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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF ARIZONA

15 NATHANIEL JOHNSON and KRISTEN
16 PETRILLI; ABRAHAM NIETO; GLORIA
and CHARLES LEWIS; FABIAN and
17 MARIA PATRON, on behalf of themselves
and all others similarly situated,

18 Plaintiffs,

19 vs.

20 KB HOME, a Delaware corporation;
21 COUNTRYWIDE FINANCIAL
CORPORATION, a Delaware corporation,
22 COUNTRYWIDE HOME LOANS, INC., a
New York corporation; COUNTRYWIDE
23 MORTGAGE VENTURES, LLC, a
Delaware company; COUNTRYWIDE-KB
24 HOME LOANS, an unincorporated
association of unknown form, LANDSAFE,
25 INC., a Delaware corporation; LANDSAFE
26 APPRAISAL SERVICES, INC., a
California corporation; and DOES 1 through
27 1000,

28 Defendants.

No.

CLASS ACTION COMPLAINT
(Violations of 18 U.S.C. § 1962; Cal.
Bus. & Prof. Code § 17200, *et seq.*;
Unjust Enrichment)

DEMAND FOR JURY TRIAL

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1 Plaintiffs, on behalf of themselves and all others similarly situated, by their
2 undersigned attorneys, allege as follows:

3 **I. INTRODUCTION**

4 1. Defendants KB Home, Countrywide and LandSafe, along with their
5 network of staff and fee appraisers formed and operated a criminal enterprise (the “KB
6 Countrywide Criminal Enterprise”) which through the “Inflated Appraisal Scheme”
7 inflated the sale amounts of KB Home properties and loan amounts of Countrywide loans
8 by corrupting the appraisals of KB Home properties such that the appraisals would
9 always indicate a value at or above the contracted sales price for the properties or were
10 otherwise inflated.

11 2. KB Home and its affiliates are one of the largest home builders in the
12 nation and have built tens of thousands of homes throughout the United States and in
13 Arizona.

14 3. KB Home is and was at all relevant times in a position to refer and direct
15 each of its customers to purchase thousands of dollars in real estate settlement services –
16 such as mortgage lending services, title insurance, escrow services, and the like – from
17 settlement service providers of its choice.

18 4. Countrywide and its related divisions comprise one of the largest lenders
19 for home loans in the country at one time originating over one in four of all home
20 mortgage loans in the United States.

21 5. These two entities formed a joint venture, “Countrywide-KB” in order to
22 control the purchase and lending process and capture every settlement service fee for KB
23 Home sales in Arizona and across the United States.

24 6. LandSafe operates an appraisal service and is a wholly owned subsidiary of
25 Countrywide.

26 7. The three entities – KB Home, Countrywide, and LandSafe, operated a
27 criminal enterprise (the “KB Countrywide Criminal Enterprise”) among themselves and
28 through the Countrywide-KB joint venture. The KB Countrywide Criminal Enterprise

1 built, financed, appraised and controlled virtually every aspect of a buyer's real estate
2 transaction and thus Defendants were in a position to rig and falsify the appraised value
3 of the homes they were selling and financing.

4 8. An appraisal is a critical part of the home buying and financing process. If
5 an appraisal is inaccurate a homeowner may purchase a house for more than its worth and
6 the results can lead to an inability to refinance and foreclosure in addition to excessive
7 mortgage payments and taxes.

8 9. Through the "Inflated Appraisal Scheme," the KB Countrywide Criminal
9 Enterprise controlled the appraisal process for new homes in KB Home developments.
10 When a customer wanted to purchase a house from KB Home, he/she was typically
11 required and/or steered to complete a loan application from Countrywide (which
12 purported to act as a loan broker for the Countrywide-KB joint venture). Countrywide
13 would order an appraisal for the property from its complicit partner LandSafe. When an
14 order for an appraisal on a KB Home went to LandSafe, it was routed to a single person
15 at LandSafe, that individual assigned appraisals of KB Home properties to a small group
16 of appraisers who had been specifically approved for each development by KB Home due
17 to their willingness to "play-ball," *i.e.*, come in with the appraisal at whatever number
18 was necessary to close the deal at the price desired by Countrywide-KB.

19 10. Thus, in order to ensure that Plaintiffs' and Class members' home
20 transactions would occur at inflated contracted prices for KB homes, notwithstanding the
21 actual and sometimes declining home market between the date of a contract and
22 settlement, the KB Countrywide Criminal Enterprise steered Plaintiffs and Class members
23 to its complicit appraisers who were under direct instruction to value homes at or above
24 the contract price even if it meant completing appraisals in violation of regulatory
25 guidelines and requirements pertaining to appraisals.

26 11. Plaintiffs' and Class members' home appraisals were tainted with false and
27 misleading data, deceptive practices, and violations of the Regulatory standards for
28 professional appraisers including, *inter alia*, the following:

- 1 i. Improper selection of distant, dissimilar properties:
2 The tainted appraisals claimed distant dissimilar
3 properties were comparable sales, overlooking
4 numerous available neighboring, identical comparable
5 sales that would have revealed lower value;
- 6 ii. Use of pending transactions as comparable sales: The
7 tainted appraisals used claimed pending sales, even
8 when no sale was actually pending because the
9 ostensible buyer had abandoned the transaction; and
- 10 iii. False and misleading statements regarding market
11 factors and conditions: The tainted appraisals gave
12 false and misleading statements concerning the
13 generally downward trending real estate market at the
14 time that the appraisals were performed.

15 12. The appraisal reports often affirmatively state that the appraisers relied on
16 information provided by KB Home and Countrywide-KB. That KB Home was a primary
17 source in support of the tainted appraisals is demonstrated by, among other things, the
18 inclusion of pending sale information, which would only have been known to KB Home,
19 and the repetition of identical misinformation in different reports by different cooperating
20 appraisers.

21 13. The appraiser's use of such unverified information and patently faulty
22 methodology demonstrates their complicity in the scheme. In contrast, when a
23 prospective KB Home purchaser was able to have an non-complicit appraiser look at
24 public records of recently closed sales of truly comparable properties, the independent
25 appraisals revealed values far below the KB Home contract price and KB Home tainted
26 appraisal to match. In such cases, KB Home often conceded the difference in order to
27 close the sale, but then concealed the facts of these transactions from contemporaneous
28 and subsequent purchasers.

14 14. The inflated sale prices resulting from the tainted appraisals, in turn,
15 infected subsequent appraisals and valuations, allowing the KB Countrywide Criminal
16 Enterprise to continue to obfuscate falling values. In other words, this was a Madoff-like
17 Ponzi scheme that depended upon the initial use of false appraisals to prop up early sales

1 in a KB subdivision, which were then used to continue to prop up the value and selling
2 activity in entire KB Home subdivisions.

3 15. The impact of this Scheme is staggering. In KB Home's "Southwest
4 segment," that includes Arizona and Nevada, KB built over 14,000 homes since 2006, at
5 an average price of approximately \$250,000. Conservatively assuming an average
6 inflated appraisal of \$20,000 per home, that amounts to \$2.8 Billion in inflated contract
7 prices. The average inflation of sampled properties as part of counsel's investigation is
8 \$82,169. Thus, actual inflated contract prices may be far greater than \$2.8 Billion.

9 16. In this action Plaintiffs seek damages directly arising from Defendants'
10 Inflated Appraisal Scheme and violations of RICO and state law.

11 **II. JURISDICTION AND VENUE**

12 17. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1331,
13 which confers original jurisdiction upon this Court in a civil action arising under federal
14 law.

15 18. With respect to Plaintiffs' claims under California law, Plaintiffs invoke the
16 jurisdiction of this Court pursuant to 28 U.S.C. § 1332(d) because various members of
17 the class are citizens of a state different from Defendants' states and the aggregate
18 amount in controversy exceeds five million dollars. California consumer protection
19 statutes are appropriately applied to the class of persons throughout the United States
20 because the wrongdoing alleged in this Complaint emanated from California, occurred in
21 significant part in California, and Defendants KB Home and Countrywide Home Loans,
22 Inc. have their headquarters and principal places of business in California.

23 19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because
24 Plaintiffs closed loans with Countrywide in this District and purchased homes from KB
25 Home in this District, and because the Defendants regularly conduct business in interstate
26 trade and commerce in this District.

27 20. Defendants' activities described herein were in the flow of interstate
28 commerce and had a substantial effect on interstate commerce.

III. PARTIES

1
2 21. Plaintiffs Nathaniel Johnson and Kristen Petrilli (the “Johnson/Petrilli
3 Plaintiffs”), purchased a home at 25625 W. Lynne Lane, Buckley, Arizona from KB
4 Home.

5 22. Plaintiff Abraham Nieto purchased a KB home located at 25615 West
6 Lynne Lane, Buckeye, Arizona.

7 23. Plaintiffs Charles and Gloria Lewis purchased a KB home located at
8 18548 W. Sunbelt Drive, Surprise, Arizona 85374.

9 24. Plaintiffs Fabian and Maria Patron purchased a KB home located at
10 25870 W. Nancy Lane, Buckeye, Arizona.

11 25. Defendant KB Home is a Delaware corporation registered to do business in
12 California and Arizona. It is the publicly traded parent and holding company of the KB
13 Home conglomerate of companies, which have their principal place of business and
14 national headquarters at 10990 Wilshire Boulevard, Los Angeles, California. KB Home
15 maintains sales offices in Tucson at 250 S. Craycroft and at several locations in Phoenix.

16 26. Defendant Countrywide Financial Corporation (“Countrywide Financial”)
17 is a Delaware corporation registered to do business in Arizona. It was at relevant times
18 the publicly traded parent and holding company of the Countrywide family of companies,
19 which have their principal place of business and national headquarters at 4500 Park
20 Granada, Calabasas, County of Los Angeles, California (“Countrywide Headquarters”).

21 27. Defendant Countrywide Home Loans, Inc. (“Countrywide”) is a New York
22 corporation with its principal place of business and national headquarters at Countrywide
23 Headquarters. It was at all relevant times a wholly owned and controlled subsidiary of
24 Countrywide Financial operated out of Countrywide Headquarters. Countrywide is
25 licensed to do business in Arizona and maintains multiple offices in Arizona, including
26 the following:

27 Countrywide Home Loans
11811 N Tatum Blvd.
28 Phoenix, AZ 85028

Countrywide Home Loans
14100 N 83rd Ave #190
Peoria, AZ 85381

1	Countrywide Home Loans 14850 N Frank Lloyd Wright Blvd Ste 117 Scottsdale, AZ 85260	Countrywide Home Loans 2133 E Warner Rd #104 Tempe, AZ 85284
2		
3	Countrywide Home Loans 5015 N 7 th Ave #2 Phoenix, AZ 85013	Countrywide Home Loans 8326 E Hartford Dr #101 Scottsdale, AZ 85255
4		
5	Countrywide Home Loans 2231 E Camelback Rd #200 Phoenix, AZ 85016	Countrywide Home Loans 8414 N 90 th St Scottsdale, AZ 85258
6		
7	Countrywide Home Loans 3344 E Camelback Rd #103 Phoenix, AZ 85018	Countrywide Home Loans 14850 N Frank L. Wright #117 Scottsdale, AZ 85260
8		
9	Countrywide Home Loans 2501 W Happy Valley Rd Phoenix, AZ 85085	Countrywide Home Loans 10001 W Bell Rd #A28 128 Sun City, AZ 85351
10		
11	Countrywide Home Loans 1515 W 14 th St Tempe, AZ 85281	Countrywide Home Loans 1201 S Alma School Rd #16500 Mesa, AZ 85210
12		
13	Countrywide Home Loans 1295 W Washington St. Tempe, AZ 85281	Countrywide Home Loans 1880 S Alma School Rd #3, Chandler, AZ 85286
14		
15	Countrywide Home Loans 2931 N 59 th Ave Phoenix, AZ 85033	Countrywide Home Loans 109 W University Dr #1& Chandler, AZ 85249
16		
17	Countrywide Home Loans 1330 W Southern Ave Tempe, AZ 85282	Countrywide Home Loans 1640 S Stapley Dr #241 Mesa, AZ 85204
18		
19	Countrywide Home Loans 20860 N Tatum Blvd #340 Phoenix, AZ 85050	Countrywide Home Loans 397 N Litchfield Rd Goodyear, AZ 85338
20		
21	Countrywide Home Loans 6909 Greenway Pkwy Scottsdale, AZ 85254	Countrywide Home Loans 1525 N Gilbert Rd Gilbert, AZ 85234
22		
23	Countrywide Home Loans 20241 N 67 th Ave #A5 Glendale, AZ 85308	Countrywide Home Loans 1515 N Gilbert Rd #111 Gilbert, AZ 85234
24		
25	Countrywide Home Loans 7898 E Acoma Dr #208 Scottsdale, AZ 85260	Countrywide Home Loans 3777 E Broadway Blvd Tucson, AZ 85716
26		
27	Countrywide Home Loans 6725 E Broadway Blvd Tucson, AZ 85710	Countrywide Home Loans 7090 N Oracle Rd Tucson, AZ 85704
28		
	Countrywide Home Loans 1745 E River Rd Tucson, AZ 85718	Countrywide Home Loans 2151 S Highway 92 Sierra Vista, AZ 85635

1 Countrywide Home Loans
2 3410 Canyon De Flores #C
3 Sierra Vista, AZ 85650

4 28. Defendant Countrywide Mortgage Ventures, LLC (“Countrywide
5 Ventures”) is a Delaware limited liability company with its principal place of business
6 and national headquarters at Countrywide Headquarters, which was registered to do
7 business in California in 2001. It was at all relevant times a wholly owned and controlled
8 subsidiary of Countrywide Financial operated out of Countrywide Headquarters.

9 29. Defendant Countrywide KB Home Loans (“Countrywide-KB”) is an
10 unincorporated joint venture between KB Home and Countrywide Financial.

11 30. Defendant LandSafe, Inc. (“LandSafe”) is a Delaware corporation
12 headquartered at 6400 Legacy Drive, Plano, Texas 75024. LandSafe is a subsidiary of
13 Countrywide Financial, and purports to provide loan closing products and services such
14 as credit reports, appraisals, property valuation services and flood determinations.

15 31. Defendant LandSafe Appraisal Services, Inc. (“LandSafe Appraisal”) is a
16 California corporation headquartered at 6400 Legacy Drive, Plano, Texas 75024.
17 LandSafe Appraisal is a subsidiary of LandSafe, Inc. with shared management and
18 employees, which purports to offer appraisal services in connection with mortgage loan
19 closings.

20 32. Collectively, LandSafe and LandSafe Appraisal are referred to as LandSafe.

21 33. The LandSafe entities, though subsidiaries of Countrywide, have a distinct
22 business presence and advertise and promote services separate and apart from
23 Countrywide. The parent, LandSafe Inc., operates, *inter alia*, the following subsidiaries:

24 LandSafe Appraisal Services

25 LandSafe Credit Services

26 LandSafe Flood Determination

27 A variety of LandSafe Title subsidiaries
28

1 residential mortgage servicing portfolio in excess of \$1 trillion. Its mortgage lending
2 segment has operated in a variety of sectors, including retail, wholesale, and
3 correspondent lending.

4 38. In addition to over 15,000 field salespersons pursuing customer leads and
5 originating home loans, Countrywide has sourced loans through a network of over 30,000
6 contracted mortgage brokers.

7 39. According to its 2007 Form 10-K annual report, Countrywide's retail
8 channel consisted of its Consumer Markets Division and the Full Spectrum Lending
9 Division ("FSL"). The Company's Consumer Markets Division ("CMD") generally has
10 originated loans through the Company's joint ventures. The Company has reached
11 customers through call centers, the Internet, and retail branches.

12 40. The Company's Full Spectrum Lending Division has focused on new
13 customer acquisitions through Internet, direct mail and mass media marketing channels
14 and has specialized in refinance and home equity products. Countrywide's Full Spectrum
15 Lending Division has been accused of predatory lending practices by multiple state
16 attorney generals (the "AG Actions").¹

17 41. Countrywide's wholesale lending channel has underwritten and funded
18 mortgage loans sourced by mortgage loan brokers and other financial intermediaries.

19 42. In 2004, Countrywide became the largest home mortgage lender in the
20 United States, built on years of primarily offering customary fixed-rate mortgage loans to
21 borrowers. By that time, Countrywide, led by its CEO and founder Angelo Mozilo, was
22 intent on elbowing out competing lenders that tried to horn in on Countrywide's market
23
24

25 ¹ See, e.g.,
26 http://ag.ca.gov/cms_attachments/press/pdfs/n1582_draft_cwide_complaint2.pdf
27 (California); [http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7G5G7L/\\$file/CountrywideComplaint.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MRAY-7G5G7L/$file/CountrywideComplaint.pdf) (Florida);
28 http://www.ag.state.oh.us/press/08/12/pr081230_c.pdf (Ohio);
http://www.illinoisattorneygeneral.gov/consumers/countrywide_final_judgement.pdf
(Illinois).

1 share by originating more exotic mortgage loans. As a result, Countrywide's mortgage
2 portfolio – and lending standards – changed dramatically.

3 43. From mid-2003 onward, Countrywide continually loosened its underwriting
4 guidelines to the point of nearly abandoning them by 2006. Countrywide's highest-level
5 managers authored official documents – underwriting matrices and guidelines – such as
6 those for Countrywide's Corresponding Lending Division ("CLD") that memorialized
7 Countrywide's systematically lowered lending standards. Numerous Confidential
8 Witnesses ("CWs") from different levels and involved in different aspects of the
9 Company corroborate the nature of Countrywide's strategy shift. Chairman and CEO
10 Angelo Mozilo's stated goal was to gain 30% of the national market share for mortgage
11 originations. To do so, he and other high-ranking executives at Countrywide ordered
12 many of the lowered standards.

13 44. Underwriting standards changed so much during the Class Period that, in
14 December 2007, Countrywide told reporters that billions of dollars of loans in 2005 and
15 2006 could not have been made under "new" guidelines.

16 45. Countrywide and its officers have come under tremendous scrutiny for the
17 practices underlying the Scheme alleged in this Complaint.

18 46. On or about October 18, 2007, the U.S. Securities & Exchange
19 Commission began informally investigating the insider stock sales of Countrywide's
20 Chief Executive Officer, Angelo Mozilo. Mr. Mozilo – who was paid \$142 million last
21 year and was the seventh highest paid CEO in the United States – has sold nearly \$300
22 million in Countrywide shares since 2005 pursuant to the Company's prearranged selling
23 program. Further, after October 2006, when Mr. Mozilo put a new selling program in
24 place at Countrywide, he raised the number of shares executives could sell, from 350,000
25 shares in October 2006, to 580,000 shares in February 2007, when shares were at a high
26 of \$45.03 per share. These stock programs provided an incentive for the Defendants, and
27 the top officials of Countrywide, to develop and implement the Scheme alleged in this
28 Complaint.

1 47. On October 6, 2008, in response to criticism from regulators and advocacy
2 groups, Countrywide announced a multi-state settlement of the AG Actions, pursuant to
3 which it would offer certain prospective relief, including a limited loan modification
4 program.

5 48. In a securities derivative action that was brought against Countrywide it
6 was alleged that Countrywide essentially abandoned its underwriting standards. The case
7 recently survived a motion to dismiss, in an opinion in which Judge Mariana R. Pfaelzer
8 found a “strong inference of a Company-wide culture that, at every level, emphasized
9 increasing loan origination volume in derogation of underwriting standards.” Derivative
10 Action Order, 2008 WL 2064977, at *10. The Court noted that numerous confidential
11 witnesses, mostly former employees of Countrywide, who had been quoted in the
12 complaint, presented a “striking[]” story of “rampant disregard for underwriting
13 standards” at Countrywide in the interest of pushing through as many loans as possible.
14 *Id.* This scheme of pushing quantity over quality, including a lack of any analysis of
15 reasonable criteria to ascertain the appropriateness of the loans Countrywide issued to its
16 borrowers, was uniformly concealed from borrowers, just as it was concealed from the
17 public. *Id.* at *9 (holding that plaintiffs had presented a “cogent and compelling
18 inference” that the defendant Countrywide executives had misled the public about the
19 “rigor of Countrywide’s loan origination process, the quality of its loans, and the
20 Company’s financial situation – even as they realized that *Countrywide had virtually*
21 *abandoned its own loan underwriting practices*”) (emphasis added).

22 **C. The Importance of Accurate Appraisals**

23 49. Because of the importance of appraisals in the home-lending market, state
24 and federal statutes and regulations require that appraisals be accurate and independent.
25 The Uniform Standards of Professional Appraisal Practice (“USPAP”), incorporated into
26 federal law, 12 C.F.R. § 34.44, require appraisers to conduct their appraisals
27 independently: “An appraiser must perform assignments with impartiality, objectivity,
28 and independence, and without accommodation of personal interests. In appraisal

1 practice, an appraiser must not perform as an advocate for any party or issue.” USPAP
2 Ethics Rule (Conduct). USPAP rules also provide that “[a]n appraiser must not accept an
3 assignment that includes the reporting of predetermined opinions and conclusions.” In
4 addition, each appraisal report must contain a certification signed by the appraiser, stating
5 that his or her compensation for completing the assignment is not contingent upon the
6 development or reporting of a predetermined value or direction in value that favors the
7 cause of the client.

8 50. USPAP is incorporated into federal law by 12 C.F.R. § 34.44, and federal
9 law sets independence standards for appraisers involved in federally-regulated
10 transactions. *See* 12 U.S.C. § 3331, *et seq.* The Code of Federal Regulations provides
11 that an in-house or “staff” appraiser at a bank “must be independent of the lending,
12 investment, and collection functions and not involved, except as an appraiser, in the
13 federally related transaction, and have no direct or indirect interest, financial or
14 otherwise, in the property.” 12 C.F.R. § 34.45. For appraisers who are independent
15 contractors or “fee” appraisers, the regulation states that “the appraiser shall be engaged
16 directly by the regulated institution or its agent, and have no direct or indirect interest,
17 financial or otherwise, in the property transaction.” 12 C.F.R. § 34.45.

18 51. Arizona also recognizes the importance of an appraisal and its integrity.
19 Thus, A.R.S. 32-3601 provides:

- 20 1. “Appraisal” or “real estate appraisal” means a
21 statement *independently and impartially prepared* by
22 an individual setting forth an opinion as to the market
23 value of real property as of a specific date and
supported by the presentation and analysis of relevant
market information.
- 24 2. “Appraisal assignment” means an engagement for
25 which a real estate appraiser is employed or retained to
26 act, or would be perceived by third parties or the
27 public in acting, *as a disinterested third party in*
28 *rendering an unbiased analysis, opinion or conclusion*
relating to the nature, quality, value or utility of
specified interests in or aspects of identified real
estate. (Emphasis added.)

1 52. In addition, A.R.S. 32-3633 provides that “A person who induces or
2 influences the actions of an appraiser for purposes of securing an appraisal that is grossly
3 misleading or fraudulent is guilty of a class 6 felony.”

4 53. Defendants are aware of the importance of accurate appraisals and the
5 requirements imposed by USPAP and Arizona law.

6 **D. Defendant KB Home’s Profits Depended Upon Increasing or Stabilizing the**
7 **Market Value for the Homes it Builds and Sells**

8 54. KB Home is a Fortune 500 company that develops residential communities
9 throughout California and nationwide. In 2006, KB Home reported \$6.86 billion in sales,
10 from which it earned a net income in excess of \$842 million. In 2007, as the housing
11 market weakened, KB Home sales increased over 25% to \$8.86 billion while it earned an
12 additional \$482 million in net income.

13 55. KB Home employs a consistent development model throughout the United
14 States. Following purchase of the land and the entitlement process for a particular
15 development project, KB Home builds model homes in several sizes and at differing
16 price points. The model homes are used to mass market unbuilt versions of the same
17 homes on the other lots in that particular development. The resulting KB Home
18 developments typically consist of dozens of identical homes built from the 4-5 marketed
19 models within a single confined area. As a result, houses of the same model in the same
20 development are fundamentally comparable for appraisal purposes under USPAP.

21 56. In order to minimize the significant costs of standing inventory and the risk
22 of building an unpopular model, KB Home builds on the empty lots in a development
23 only after a purchaser has entered into a contract specifying the price for the specific
24 model home they desire and the particular lot in the development on which they want it
25 built. Thus, production of homes is contingent on customer orders.

26 57. While an existing home sale may have 4-6 week period between entering
27 into a purchase/sale agreement and the close of escrow on the property, because KB
28 Home begins construction on each home only after it has a purchase agreement, there is

1 typically a 6-8 *month* lag time between KB Home securing customer orders (in the form
2 of purchase agreements) and delivery of completed houses to the customer and payment
3 at the close of escrow.

4 58. KB refers to this time lag as “Backlog”:

5 “Backlog” consists of homes that are under contract but have
6 not yet been delivered. Ending backlog represents the
7 number of homes in backlog from the previous period plus
8 the number of net orders (new orders for homes less
9 cancellations) taken during the current period minus the
10 number of homes delivered during the current period. The
11 backlog at any given time will be affected by cancellations.
12 In addition, deliveries of new homes typically increase from
13 the first to the fourth quarter in any year.

14 59. All financed transactions require an appraisal report in order to close
15 escrow. The appraisal cannot be completed until the house is substantially constructed.
16 The purchase agreements signed by Plaintiffs and members of the putative classes are
17 subject to financing contingencies which allowed Plaintiffs and Class members to refuse
18 to close the transactions if the property does not appraise at or above the contract price
19 (*i.e.*, “at-value”). In any event, during the production period, the customer may abandon
20 the contract and, at worst, lose their deposit of about \$5,000 to \$10,000 as liquidated
21 damages.

22 60. In a rising home value market, the 6-8 month backlog period can create
23 value for both KB Home and the home purchaser. KB Home benefits as it is able to
24 demand a price somewhat higher than then-current market price as it can predict a higher
25 appraisal at closing. Concomitantly, the home purchaser may also benefit as the price
26 he/she agrees to pay for a new home may be well under the value of such house 6-8
27 months later when the house is built and escrow closes.

28 61. However, in an environment of falling home prices, market forces should
drive builders such as KB Home to discount home prices, even below the then-current
appraisal value, in order to ensure that the value at closing will be correlated to the
contract purchase price. As set forth below, rather than succumb to these market forces –
that would naturally have resulted in a decrease of KB Home’s sales and profit – KB

1 Home entered into a illicit enterprise with Defendants Countrywide and LandSafe to
2 unfairly and deceptively prop up the appraised value of the homes it sold, and place
3 purchasers in loans at levels exceeding the values of the purchased homes and with
4 payments beyond such purchasers' true abilities to repay.

5 **E. KB Home's Lending Subsidiary is Fined by HUD for Improper Lending**
6 **Practices**

7 62. KB Home and its in-house mortgage lending operation, KB Home
8 Mortgage, would take unprecedented and illegal steps to place KB Home customers in
9 loans that would support the contracted home prices. In July, 2005, HUD announced that
10 it had reached a \$3.2 million settlement with KB Home Mortgage to resolve HUD's
11 investigation that revealed 13 distinct loan underwriting violations including: "approving
12 loans to borrowers who were not eligible; approving loans based on overstated or
13 incorrect income; failing to include all of a borrowers' debts; failing to properly verify
14 sources of funds; and, failing to ensure gift letters met HUD requirements." See HUD
15 Press Release No. 05-093.² The settlement resulted in the largest administrative penalty
16 payment in HUD history and, according to HUD, was intended to "send[] a strong
17 message that FHA will not tolerate violations of its requirements, especially when they
18 cause homeowners to default on their mortgages." See *id*

19 63. KB Home apparently viewed the \$3.2 million settlement payment as a cost
20 of business as it offset only about 18% of the \$17.6 million in mortgage banking revenue
21 KB Home Mortgage earned in 2004 alone. Rather than correct and reform its predatory
22 practices, as its settlement with HUD required, one week prior to the announcement of
23 the HUD settlement, KB Home announced it was "selling" KB Home Mortgage to
24 Countrywide and together they were forming Countrywide-KB, a 50/50 joint venture that
25 would exclusively provide loans to KB Home purchasers.

26
27
28 ² See HUD Announces \$3.2 Million Settlement Against KB Home Mortgage Company,
HUD No. 05-093, available online at:
<http://www.hud.gov/news/release.cfm?content=pr05-093.cfm>.

1 **F. Countrywide and KB Home Join Forces to Form Countrywide-KB**

2 64. In 2005, KB Home sold its mortgage banking assets to Countrywide
3 Financial and they agreed to form an unincorporated joint venture, known as
4 Countrywide KB Home Loans (“Countrywide-KB”), to receive KB Home customer
5 mortgage lending services referrals from KB Home.

6 65. In its 2008 SEC Form 10-K, KB Home described the relationship as
7 follows:

8 **Customer Financing**

9 On-site representatives at our communities facilitate sales by
10 offering to arrange mortgage financing for prospective
11 homebuyers through our Countrywide KB Home Loans retail
12 mortgage banking joint venture. Although our homebuyers
13 may obtain financing from any qualified lender, we believe
14 that the ability of Countrywide KB Home Loans to offer
15 customers a variety of financing options on competitive terms
16 as a part of the on-site sales process is an important factor in
17 completing sales. This includes both fixed and adjustable rate
18 mortgages under conventional, FHA-insured and
19 VA-guaranteed mortgages, and mortgages through revenue
20 bond programs sponsored by states and municipalities.
21 Countrywide KB Home Loans originated loans for 80% of
22 our customers who obtained mortgage financing in 2008 and
23 72% in 2007.

24 66. Through the Countrywide-KB joint venture, KB Home referred its
25 customers’ mortgage business to Countrywide as part of an unlawful ongoing exchange
26 of monetary and non-monetary “things of value” (as that term is defined in RESPA
27 Section 8 and its implementing regulations) including, for example, predetermined loan
28 approvals and predetermined “at value” appraisals provided by appraisers affiliated with
Countrywide’s LandSafe subsidiary and hand-picked and controlled by KB Home.

67. Thus, at all relevant times, KB Home referred its customers to
Countrywide-KB for mortgage settlement services and Countrywide-KB referred
additional settlement services, such as appraisals, flood certifications, credit inquiries and
tax reviews to Countrywide and its LandSafe subsidiaries.

1 68. At all relevant times, Countrywide-KB only made loans to KB Home
2 customers and always did so pursuant to referrals from KB Home.

3 69. These referrals were made pursuant to an agreement between KB Home
4 and Countrywide Financial. Specifically, Countrywide-KB is itself the manifestation of a
5 “mortgage banking joint venture” agreement that KB Home “established with
6 Countrywide Financial Corporation in 2005.” KB Home 2006 SEC Form 10-K, p. 12.

7 70. Pursuant to the joint venture agreement, Countrywide-KB was operated and
8 managed by Countrywide Financial. *See* KB Home 2005 SEC Form 10-K, p. 27.

9 71. Pursuant to the joint venture agreement, the operation and management of
10 Countrywide-KB occurred by and through Countrywide Home, a wholly owned
11 subsidiary of Countrywide Financial, which held California mortgage banking and
12 brokerage licenses.

13 72. Pursuant to the joint venture agreement, Countrywide Home established
14 and operated Countrywide-KB websites called www.countrywidekb.com and
15 www.countrywidekbhl.com, which used www.countrywide.com domain servers.

16 73. Pursuant to the joint venture agreement, Defendant Countrywide Ventures,
17 another wholly owned subsidiary of Countrywide Financial, established several “d/b/a
18 Countrywide KB Home Loans” branch offices at preexisting Countrywide Home
19 locations.

20 74. Pursuant to the joint venture agreement, the “lender” for Countrywide-KB
21 mortgages was Countrywide Ventures. As Countrywide Ventures is a Delaware “series”
22 entity, the loan documents, including Plaintiffs’ documents, frequently identified the
23 lender as “Countrywide KB Home Loans, a Countrywide Mortgage Ventures LLC
24 series.”

25 75. Pursuant to the joint venture agreement, Countrywide Home received a 1%
26 origination fee on all Countrywide-KB loans.

27 76. Pursuant to the joint venture agreement, to the extent the processing,
28 underwriting, and funding of Countrywide-KB loans was not performed directly by

1 “Countrywide”³ employees, it was performed by administrative employees that the
2 Countrywide-KB joint venture “borrowed” from Countrywide.

3 77. Pursuant to the joint venture agreement, all persons who provided mortgage
4 settlement services in connection with Countrywide-KB loans: (a) were physically
5 located in office space possessed, controlled, and managed by Countrywide; (b) utilized
6 computer networks, systems, software, and similar resources furnished by Countrywide;
7 (c) were supported by accounting, technical support, information technology, human
8 resources, facilities, and similar “back office” resources supplied by Countrywide; and
9 (d) were under the management and control of Countrywide employees.

10 78. Pursuant to the joint venture agreement, or understandings incidental
11 thereto, Countrywide-KB referred any additional settlement services required for its
12 customers’ closings to wholly owned Countrywide Financial subsidiaries, as follows:

- 13 a. LandSafe Appraisal Service Inc., a for appraisal
14 services;
- 15 b. LandSafe Credit Inc., for credit agency reporting
16 services;
- 17 c. LandSafe Flood Determination Inc. for flood review
18 services; and
- 19 d. Countrywide Tax Service Corporation for tax review
20 services.

21 79. Pursuant to the joint venture agreement, or understandings incidental
22 thereto, all Countrywide-KB appraisal orders received by LandSafe Appraisal, including
23 the ones related to Plaintiffs’ properties, were assigned to a pre-determined list of “KB
24 friendly” appraisers, over which KB Home had an absolute veto right. That is, KB Home
25 maintained a list of KB Home-approved LandSafe panel appraisers for each KB Home

26 _____
27 ³ Where the term “Countrywide” is used herein, it means Countrywide Financial and/or
28 Countrywide Home, which both did business at all relevant times as both “Countrywide
Home Loans” and “Countrywide.” Where Plaintiffs are informed as to the identity of the
particular entity involved, it is specifically identified.

1 community, and it was agreed that only these particular appraisers could be assigned to
2 appraise KB Home properties.

3 80. Pursuant to the joint venture agreement, Countrywide sold these mortgages
4 in the secondary markets for the benefit of the Countrywide-KB joint venture.

5 81. Pursuant to the joint venture agreement, Countrywide then paid KB Home a
6 portion of the profits attributable to service fees and secondary market sales of all KB
7 Home referred mortgages, including those settlement service fees paid by Plaintiffs and
8 those secondary market profits acquired through the sale of their mortgages.

9 82. The revenue realized from KB's portion of its financial joint venture is
10 substantial. The joint venture resulted in the following loans and revenues for KB:

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Loans	11,289	16,909	15,613
Principal	\$2,328,702	\$3,969,827	\$3,787,597

11
12
13
14 **G. The KB Countrywide Criminal Enterprise Fraudulently Inflated the
Appraised Value of Plaintiffs and Class Members KB Home**

15 83. Starting at an exact time that is unknown, but estimated to be in 2006, the
16 value of newly built KB Home residences dropped relative to the pre-construction
17 contract prices obtained in the preceding months. Some buyers who became aware of the
18 falling property values, abandoned the transactions before the close of escrow, or
19 extracted large price concessions from KB Home. To counter this market shift, KB
20 Home, Countrywide and LandSafe, through the Countrywide-KB joint venture and the
21 Countrywide KB Criminal Enterprise, began and conducted the affairs of the Inflated
22 Appraisal Scheme.

23 84. To the home purchasers, it appeared that they could afford the loans
24 Countrywide-KB was offering and that the homes they were purchasing from KB Home
25 were, in fact, worth the amount that they were paying and worth enough to support the
26 loan principal that would be owed.

27 85. At the highest levels of Countrywide, LandSafe and KB Home, executives
28 were aware that truly independent appraisals of KB Home properties would jeopardize

1 KB Home's continuing profits on sales, and Countrywide's continuing profits on
2 mortgage origination fees and sales of loans in the secondary market.

3 86. Thus, KB Home, Countrywide, Countrywide-KB and LandSafe entered
4 into a scheme to control the appraisal process so that artificially high appraisals were
5 used in the financing of KB Home purchases. Prospective buyers were referred to the
6 Countrywide-KB joint venture for financing and required to use LandSafe for their
7 appraisals. LandSafe executives were also Countrywide executives.

8 87. For the entire United States, as part of the Scheme, one LandSafe employee
9 was placed in charge of controlling who received appraisal assignments for every KB
10 Home/ Countrywide-KB transaction. This employee was under instruction, agreed to by
11 executives of KB Home, Countrywide and LandSafe, to only use appraisers that valued
12 homes where KB Home needed them to be. Typically this meant only a few appraisers
13 were allowed to value KB Home in any given area.

14 88. In order to ensure that Plaintiffs' and Class members' home transactions
15 would occur at the previously contracted prices, notwithstanding the declining home
16 market, the KB Countrywide Criminal Enterprise used its affiliated appraisers who were
17 under direct instruction to value homes at their contract price and were hand-fed
18 inappropriate – if not outright false – comparable properties to use in completing their
19 appraisals.

20 89. Plaintiffs' and Class members' home appraisals were tainted with false and
21 misleading data and deceptive practices, including, *inter alia*, the following:

- 22 i. False comparable sales prices: the tainted appraisals
23 contained statements that comparable houses had sold
24 at a specific price when they had in fact sold at a
25 different and much lower price;
- 26 ii. False comparable sales dates: The tainted appraisals
27 contained statements that comparable houses had
28 recently sold when in fact that had sold at a much
earlier time and, therefore did not reflect the market at
the actual time of the appraisal;
- iii. Improper selection of distant, dissimilar properties:
the tainted appraisals claimed distant dissimilar

1 properties were comparable sales, overlooking
2 numerous available neighboring, identical comparable
sales that would have revealed lower value;

3 iv. Use of pending transactions as comparable sales: the
4 tainted appraisals used claimed pending sales, even
5 when no sale was actually pending because the
6 ostensible buyer had abandoned the transaction or the
seller had already agreed to a much lower price for the
transaction; and

7 v. False and misleading statements regarding market
8 factors and conditions: the tainted appraisals gave
9 false and misleading statements concerning the
generally downward trending real estate market at the
time that the appraisals were performed.

10 90. The appraisal reports often affirmatively state that the appraisers relied on
11 information provided by KB Home and Countrywide KB. That KB Home was a primary
12 source in support of the tainted appraisals is demonstrated by, among other things, the
13 inclusion of pending sale information, *which would only have been known to KB Home*,
14 and the repetition of identical misinformation in different reports by different cooperating
15 appraisers. In other words, this was a Madoff-like Ponzi scheme that depended upon the
16 use of false appraisals to prop up the value and selling activity in entire subdivisions.

17 91. The appraiser's use of such unverified information and patently faulty
18 methodology demonstrates their complicity in the Scheme. In contrast, when a
19 prospective KB Home purchaser was able to have an independent appraiser look at public
20 records of recently closed sales of truly comparable properties, the independent appraisals
21 revealed values below the KB Home contract price. In such cases, KB Home often
22 conceded the difference in order to close the sale, but concealed the facts of these
23 transactions from contemporaneous and subsequent purchasers.

24 92. The inflated sale prices resulting from the tainted appraisals, in turn,
25 infected subsequent appraisals and valuations, allowing the KB Countrywide Criminal
26 Enterprise to continue to obfuscate falling values and/or to set values at an artificially
27 high price to begin with. This allowed the KB Countrywide Criminal Enterprise to
28 obtain prices inflated well beyond where they would have been in the absence of their

1 unfair and deceptive criminal enterprise even when using appraisals downstream of the
2 original tainted appraisals which “accurately” reported those inflated sales as
3 comparables. In other words, this was a Madoff-like Ponzi scheme that depended upon
4 the initial use of false appraisals to prop up early sales, but then was self-cleansing even
5 while it continued to prop up the value and selling activity in entire KB Home
6 subdivisions.⁴

7 **H. Additional Confirmation of the KB Countrywide Criminal Enterprise**
8 **Fraudulent Approval of Loans Borrowers Could Not Afford to Support**
9 **Inflated KB Home Contract Prices**

9 93. Countrywide KB’s fraudulent loan approval practices were recently
10 revealed in a wrongful termination complaint filed by former Countrywide KB Regional
11 Vice President and Manager, Mark Zachary. Mr. Zachary’s complaint was filed on
12 January 17, 2008, in the Southern District of Texas (the “Zachary Complaint”),
13 No. 08-cv-00214.

14 94. In September 2006, Zachary questioned Countrywide KB’s practice of
15 using a single appraiser who, with Countrywide KB executive knowledge, was being
16 directed to inflate the appraised value of KB Home residences that were financed through
17 Countrywide-KB. Zachary alleges:

18 9. In September 2006, Mr. Zachary began questioning
19 Countrywide executives as to a questionable practice
20 on the part of Countrywide where only one appraiser
21 was being used to appraise homes on behalf of KB
22 Home as it related to CWKB. The appraiser, as known
23 to Countrywide executives, was being strongly
24 encouraged to inflate the homes’ appraised value by as
25 much as 6% to allow the homeowner to “roll up” all
26 closing costs. Not only would the home buyer be
27 duped by this act, the end investors (the secondary
28 market) providing funds for these loans were also

26 ⁴ In this manner, the later sales in any particular subdivision might not show comparables
27 with false sales values or dates because they could accurately report the prior fraudulently
28 inflated sales. Nonetheless, these later sales were still infected with the earlier fraud and
thus grossly inflated through the used of false statements of market stability and false
reliance on the knowingly inflated prior appraisals (since the same small group of
appraisers did all homes for a particular subdivision).

1 duped because they were not made aware that the
2 actual home value could actually be less than the loan
3 amount tied to the mortgage note. *This inflated value*
4 *put the buyer upside down on the home immediately*
5 *after purchasing it; thus, setting up the buyer to*
6 *become more susceptible to defaulting on the loan.* It
7 also put the lender and secondary market end investor
8 at risk because they were unaware of the true value of
9 their asset (emphasis added).

10 95. After Zachary brought his concerns to executives within CWKB, it was
11 brushed aside as he was told, “that was they way KB Home wanted it.” *Id.* at ¶ 10.

12 96. Zachary continued to make this inflated appraisal issue known to
13 Defendant’s executives. For example, Zachary recounted in an e-mail dated May 11,
14 2007, to KB Homes executives and CWKB’s Senior Vice President and Divisional
15 Manager to whom Zachary reported, a letter from an appraiser to the appraiser’s Area
16 Appraiser Manager whereby the appraiser was told by the KB Homes Closing
17 Coordinator that “*KB will not be able to continue doing business with him if he cannot hit*
18 *the contract sales price on his appraisals*” and that the KB Homes Closing Coordinator
19 stated that “*his past appraiser never missed the contract sales price even if he had to go*
20 *outside of the given community to make value.*” Zachary went on to state in the e-mail
21 that “This is considered appraisal fraud.” *Id.* at ¶ 11.

22 97. Zachary also complained to Countrywide KB executives concerning
23 Countrywide-KB’s illegal practice of “flipping” a loan application from a fully
24 documented or “full doc” loan to a “stated income” or “no income, no asset” type loan.
25 *See Zachary Complaint, ¶ 11.* Zachary explained that “loans were being cancelled at the
26 prime regional operation center as full documentation loans and transferred to the sub-
27 prime operations center in Plano, Texas as stated loans or No Income No Assets
28 (“NINA”) loans.” *Id.* Zachary further alleged that loan officers would submit flipped
subprime loan applications with false income amounts. *See id.*

98. The Zachary Complaint further explains that Countrywide-KB was required
to approve 10% of the backlog inventory of loans for KB Home transactions each day “so
that the green light could be given to KB Home to start building the homes under

1 contract.” *Id.*, ¶ 13. Zachary reviewed the loan applications on the list from which 10%
2 were required to be approved and concluded that the 10% approval requirement could not
3 be met and he refused to do so. *See id.*, ¶ 13, 14. As a result, Zachary was removed from
4 the approval process and thereafter the requisite 10% threshold of approvals was met by
5 Zachary’s supervisor. *See id.*, ¶ 14.

6 99. Zachary investigated these approvals and concluded that the loans “were
7 being approved without any review by any underwriter” and were known as “Shadow
8 Approvals.” *See id.* Zachary voiced his concern with Countrywide-KB executives that
9 Shadow Approvals could lead to borrowers being unable to afford the loans for which
10 they were approved, ultimately resulting in defaults and foreclosures. *See id.*, ¶ 14, 15.

11 100. Within weeks after refusing to participate in Countrywide-KB’s fraudulent
12 loan practices and voicing his concerns to Countrywide-KB executives, Zachary was fired,
13 purportedly for performance issues, and specifically for failing to make Shadow Approvals
14 for 10% of the daily backlog of unapproved KB Home related loans. *See id.*, ¶ 15.

15 **I. Examples of KB Home Residences in Other States That as Part of the**
16 **Inflated Appraisal Scheme Were Appraised at Values in Excess of the True**
17 **Market Value**

18 **1. The Bolden and Contreras appraisals**

19 101. The following are examples of how the Scheme worked as alleged by
20 Plaintiffs “Bolden” and “Contreras” in a case filed against KB Home in Los Angeles.
21 The same improper appraisal practices used in California were also used in Arizona and
22 the Arizona specific examples are set further in Section J below. The California
23 examples set forth below illustrate how the Scheme operated in California and the
24 Scheme was implemented.

25 102. The Boldens and the Contreras each purchased the Identical Model No. 3037
26 KB Home residence in the “Oak Knoll” development in Live Oak, California.

27 103. The Bolden’s appraisal relied on comparison to five home sales within six
28 months of the date of the Bolden close of escrow (February 6, 2006). These comparisons
were demonstrably false, unfair and deceptive in the following manner:

- 1 i. 9743 Ellis Ct., Live Oak, California: This comparable
2 sale was of the exact model purchased by the Boldens,
3 in the same development and thus would be an
4 excellent indicator of the value of the Bolden's home.
5 **However, the tainted appraisal stated that this home
6 sold for \$461,000. Public records reveal that the
7 selling price for this home was over \$52,000 less at
8 \$408,500.**
- 9 ii. 2068 Clark Ave., Yuba City, California: Though the
10 sales price was accurately stated on the tainted
11 appraisal, this was in inappropriate comparison to a
12 dissimilar house **more than ten miles distant from the
13 Bolden's home.**
- 14 iii. 3692 Rue Dr., Yuba City, California: Not only was
15 this comparable a dissimilar home more than ten miles
16 distant from the Bolden's home, but in addition, the
17 tainted appraisal indicated a sales price of \$556,500,
18 when **the home actually sold for over \$50,000 less at
19 \$16,000.**
- 20 iv. 800 Allen Way, Yuba City, California: Though the
21 sales price was accurately stated on the tainted
22 appraisal, this was in inappropriate comparison to a
23 dissimilar house **more than ten miles distant from the
24 Bolden's home.**
- 25 v. 9912 Cannon, Live Oak, California: This comparable
26 sale was of the exact model purchased by the Boldens,
27 in the same development (and on the same street) and
28 thus would be an excellent indicator of the value of the
Bolden's home. However, the tainted appraisal stated
that this home sold for \$480,500. **Public records
reveal that the selling price for this home was over
\$70,000 less at \$410,000.**

104. By using the above described grossly inflated sales of two similar homes,
the sales of two dissimilar and distant homes, and the sale of one home that was both
grossly inflated and dissimilar and distant, the appraisal submitted to KB Home and
Countrywide KB were the appraisals they sought, **one at the contract price for the
Bolden's home at \$475,000.** At least four additional recent sales of the same model
home in the same development were available as comparables, yet were ignored.

1 105. The Contreras' appraisal relied on comparison to four home sales within six
2 months of the date of the Contreras close of escrow (May 25, 2006). These comparisons
3 were demonstrably false, unfair and deceptive in the following manner:

4 i. 3461 Cannon, Live Oak, California: This comparable
5 sale was of the exact model purchased by the
6 Contreras, in the same development and thus would be
7 an excellent indicator of the value of the Contreras
8 home. However, the tainted appraisal stated that this
9 home sold for \$438,500. ***Public records reveal that
10 the selling price for this home was over \$48,000 less
11 at \$390,000.***

12 ii. 9912 Cannon, Live Oak, California: This comparable
13 sale was of the exact model purchased by the
14 Contreras, in the same development and thus would be
15 an excellent indicator of the value of the Contreras
16 home. However, the tainted appraisal stated that this
17 home sold for \$449,900. ***Public records reveal that
18 the selling price for this home was nearly \$37,000
19 less at \$410,000.*** Interestingly this home also
20 appeared on the Bolden's tainted appraisal at an even
21 higher false price.

22 iii. 1496 Tres Picos, Yuba City, California: Though the
23 sales price was accurately stated on the tainted
24 appraisal, this was in inappropriate comparison to a
25 dissimilar house ***more than ten miles distant from the
26 Contreras' home.***

27 iv. 2009 Tumbler Way, Yuba City, California: Though
28 the sales price was accurately stated on the tainted
appraisal, this was in inappropriate comparison to a
dissimilar house ***more than ten miles distant from the
Contreras' home.***

106. By using the misreported sales of two similar homes at prices far in excess
of the actual sales priced, and the sales of two dissimilar and distant homes, KB Home
and Countrywide received the appraisal they sought, one at the contract price for the
Contreras home at \$428,000. At least four additional recent sales of the same model
home in the same development were available as comparables, yet were wholly ignored.

1 **2. Contemporaneous independent appraisals of identical homes in the same**
2 **development reveal Defendants' fraudulent, unfair and deceptive acts**

3 107. In December 2005, shortly before the Bolden close of escrow, Ruvacalbas
4 (the "Ruvacalbas") closed escrow on the same Model No. 3037 home in the Oak Knolls
5 Development. However, the Ruvacalbas, though forced to complete a loan application
6 with Countrywide in order to enter the contract for their home, refused to use a
7 Countrywide Lender. As a result, KB Home and Countrywide could not require the use
8 of a complicit appraiser.

9 108. The Ruvacalbas contracted to purchase 9797 Richmond Way for nearly
10 \$469,000. On or about December 5, 2005, the Ruvacalbas' lender ordered an appraisal
11 from [Rutledge], an appraiser with no known prior ties to KB Home or Countrywide.

12 109. The Ruvacalba appraisal set forth the following comparables home sales:

- 13 i. 3266 Baker Way, Live Oak, California: This
14 comparable sale was of the *exact* model purchased by
15 the Ruvacalbas, in the same development and thus
16 would be an excellent indicator of the value of the
17 homes. The untainted appraisal accurately stated that
18 this home sold for \$373,000.
- 19 ii. 3301 Baker Way, Live Oak, California: This
20 comparable sale was of the exact model purchased by
21 the Ruvacalbas, in the same development and thus
22 would be an excellent indicator of the value of the
23 homes. The untainted appraisal accurately stated that
24 this home sold for \$397,000.
- 25 iii. 3265 Baker Way, Live Oak, California: This
26 comparable sale was of the exact model purchased by
27 the Ruvacalbas, in the same development and thus
28 would be an excellent indicator of the value of the
homes. The untainted appraisal accurately stated that
this home sold for \$414,500.
- iv. 9743 Ellis Court, Live Oak, California: This
comparable sale was of the exact model purchased by
the Ruvacalbas, in the same development and thus
would be an excellent indicator of the value of the
homes. The untainted appraisal accurately stated that
this home sold for \$408,500.

1 110. The Ruvacalba appraiser concluded the house could not appraise for more
2 than \$408,000 based on four recently closed comparable sales of Model No. 3037 homes
3 in the same development and declining market conditions.

4 111. When presented with the results of the appraisal, KB Home requested that
5 the Ruvacalbas switched to a KB Home/Countrywide-KB appraiser. When the
6 Ruvacalbas refused to switch appraisers, KB Home conceded that the contract was
7 overpriced, and escrow closed for approximately \$408,000 on or about December 23,
8 2005.

9 112. The appraisal reports arranged by KB Home and Countrywide Lenders
10 (through LandSafe) were sham documents, generated for the sole purpose and with the
11 specific intent of providing a false appraisal to close transactions which would not have
12 closed at the stated sales prices but for such fraudulent practices and concealment of the
13 true facts.

14 113. On information and belief, shortly before the close of escrow, the above
15 described fraudulent appraisals were transmitted via facsimile and/or electronic mail,
16 from the appraiser to KB Home and Countrywide KB and among Defendants.

17 114. Plaintiffs and members of the Classes each paid approximately \$400 or more
18 for the appraisal service and report, which, in fact, had no value because it was a sham.

19 **J. The Scheme was Carried out in Arizona and Injured the Plaintiffs in Arizona**

20 115. Plaintiff Nathaniel Johnson, a Navy Veteran living in San Diego, moved to
21 Arizona with the intention of purchasing a new home for his family. He planned to use
22 his VA benefits to buy a KB Home.

23 116. Plaintiff contracted for a KB Home and obtained a VA appraisal that was
24 \$40,000 below the contract price. When presented with this appraisal, KB Home refused
25 to change the contract price and suggested that Plaintiff used Countrywide as a lender and
26 an appraiser chosen by KB Home. C.S. Heaton was the appraiser and was one of the
27 complicit appraisers used in Arizona by KB Home. The Johnsons then, based on that
28 appraisal, agreed to purchase the KB loan. The lender on the sale was KB Home

1 Mortgage Company and the amount of the loan was \$412,121.69. The contract sales
2 price was \$383,819.00. Plaintiff Johnson was charged an appraisal fee of \$475.

3 117. The valuation by C.S. Heaton was predetermined by C.S. Heaton's
4 relationship with LandSafe and KB Home and did not reflect the true value due to the
5 following improper practices:

- 6 (i) the appraiser used a neighborhood that was not in a
7 comparable area and was well beyond the definition of
8 a neighborhood. Further, if the appraiser uses the area
9 defined the one-unit values and the Percent of land
10 Use were wrong. If the appraiser uses this vast
11 distance then the neighborhood characterizes are
12 wrong. The location should be rural. A more realistic
13 neighborhood would include single family homes in
14 subdivisions rather than a mix of single family,
15 manufactured, farm and vacant property.
- 16 (ii) Sale #1 on the comparables sheets is one that the
17 appraiser and reviewer both selected. Sales #2 and 3
18 are new sales that are more comparable than the other
19 sales selected by the appraiser. By going outside the
20 subject area to more expensive areas caused the
21 appraiser to over state the subject value.
- 22 (iii) The data analysis is forced upward by the selection of
23 sales in more expensive areas that have a higher land
24 and construction cost.

18 118. The following issues are also suspect in the appraisal report.

- 19 (i) The appraiser traveled to the next community
20 (Goodyear) to the east to secure sales comparative
21 properties.
- 22 (ii) Sale #2 & #3 in the original report are superior
23 properties to the subject. Style, construction and
24 exterior appointments are reasons for making the
25 statement. There are also interior upgrades and extra
26 features not found in the subject property.
- 27 (iii) The opinion of value established by the appraiser is
28 too aggressive.

26 119. C.S. Heaton appraised the home at \$395,000, an amount that conveniently
27 matches the contract price, but which overstates the true value of the house. If a true and
28

1 accurate appraisal had been used, Plaintiff Johnson would not have paid \$383,819 for the
2 home.

3 120. Plaintiff Nieto purchased his home from KB Home. The contract price was
4 \$303,812 and the lender was Countrywide KB Home Loans. He was charged an
5 appraisal fee of \$475 by Countrywide KB Home Loans. His Good Faith Estimate
6 indicated that \$475 would be paid to an “appraiser” and that LandSafe was the required
7 appraiser.

8 121. As part of the Scheme, Countrywide-KB required Nieto to have his home
9 appraised by LandSafe, who in turn assigned the appraisal to C.S. Heaton, the KB Home
10 approved and complicit appraiser.

11 122. As part of the Scheme, Countrywide Home Loans, Inc. notified Nieto in a
12 document sent via U.S. mail on or about April 21, 2006, that his home would be
13 appraised through LandSafe.

14 123. As part of the Scheme, C.S. Heaton used the wires and/or mails to transmit
15 an appraisal to Countrywide-KB Home indicating that the appraisal value was \$415,000.

16 124. On information and belief, Countrywide-KB performed *no work* and
17 provided *no services* on the Nieto appraisal.

18 125. On information and belief, KB Home, through Countrywide, Countrywide-
19 KB, and LandSafe was able to dictate and control the outcome of the Nieto appraisal such
20 that it would disclose a value for the Nieto home sufficient to close the deal.

21 126. An Appraisal fee of \$475 was paid to Countrywide KB Home Loans by
22 Nieto through the escrow closing on his home. However, Countrywide-KB, through
23 LandSafe, paid only a portion of the fee to C.S. Heaton for the actual appraisal and the
24 remainder was retained as illicit and unearned fees for no services rendered.

25 127. The Nieto’s contract price was \$383,812 on a contract dated June 17, 2005.
26 The appraisal was done on April 10, 2006. The appraisal value was \$415,000. However,
27 the appraised value was inflated as a result of the following:

28 The appraiser has indicated a neighborhood area that is well
beyond the definitions of a neighborhood. Further, if the

1 appraiser uses the area defined the one-unit values and the
2 Percent of Land Use are wrong. If the appraiser uses this vast
3 distance then the neighborhood characterizes are wrong. The
4 location should be rural. A more realistic neighborhood
5 would include single family homes in subdivisions rather than
6 a mix of single family, manufactured, farm and vacant
7 property.

8 By going outside the subject area to more expensive areas
9 caused the appraiser to, in the reviewer's opinion, to over
10 state the subject value.

11 The data analysis is forced upward by the selection of sales in
12 more expensive areas that have a higher land and construction
13 cost. Several items such as the factor for GLA and the
14 adjustment for the in ground pool are suspect.

15 The following issues are also suspect in the original report.

16 The appraiser traveled to the next community (Goodyear) to
17 the east to secure sales comparative properties. At a
18 minimum the sale #2 & #3 in the original report are superior
19 properties to the subject. Style, construction and exterior
20 appointments are reasons for making the statement. The
21 reviewer believes that there are interior upgrades and extra
22 features not found in the subject property.

23 Another area of concern is that builders usually give closing
24 assistance (concessions) when the buyer uses the builder's
25 lender. The subject may have had a concession that would
26 tend to reduce the value.

27 The reviewer selected properties more similar to the subject
28 by construction and value range and applied a time
adjustment as well as several other adjustments to arrive at
the indicated value opinion.

128. At the time of closing, Mr. Nieto was presented with two mortgages, one
with a balloon payment. He was told that he could refinance at any time. Two months
later he tried to refinance but Countrywide refused to do so because the value of the
house was too low. Within a year of purchase, the assessor lowered the value by
\$105,000.

129. Mr. Nieto fell behind on his mortgage, Countrywide foreclosed on his
home. Had Mr. Nieto not been subjected to the Scheme, he would not have entered into

1 the contract at the contract price agreed to and would not have been “upside down” from
2 day one.

3 130. The Lewis’ contract dated September 24, 2005, was for \$347,998. The
4 lenders on the loan was Countrywide Home Loans. The appraisal dated September 27,
5 2006, almost a year later gave the home an appraised value that was an exact match to the
6 contract price: \$348,000.

7 131. The false appraisal was sent to the Lewis’ via mail by Countrywide Home
8 Loans.

9 132. The appraisal was false and overstated the value of the home. A true value
10 arrived at through a proper appraisal would have been \$275,190 as of 9/27/06. The
11 appraisal was false in, among other flaws, it:

- 12 (i) Used a comparable that was not listed in the MLS but
13 was a speculation home being offered by KB Home;
- 14 (ii) The appraiser used a single story property (sale #2)
15 that is not comparable to buyer profiles of multi-story
16 properties. The appraiser also used two properties of
17 smaller gross living area (GLA) and used \$44.00 as a
18 multiplier for GLA. Using properties greater or less
19 than 100 SF tend to be non-reflective of a realistic
20 value difference. The appraiser also used adjustments
21 for inferior interior appointments and extras that are
22 not supported by comment in the report.
- 23 (iii) The appraiser used non-supportable data and
24 adjustments. This causes the final adjusted value to be
25 higher or lower than what is reasonable.
- 26 (iv) The use of a single story property to compare to a
27 multi-story home, GLA factor exceeding guidelines
28 and the use of properties with gross living area greater
than appraisal practices recommends.
- (v) The appraiser likely avoided a model match as one of
the comparable sales (see #1 below) due to it’s sale
price. Also the GLA adjustment appears overstated
based on general appraisal practice of not exceeding
50% of the GLA factor used in the Cost Approach.
The appraiser only used one sale within the subject
neighborhood and used a single story property that
tended to boost value due to construction cost and also
is considered a different buyer profile than a multi-

1 story property. Finally, the appraiser shows no closing
2 cost when supplementing closing cost is normal. The
3 reviewer noted that in two of the listing sheets, closing
4 cost were noted by the sales agent or within the
5 comments section of the listing sheet.

6 (vi) Adjustments exceeding FNMA Guidelines – Due to
7 the lack of fully comparable sales the Quality of
8 construction adjustment exceeded FNMA guidelines.
9 This was unavoidable. It also caused the net/gross
10 adjustment to exceed FNMA.

11 133. As a result of the Scheme the Lewis' overpaid for their home.

12 134. The Patron's contract was for \$251,690 and was dated April 10, 2005.

13 135. The Patron's purchased a home from KB Home for a contract price of
14 \$251,690. Their lender was Countrywide KB Home Loans. The appraisal was done by
15 C.S. Heaton. The appraisal was done on February 26, 2006, and valued the house at
16 \$282,000 by C.S. Heaton.

17 136. The Patron property was also subject to an improper appraisal as follows
18 per a review performed by an independent appraiser:

19 Comparable page at the top shows the listings at 316 to 439
20 and the sales at 299 to 454 yet he has subject concluded at
21 262 and construct at 263....this is a contradiction and contract
22 based value. In the summary of sales comparison analysis, $\frac{3}{4}$
23 down the down the page, the adjustments are based on paired
24 sales analysis and market extraction. No support for that is
25 provided and the appraiser will not have any in the work file
26 because that is a general canned comment appraisers use on
27 mass produced appraisals.

28 Comp #4 was pending sale and worthless as a market
indicator.

Comp #1 is adjusted for upgrade items but the appraiser does
not list specific items costs and differences for the
upgrade....the original package had some value, the appraiser
needs to show the upgrade value difference and then support
it with market data. You can not simply say, for example,
that they bough a cumulative package valued at \$30,000 and
then give the property full value. At best, in a real market
that has not been manipulated by the appraiser since the
beginning of the development, you would expect to see a 20%
to maybe a 50% market recognized contributory value for
upgrades. Even a pool would not afford you 100%.

1 All the closed comps are outside six months old of the "CD"
2 contract data and yet they are within a few months of the
3 actual closed date of the subject which is shown to be
4 2/6/2006. Why is that? A reviewer should have kicked it
5 back. Comp #1 which appears to have sold within 6 days of
6 the subject's closing. So, basically, he made an adjustment
7 for comparing the contract data to the sale date of comp #1
8 and yet they both closed in the same week. Why would you
9 compare the contract data to the close dates and make
10 adjustments? The appraiser is supposed to compare "apples
11 to apples." He makes a \$25,000 adjustment for the date of
12 sale on comp 1 yet it is only a month older than comp 2 that
13 does not have an adjustment and two months older the #3.
14 The quality of construction is the same as the subject and the
15 other comps but yet below he gives it \$25,000 for upgrades
16 which would have to suggest superior quality of
17 construction/amenities.

18 This is a poor appraisal contrived to reach a value by
19 intentionally misleading the close date to contract date item
20 and then the upgrades. Comp #1 is his strongest market
21 indicator and it would have suggested a lower value, of at
22 least \$40,000, if the adjustments had been completed
23 correctly.

24 137. The following issues are also suspect in the original report.

25 The appraiser has assumed a time adjustment on sale #1 that
26 cannot be supported. The reviewer performed a regression
27 analysis and found that a more reasonable factor would
28 produce a time adjustment of \$1,247 not \$25,000. Similarly,
a time adjustment should have been applied to all sales using
the same factor. The appraiser only applied it to sale #1. The
reviewer applied the time adjustment to all sales.

Fireplaces/Extras – The appraiser used \$25,000 as a
deduction on sale #1 for having superior upgrades. The
reviewer applied the same factor only because the reviewer
believes that the subject had few upgrades and sale #1 sold
for a higher amount and being a model match likely had more
upgrades. It should be noted that the reviewed did not have
access to an upgrade list of sale #1.

The "extras" adjustment to sale #3 was based on matched
pairs with sale #2.

The result of this sale #1 is a lower value at approximately
\$240,000.

29 138. At the time of closing, Countrywide KB Home Loans indicated that the
30 Patron's have two mortgages, one with a balloon payment. They were told they could

1 refinance. When they tried to refinance, they were unable to because their equity was too
 2 low. Maricopa County's assessor's office lowered the value of their home 32% in just
 3 one year from \$228,500 to \$156,300. As a result of the Scheme, the Patrons were
 4 financially injured by overpaying for their home.

5 139. The differences between the KB appraisal resulting from the Scheme and a
 6 true USPAP 1A appraisal are significant:

7 **Differences in Appraised Value:**

8 Lewis

9 \$349,220 (Orig. Appraised Value)
 10 \$275,190 (Corrected Appraised Value)
 \$ 74,030 (Difference)

11 Patron

12 \$262,000 (Orig. Appraised Value)
 13 \$253,190 (Corrected Appraised Value)
 \$ 8,810 (Difference)

14 Nieto

15 \$415,000 (Orig. Appraised Value)
 16 \$251,332 (Corrected Appraised Value)
 \$163,668 (Difference)

17 **K. KB's Presence in the Southwest and the Impact of the Scheme on the Region**

18 140. The impact of the Scheme on homebuyers in the State of Arizona is
 19 profound. For example, in Phoenix, KB Homes built homes in the following
 20 communities: Classics at Cameron Ranch, Classics I at Copper Ranch, Classics II at
 21 Copper Ranch, Courts at Copper Ranch, Estates at Cameron Ranch, Classics at Sin
 22 Lomas, Juniper at Desert Passage, Sage at Desert Passage, Watercress at Desert Passage,
 23 Muirfield Village, Hunter Ridge, Retreat at Daravante, Townes at Camelback Ranch,
 24 Villas at Camelback Ranch, Classics at Avalon Village, Cottages at Avalon Village,
 Indigo Trails, and Talladera

25 141. KB Homes divides its business into segments based on the markets in
 26 which it constructs homes. It's "Southwest" segment includes Phoenix, Tucson, Las
 27 Vegas and Reno. The Southwest segment built homes from 2006-2008 as follows:
 28

	Years Ended November 30,		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Southwest:			
Homes delivered	2,393	4,855	7,011
Average selling price	\$229,200	\$258,500	\$306,900
Total revenues (in millions)(a)	\$618.0	\$1,349.6	\$2,183.8

142. All of the KB Homes in the Southwest were the target of the Scheme.

143. The Scheme thus effected the contract prices for thousands of homes in the Southwest. If the 14,000 plus homes were inflated by just \$10,000, that results in \$1.4 Billion in inflated contract prices. The inflation per home exceeded \$10,000 and thus the impact on the class is greater. Each Plaintiff and class member has been directly and foreseeably injured by the Scheme.

V. TOLLING OF THE STATUTE OF LIMITATIONS

144. Plaintiffs' claims are subject to both equitable estoppel, stemming from Defendants knowingly and fraudulently concealing the facts alleged herein, and equitable tolling, stemming from Plaintiffs inability to obtain vital information underlying their claims. Defendants are estopped from relying upon a statute of limitations defense because they purposefully concealed the true nature of Countrywide-KB as a sham under RESPA and the Countrywide KB Criminal Enterprise under RICO, and they concealed the fraudulent nature of the inflated appraisals, inflated appraisal fees and their predatory lending practices. Separate and apart from Defendants' acts of concealment, any applicable statutes of limitation are properly tolled because Plaintiffs did not know and could not have learned the true facts underlying their claims until shortly before filing their Complaint

A. Equitable Estoppel

145. Defendants are estopped by their own fraudulent concealment from asserting the statute of limitations as an affirmative defense against Plaintiffs' claims.

146. As set forth herein, Countrywide-KB appeared to consumers to be a genuine joint venture between KB Home and Countrywide tasked with providing heightened service and superior loan products to KB Home customers. In truth and fact,

1 Countrywide-KB was a sham that operated: (1) as a conduit for KB Home and
2 Countrywide to pay referral fees to one another in exchange for originating new loans;
3 (2) for artificially inflating the selling prices of KB Home residences; and (3) to funnel
4 borrowers to Countrywide who Countrywide would, through predatory tactics, place in
5 inappropriate, unfair and deceptive loan products. Defendants concealed their referral fee
6 payments to one another and inflated appraisals, then affirmatively represented to
7 Plaintiffs, the Class and the public at large that Countrywide-KB was a legitimate and
8 independent business.

9 147. Defendants concealed that they were using pre-textual and fraudulently
10 inflated appraisals to artificially prop-up the value of the subject homes and thereby close
11 transactions on homes for prices far above the true value of such homes. Defendants
12 affirmatively sought to prevent appraisers from intentionally, or even inadvertently
13 disclosing to borrowers the true rates that they were charging for appraisals so that
14 Defendants could maintain and continue their fraudulent practice of marking-up these
15 charges for no legitimated additional services rendered.

16 148. Plaintiffs and the Class members reasonably relied on Defendants'
17 fiduciary and agency obligations to retain appraisers who would provide accurate, and
18 not fraudulently inflated appraisals. Plaintiffs and the Class members reasonably relied
19 on Defendants' fiduciary and agency obligations to charge only that fee for appraisals
20 that represented that actual charge that the appraiser charged and collected from
21 Defendants for each such appraisal.

22 149. Defendants had actual or constructive knowledge that their conduct was
23 deceptive, in that they consciously concealed the schemes set forth herein, including their
24 affiliated nature, their receipt of unearned settlement service fees for no services
25 rendered, the pre-textual nature of the appraisals and the predatory nature of the loans
26 that were provided.

27 150. The purposes of the statutes of limitations period are satisfied because
28 Defendants cannot claim prejudice due to a late filing where Plaintiffs filed suit promptly

1 upon discovering the facts essential to their claims, described herein, which Defendants
2 knowingly concealed.

3 **B. Equitable Tolling**

4 151. Plaintiffs and members of the Classes were or have been unable to obtain
5 vital information bearing on their claims absent any fault or lack of diligence on their
6 part. As further set forth below, Plaintiffs were not on inquiry notice of Defendants'
7 wrongdoing and had no duty to initiate an investigation of any nature because the charges
8 on their HUD-1 Settlement Statements appeared to be legitimate. Plaintiffs did not have
9 any reason to know of the KB Countrywide Criminal Enterprise, the RESPA and RICO
10 violations or injuries described herein and did not and could not have known of
11 Defendants' violations of their fiduciary and agency duties, breaches of their contracts or
12 unjust enrichment.

13 152. Plaintiffs were relieved of any duty to investigate because they reasonably
14 and justifiably relied on Defendants to fulfill their fiduciary and agency duties. Even
15 assuming there had been some indication of wrongdoing (which there was not), and
16 Plaintiffs had attempted to investigate, such investigation would have been futile because
17 it would not have uncovered the true, unlawful nature of Defendants' criminal enterprise
18 and profiteering schemes alleged herein.

19 153. Plaintiffs and members of the Classes did not discover and could not have
20 discovered, despite all due diligence, that: (1) that Countrywide-KB was a sham ABA;
21 (2) that their appraisals were pre-textual and fraudulently completed; and (3) that
22 LandSafe was marking up the fees for their appraisals for no additional services rendered.
23 Plaintiffs and members of the Classes did not discover and could not have discovered,
24 despite all due diligence, the schemes alleged herein. Plaintiffs' claims were thus
25 equitably tolled until they discovered the true facts underlying their claims shortly before
26 the filing of the Complaint.

27

28

VI. CLASS ALLEGATIONS

A. The Inflated Appraisal Class

1. Class definition for the inflated appraisal class

154. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

155. This class action is brought pursuant to RICO and California law by the individual named Plaintiffs on behalf of themselves and all consumers (the “Inflated Appraisal Class”) in the “Southwest” segment of KB’s operations (Arizona and Nevada) who purchased a home from KB Homes and whose loans were through the Countrywide, or a KB entity or the Countrywide-KB joint venture at any time since the creation of the Countrywide-KB Criminal Enterprise and the date of judgment in this action (the “Class Period”).

156. Plaintiffs sue on their own behalf and on behalf of the Inflated Appraisal Class under Rules 23(a) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

2. Numerosity

157. Plaintiffs do not know the exact size or identities of the proposed Inflated Appraisal Class, since such information is in the exclusive control of the Defendants. Plaintiffs believe that the Inflated Appraisal Class encompasses many thousands of individuals. According to KB Homes 2008 SEC Form 10-K, KB built in excess of 10,000 homes that were financed by the Countrywide KB joint venture. Thus, the class consists of ten thousand members or more. Therefore, the proposed class is so numerous that joinder of all members is impracticable.

3. Commonality

158. All members of the Inflated Appraisal Class have been subject to and affected by Defendants’ Countrywide KB Criminal Enterprise and the practices detailed herein. There are questions of law and fact that are common to the Inflated Appraisal Class, and predominate over any questions affecting only individual members of the Inflated Appraisal Class. These questions include, but are not limited to, the following:

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- a. Whether Defendants created and implemented the Inflated Appraisal Scheme;
- b. Whether Defendants used the wires and mails to further the Inflated Appraisal Scheme;
- c. Whether Defendants violated RICO and state law;
- d. Whether the statute of limitation for Plaintiffs' RICO claims should be properly tolled;
- e. Whether Defendants should be estopped from relying on the statute of limitation for Plaintiffs' RICO claims;
- f. Whether Defendants' wrongful conduct resulted in economic damage to Plaintiffs and members of the Class, and the amount of said damages;
- g. Whether and the extent to which Countrywide and Countrywide-KB required appraisers to submit appraisals at the contract price of KB homes;
- h. whether the Court can enter declaratory and injunctive relief; and
- i. the proper measure of disgorgement and/or actual and/or punitive damages and/or restitution.

4. Typicality

159. The claims of the individual named Plaintiffs are typical of the claims of the Inflated Appraisal Class and does not conflict with the interests of any other members of the Inflated Appraisal Class, in that Plaintiffs and the other members of the Inflated Appraisal Class were subjected to the same practices of the KB Countrywide Criminal Enterprise.

5. Adequacy

160. The individual named Plaintiffs will fairly and adequately represent the interests of the Inflated Appraisal Class. They are committed to the vigorous prosecution of the Inflated Appraisal Class' claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions – in particular, consumer protection and predatory lending actions.

1 **6. The prerequisites to maintaining a class action for injunctive**
2 **relief are readily apparent**

3 161. The prerequisites to maintaining a class action for injunctive relief exist:

- 4 a. If injunctive relief is not granted, great harm and
5 irreparable injury to Plaintiffs and the members of the
6 Inflated Appraisal Class will continue; and
7 b. Plaintiffs and the members of the Inflated Appraisal
8 Class have no adequate remedy at law for the injuries
9 which are threatened to recur, in that, absent action
10 from this Court, Defendants will continue to violate
11 RICO, RESPA and state law, and cause damage.

12 162. The prosecution of separate actions by members of the Inflated Appraisal
13 Class would create a risk of establishing incompatible standards of conduct for
14 Defendants – for example, one court might decide that the challenged actions are illegal
15 and enjoin them, while another court might decide that those same actions are not illegal.
16 Individual actions may, as a practical matter, be dispositive of the interests of the Inflated
17 Appraisal Class.

18 163. Defendants’ actions are generally applicable to the Class as a whole, and
19 Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole.

20 **7. Common questions predominate, and the class action device is**
21 **superior**

22 164. The common questions of law and fact enumerated above predominate over
23 questions affecting only individual members of the Class, and a class action is the
24 superior method for fair and efficient adjudication of the controversy. The likelihood that
25 individual members of the Class will prosecute separate actions is remote due to the time
26 and expense necessary to conduct such litigation. To Plaintiffs’ knowledge, no similar
27 litigation is currently pending by other members of the Class. Plaintiffs’ counsel, highly
28 experienced in class actions, foresee little difficulty in the management of this case as a
 class action.

VII. CLAIMS FOR RELIEF

**COUNT I
VIOLATION OF 18 U.S.C. § 1962(c)**

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165. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

166. This Count, which alleges substantive violations of RICO, as provided in 18 U.S.C. § 1962(c), is asserted against the Defendants on behalf of the Class.

167. Plaintiffs, members of the Class, and all Defendants are each “persons” as that term is defined in 18 U.S.C. § 1961(3).

168. The RICO “enterprise” is an association-in-fact entitled the “Countrywide KB Appraisal Enterprise” consisting of: (1) Countrywide, including its LandSafe loan closing services subsidiaries, (2) KB Home and its various entities operating in the Southwest; (3) Countrywide-KB Home; and (4) complicit appraisers who conducted the actual appraisals. The Enterprise is an ongoing and continuing business organization consisting of both corporations and individuals that are and have been associated for the common or shared purposes of providing appraisals and loans on real estate transactions in which KB Home is the home seller, Countrywide or Countrywide-KB is the mortgage lender, and LandSafe or KB Home arranged for the appraisal. Members of this enterprise operate businesses that perform services distinct from the pattern of racketeering alleged herein.

169. The Countrywide KB Appraisal Enterprise is an ongoing organization that engages in, and whose activities affect, interstate commerce and has an existence apart from the racketeering acts set forth herein.

170. While all Defendants participate in and are members and part of the Enterprise, they also have an existence separate and distinct from the Enterprise.

171. In order to inflate or manage appraisals to an outcome that is in keeping with their joint objectives, Defendants need a system that allows them to do so. The Countrywide KB Appraisal Enterprise provides Defendants with that system and ability, and their control of and participation in it is necessary for the successful operation of

1 their Scheme. Furthermore, the participation by the LandSafe subsidiaries in the
2 Countrywide Appraisal Enterprise allows the Enterprise to function more effectively,
3 given that many of the functions provided by these entities, such as appraisals, would
4 normally be conducted by independent entities. LandSafe's participation in the
5 Enterprise allows the normal checks and balances within the mortgage process to be
6 eliminated, permitting Defendants to advance their Scheme and conceal the fraudulent
7 activity they have been engaging in.

8 172. The Defendants control and operate the Countrywide Appraisal Enterprise
9 as follows: (a) Countrywide and/or KB or the Countrywide-KB joint venture tells a
10 borrower that LandSafe or some controlled entity must perform the appraisal;
11 (b) LandSafe or the controlled entity then purports to hire an 'independent' appraiser to
12 do the actual work but actually hires a complicit appraiser who provides an appraisal at a
13 pre-determined value; (c) KB Home receives things of value from its referral to
14 Countrywide-KB and Countrywide in that it is assured an "at-value" appraisal to close
15 the deal and (d) Countrywide receives a thing of value in exchange for referring its
16 appraisal business in that controls the loan appraisal process and values, through the
17 common ownership of Countrywide, LandSafe and Countrywide-KB.

18 173. The Countrywide KB Appraisal Enterprise has an ascertainable structure
19 separate and apart from the pattern of racketeering activity in which the Defendants
20 engage.

21 **A. Alternative Enterprise Allegations: The Countrywide Enterprise**

22 174. Plaintiffs, the Class members and Defendants are all "persons" within the
23 meaning of 18 U.S.C. § 1961(3).

24 175. Based upon Plaintiffs' current knowledge, the following persons constitute
25 a group of individuals associated in fact that will be referred to herein as the
26 "Countrywide Enterprise": (1) Countrywide and (2) its LandSafe settlement services
27 subsidiaries.

28

1 176. The Countrywide Enterprise is an ongoing organization that engages in,
2 and whose activities affect, interstate commerce.

3 177. While all Defendants participate in and are members and part of the
4 Countrywide Enterprise, they also have an existence separate and distinct from the
5 enterprise. The LandSafe subsidiaries market their services to third parties and in
6 addition to providing services through Countrywide referrals, provide services to third-
7 party lenders and escrow companies.

8 178. The Countrywide Enterprise has an ascertainable structure separate and
9 apart from the pattern of racketeering activity in which the Defendants engage.

10 179. The Enterprises have a systemic linkage because there are contractual
11 relationships, financial ties, and continuing coordination of activities between
12 Countrywide, LandSafe and appraisers. There is a common communication network by
13 which Countrywide, LandSafe and brokers and appraisers shared and continued to share
14 information on a regular basis throughout the Class Period. Typically this
15 communication occurred by use of the wires and mails in which Countrywide and
16 LandSafe as well as brokers and appraisers exchanged information about properties and
17 appraisers. Countrywide and LandSafe functioned as a continuing unit for the purposes
18 of the Scheme.

19 180. The foregoing evidences that all Defendants are willing participants in the
20 Enterprises; had a common purpose and interest in the establishment and operations of
21 the foregoing Scheme; and agreed to a structure wherein LandSafe and Countrywide
22 would implement the Scheme.

23 **B. The Defendants' Use of the U.S. Mails and Interstate Wire Facilities**

24 181. The Enterprises engaged in and affected interstate commerce because they
25 engaged in the following activities across state boundaries: KB Home built and sold
26 homes in California, then referred customers to Countrywide and Countrywide-KB for
27 mortgages. Countrywide-KB and Countrywide provided services for KB Home related
28 loans through their offices in California, Texas and other states and referred appraisal

1 work to LandSafe, which assigned appraisals to hand-picked appraisers through its Texas
2 operations center. Countrywide re-packaged and sold mortgages secured by KB Homes
3 in the secondary market to investors across the United States and throughout the world.

4 182. During the Class Period, the Defendants' illegal conduct and wrongful
5 practices were carried out by an array of employees, working across state boundaries,
6 who necessarily relied upon frequent transfers of documents, information, products and
7 funds by the U.S. mails and interstate wire facilities.

8 183. The nature and pervasiveness of the Scheme, which was orchestrated out of
9 KB's, Countrywide's and LandSafe's offices, necessarily required those offices to
10 communicate directly and frequently with each other, with appraisers, and with
11 customers by the U.S. mails and by interstate wire facilities.

12 184. Many of the precise dates of Defendants' uses of the U.S. mails and
13 interstate wire facilities (and corresponding RICO predicate acts of mail and wire fraud)
14 have been hidden and cannot be alleged without access to these Defendants' books and
15 records. However, Plaintiffs can ascertain when and how their transaction involved the
16 mail and wire facilities and can generally describe the occasions on which the RICO
17 predicate acts of mail fraud and wire fraud occurred, and how those acts were in
18 furtherance of the Scheme. Plaintiffs describes this below.

19 185. The Defendants' use of the U.S. mails and interstate wire facilities to
20 perpetrate the Scheme involved thousands of communications throughout the Class
21 Period including telephone, email and U.S. Mail communications to borrowers and
22 appraisers; the transmission by email and/or U.S. mail of appraisals prepared by
23 appraisers and the use of fraudulent HUD-1 forms to complete transactions. Use of the
24 U.S. Mail occurred on hundreds if not thousands of occasions where Countrywide, KB
25 and LandSafe communicated amongst themselves. In addition to these RICO predicate
26 acts, it was foreseeable to each Defendant that it would communicate with borrowers and
27 appraisers by the U.S. mails and by interstate wire facilities. Further, each Defendant
28

1 has, in furtherance of the Scheme, communicated through use of the U.S. mails and by
2 interstate wire facilities with their various local offices or divisions.

3 186. Defendants use the wires and mails to effectuate their Scheme. When an
4 appraiser would come in below value, Countrywide and KB would agree, via use of emails
5 between KB Home employees and Countrywide employees, not to use that appraiser.

6 187. This appraiser would then be blacklisted so that appraisals would come
7 from LandSafe appraisers who met values.

8 188. Specifically Defendants perpetrated their Scheme against Plaintiffs through
9 interstate mail and wire facilities by sending documents from California, Texas, and
10 potentially other states, to Plaintiffs in Arizona. Defendants utilized the U.S. Mail,
11 Federal Express, and United Parcel Service, and email to send loan documents, appraisal
12 reports, billing statements, and other related documents to Plaintiffs. For example, on or
13 about April 21, 2006, Countrywide Home Loans used the mails to send Nieto a Good
14 Faith Estimate, and used the mails on or about May 31, 2007, to send a fraudulent
15 appraisal. On or about February 28, 2006, C.S. Heaton used the mails to send a
16 fraudulent appraisal to Countrywide.

17 **C. Conduct of the RICO Enterprises' Affairs**

18 189. During the Class Period, the Defendants have exerted control over the
19 Enterprises and, in violation of Section 1962(c) of RICO, the Defendants have conducted
20 or participated in the conduct of the affairs of those RICO Enterprises, directly or
21 indirectly by hand-picking the appraisers and controlling the outcome of the appraisals it
22 required on KB Home sales. Appraisers accepted KB Home, Countrywide and
23 LandSafe's terms in order to obtain business. LandSafe followed Countrywide's
24 directives and, as to implementation, acted jointly with Countrywide in implementing and
25 enforcing the Scheme.

26 190. The Enterprises had a hierarchical decision-making structure headed by
27 Countrywide and guided by: (1) the overt KB Countrywide joint venture agreement; and
28 (2) the illicit agreements surrounding the joint venture through which KB Home referred

1 customers exclusively to Countrywide in exchange for control over the valuation of the
2 homes it sold.

3 **D. The Defendants' Pattern of Racketeering Activity**

4 191. Each of the Defendants conducted and participated in the affairs of the
5 above-referenced Enterprises through a pattern of racketeering activity, including acts
6 that are indictable under 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343,
7 relating to wire fraud. The Defendants' pattern of racketeering likely involved thousands
8 of separate instances of use of the U.S. mails or interstate wire facilities in furtherance of
9 their Scheme. Each of these fraudulent mailings and interstate wire transmissions
10 constitutes a "racketeering activity" within the meaning of 18 U.S.C. § 1961(1)(B).
11 Collectively, these violations constitute a "pattern of racketeering activity," within the
12 meaning of 18 U.S.C. § 1961(5), in which the Defendants intended to defraud Plaintiffs,
13 the members of the Class and other intended victims.

14 192. The Defendants' racketeering activities amounted to a common course of
15 conduct, with similar pattern and purpose, intended to exclude impartial and objective
16 appraisers, that is, Plaintiffs and members of the Class. Each separate use of the U.S.
17 mails and/or interstate wire facilities employed by the Defendants was related, had
18 similar intended purposes, involved similar participants and methods of execution, and
19 had the same results affecting the same victims, including Plaintiffs and members of the
20 Class. Each Defendant has engaged in the pattern of racketeering activity for the purpose
21 of conducting the ongoing business affairs of the Enterprises.

22 **E. Damages Caused by the Defendants' Scheme**

23 193. The Defendants' violations of federal law and their pattern of racketeering
24 activity have directly and proximately caused Plaintiffs and members of the Class to be
25 injured in their business or property because Plaintiffs have (1) overpaid for their house;
26 (2) would not have entered into the purchase at the contract price if a proper appraisal had
27 been prepared; (3) have overpaid principal and interest; and (4) have in certain cases
28 suffered foreclosure.

- 1 a. Multiple instances of mail and wire fraud violations of
- 2 18 U.S.C. §§ 1341 and 1342;
- 3 b. Multiple instances of mail fraud violation of 18 U.S.C.
- 4 §§ 1341 and 1346;
- 5 c. Multiple instances of wire fraud violations of 18
- 6 U.S.C. §§ 1341 and 1346; and
- 7 d. Multiple instances of unlawful activity in violation of
- 8 18 U.S.C. § 1952.

9 **COUNT III**
10 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
11 **(Cal. Bus. & Prof. Code § 17200, et seq.)**

12 **AGAINST ALL DEFENDANTS**

13 202. Plaintiffs reallege and incorporate by reference the preceding allegations.

14 203. Through the Scheme, Defendants have (1) directly and indirectly employed
15 a scheme, device and artifice to defraud and mislead borrowers and defraud any person;
16 (2) directly and indirectly engaged in an unfair and deceptive act toward a person;
17 (3) directly and indirectly obtained property by fraud and misrepresentation; and
18 (4) knowingly made published and disseminated false, deceptive and misleading
19 information.

20 204. Defendants are residents of the State of California. On information and
21 belief, the actions and underlying decisions of Defendants, alleged herein emanated from
22 and occurred within the State of California. California law applies to the claims of
23 Plaintiffs and all Class members. Defendants planned and implemented their wrongful
24 scheme in California and many of the wrongful acts emanated from Countrywide's
25 California offices.

26 205. Defendants have engaged and continue to engage in the Scheme.
27 Countrywide's acts and practices as described herein constitute unlawful, fraudulent
28 and/or unfair business acts and practices. As such, its conduct violates Cal. Bus. & Prof.
Code § 17200, et seq. ("UCL").

206. Defendants' conduct described herein constitutes an unlawful business
practice within the meaning of Cal. Bus. & Prof. Code § 17200, et seq., in that the

1 conduct violates RESPA, RICO, California law and the common law of unjust
2 enrichment. Specifically, as alleged herein, Defendants have:

- 3 a. Violated 18 U.S.C. § 1962(c) by conducting the affairs
4 of certain association-in-fact enterprises identified
5 herein, the affairs of which affected interstate
6 commerce through a pattern of racketeering activity,
7 and engaged in a conspiracy in violation of 18 U.S.C.
8 § 1962(d); and
- 9 b. Violated 12 C.F.R. § 33.44-45 by having appraisals
10 prepared in violation of USPAP.
- 11 c. Violated A.R.S. 32-3633 in that KB and Countrywide
12 have influenced the acts of an appraiser for the
13 purposes of securing an appraisal that is grossly
14 misleading or fraudulent.

15 207. Defendants' conduct as described herein violates not only the unlawful
16 prong of the UCL, but also constitutes a violation of the UCL's "unfair" prong,
17 independent of the other causes of action asserted herein. Defendants' conduct offends
18 public policy and is immoral, unethical, oppressive, unscrupulous and substantially
19 injurious to consumers. Any justification for Defendants' practices is outweighed by the
20 consequences and harm to Plaintiffs and the Class.

21 208. Defendants' conduct as described herein also violates the "deceptive" prong
22 of the UCL, independent of the other causes of action asserted herein. Defendants acted
23 deceptively by operating a sham ABA and by providing Plaintiffs and members of the
24 Class with phony appraisals.

25 209. Plaintiffs and the Class have suffered injury in fact and have lost money or
26 property as a result of Defendants' unlawful, unfair and/or deceptive business practices.
27 Each of Defendant's omissions was material to Plaintiffs and the Class in entering into
28 the transaction with Defendants and Plaintiffs and the Class relied on Defendant's false
and misleading misrepresentations in entering into the transactions at issue.

29 210. The above-described unlawful, unfair and/or deceptive business practices
30 present an ongoing threat of continuing injury to Plaintiffs, the Class and the general
31 public. Among other things, Plaintiffs, the Class and the general public continue to be

1 financially disadvantaged by such conduct. Such wrongful conduct is continuing and,
2 unless Defendants are restrained, it will continue to engage in such conduct.

3 211. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs and the Class,
4 individually and on behalf of the public, seek an order of this Court enjoining Defendants
5 from continuing its unfair, unlawful, and/or deceptive business acts or practices in the
6 State of California and elsewhere. The public, Plaintiffs and the Class will be irreparably
7 harmed if such an order is not granted.

8 212. Further, Plaintiffs and the Class, individually and on behalf of the public,
9 seek restitution and disgorgement of profits realized by Defendants as a result of their
10 unfair, unlawful and/or deceptive practices.

11 **COUNT IV**
12 **UNJUST ENRICHMENT AGAINST KB HOMES AND COUNTRYWIDE**

13 213. Plaintiffs incorporate the previous allegations as if fully set forth.

14 214. As a result of the Scheme KB and Countrywide KB sold homes to Plaintiffs
15 and class members at an inflated price, and earned money and fees that were
16 unreasonable.

17 215. Defendants are aware of their receipt of the above-described benefits.

18 216. Defendant received the above-described benefits to the detriment of
19 Plaintiffs and each of the other members of the Class.

20 217. Defendants continue to retain the above-described benefits to the detriment
21 of Plaintiffs and the Class.

22 218. As a result of Defendants' unjust enrichment, Plaintiffs and the respective
23 Class have sustained damages in an amount to be determined at trial and seek full
24 disgorgement and restitution of Defendants' enrichment, benefits, and ill-gotten gains
25 acquired as a result of the unlawful or wrongful conduct alleged above.

26 219. Further, Plaintiffs and the Class, individually and on behalf of the public,
27 seek restitution and disgorgement of profits realized by Defendants as a result of their
28 unfair, unlawful and/or deceptive practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. For an order declaring that this action may be maintained as a class action pursuant to Federal Rules of Civil Procedure Rule 23, and for an order certifying this case as a class action and appointing Plaintiffs as representatives of the Class;

B. For an order awarding compensatory damages on behalf of Plaintiffs and the Class in an amount to be proven at trial;

C. For judgment for Plaintiffs and the Class on their claims in an amount to be proven at trial, for compensatory damages caused by Defendants' unfair or deceptive practices; along with exemplary damages to each class member for each violation;

D. For judgment for Plaintiffs and the Class on their RICO and state law claims, in an amount to be proven at trial;

E. For restitution of all improperly collected charges and interest, and the imposition of an equitable constructive trust over all such amounts for the benefit of Plaintiffs and members of the Class;

F. For an accounting of all credits, disbursements and charges and other benefits associated with Plaintiffs' and Class members' real estate transactions;

G. For pre-judgment and post-judgment interest as provided for by law or allowed in equity;

H. For an order awarding Plaintiffs and the Class their attorneys' fees and costs; and

I. Such other and further relief as may appear necessary and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all issues so triable.

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RESPECTFULLY SUBMITTED this ____ day of May, 2009

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