

District Court, Grand County, Colorado;
Court Address: 308 Byers, Hot Sulphur Springs, CO 80451;
Telephone: (970) 725-3357

**T. WAYNE MILLS, STEVEN F. HADLEY,
CHRISTIANE HADLEY, JIM RODGERS, LISA
RODGERS, KEVIN KING, DONNA KING, JAMES
GRINESTAFF, KARL A. SHEPHERD, MARLON
BRIDGES, JANET BRIDGES, GARY FEINGOLD,
THOMAS FENIGER, STEVEN TACHER, JENNIFER
WALKER, DOUGLAS WALKER, DAVID KATZ, and
VICTOR TORRES,**

Plaintiffs,

v.

**UPSTREET DEVELOPMENTS, LLC, JONATHAN C.
THOMPSON, MICHAEL G. HAWTHORNE, ROCKY
MOUNTAIN ESTATES, LLC, MORRIS KING, RALPH
CHIARELLA, GRAND LAKE TITLE, LLC, AUSTIN
ESCROW & TITLE, LLC, KIM AUSTIN, PAUL
STRANGE, ADS BUILDERS, LLC, ADS BUILDERS,
INC., MILE HIGH CONSTRUCTION SERVICES, LLC,
LEGACY CONSTRUCTION SERVICES, LLC, JAMES
D. BARNETT, CHRIS FOSTER, DONALD S. STOOKEY,
and NATIONAL CITY MORTGAGE,**

Defendants.

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COURT USE ONLY

Case Number: 08 CV

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COMPLAINT AND JURY DEMAND

Plaintiffs, by and through their attorneys, Keyes Michel & Pummell, LLC, submit the following complaint against Defendants:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over Defendants pursuant to C.R.S. § 13-1-124.
2. Venue is proper in Grand County, Colorado under C.R.C.P. 98.

PARTIES

Plaintiffs

3. Plaintiff T. Wayne Mills is a resident of California.
4. Plaintiffs Steven F. Hadley and Christine Hadley are residents of California.
5. Plaintiffs James L. and Lisa Fay Rodgers are residents of Colorado.
6. Plaintiffs Kevin King and Donna King are residents of Tennessee.
7. Plaintiff James Grinestaff is a resident of Florida.
8. Plaintiff Karl A. Shepherd is a resident of Texas.
9. Plaintiff Gary Feingold is a resident of New Jersey.
10. Plaintiffs Marlon Bridges and Janet Bridges are residents of Colorado.
11. Plaintiffs Jennifer and Douglas Walker are residents of Idaho.
12. Plaintiff Steven Tacher is a resident of Florida.
13. Plaintiff Thomas Feniger is a resident of Florida.

14. Plaintiff David Katz is a resident of New Jersey.
15. Plaintiff Victor Torres is a resident of New Jersey.
16. The Plaintiffs are a group of individuals who were lured into the disastrous and fraudulent real estate investment scheme detailed below.

Defendants

17. Defendant Upstreet Developments, LLC (hereinafter “Upstreet Developments”) is a Colorado limited liability company.

18. Defendant Jonathan C. Thompson is, on information and belief, a resident of Colorado and an owner of Upstreet Developments. At all times material hereto, Thompson was acting individually, and as a representative and/or agent of Upstreet Developments.

19. Defendant Michael G. Hawthorne is, on information and belief, a resident of Colorado and an owner of Upstreet Developments.

20. Defendant Rocky Mountain Estates, LLC (hereinafter “RME”) is a Colorado limited liability company. RME was the initial “horizontal” developer that sold lots to Plaintiffs through Upstreet Developments.

21. Defendant Morris King is, on information and belief, a resident of Colorado. Mr. King is an owner of RME.

22. Defendant Ralph Chiarella is, on information and belief, a resident of Colorado. Mr. Chiarella is an owner of RME.

23. Defendant Grand Lake Title, LLC (hereinafter “Grand Lake Title”) is a Colorado limited liability company that was formed on or about January 18, 2006 by Defendant Kim Austin. At all times relevant hereto Grand Lake Title provided title insurance, escrow and closing services for the loans which form the subject of this lawsuit.

24. Defendant Austin Escrow & Title, LLC (hereinafter “Austin Title”) is a Colorado limited liability company that was formed on or about December 7, 2000 by Defendant Kim Austin. Austin Title was the owner of Grand Lake Title and, on information and belief, also provided title insurance, escrow and closing services for the loans which form the subject of this lawsuit.

25. Defendant Kim Austin is, on information and belief, a resident of Colorado and an owner of Grand Lake Title and Austin Title. On information and belief, Defendant Kim

Austin and Defendant Jon Thompson are longtime friends who have taken family trips together in foreign countries.

26. Defendant ADS Builders, LLC (hereinafter “ADS”) is a Colorado limited liability company. ADS Builders, LLC was hired to build the residences on the properties which form the subject of this lawsuit.

27. Defendant ADS Builders, Inc. (hereinafter “ADS Builders”) is a Colorado corporation. ADS Builders, Inc. is the parent company of Mile High Construction, LLC (hereinafter “Mile High”) and Legacy Construction Services (hereinafter “Legacy”).

28. Defendant Mile High Construction Services, LLC was a Colorado limited liability company at the time of the events at issue in this case. Mile High was initially hired to build the residences on the properties which form the subject of this lawsuit.

29. Legacy Construction Services, LLC is a Colorado limited liability company at the time of the events at issue in this case. Legacy was later hired to build the residences on the properties which form the subject of this lawsuit.

30. Defendant James D. Barnett is, on information and belief, a resident of Colorado and an owner of ADS and Mile High. On information and belief, James D. Barnett and Michael Hawthorne are former business associates having worked on a number of previous projects.

31. Defendant Chris Foster is, on information and belief, a resident of Colorado and an owner of ADS Builders and Legacy. On information and belief, Chris Foster was a principal of ADS Builders and Legacy.

32. Defendant Paul Strange is, on information and belief, a resident of Colorado. Defendant Strange, at all times relevant hereto, acted as the mortgage loan broker for all of the loans that form the subject of this lawsuit. At all times material hereto, Strange was acting individually, and as a representative and/or agent of the originating lenders. On information and belief, Paul Strange is a longtime friend of Jon Thompson.

33. Defendant National City Mortgage (hereinafter “National City”) is an Ohio Corporation with this principal address at 3232 Newmark Drive, Miamisburg, OH 45342. At the time of the events at issue in this case, National City was authorized to do business in the State of Colorado. On information and belief, National City’s authority to do business in Colorado was “withdrawn” on May 8, 2007.

34. Defendant Donald S. Stookey is a Certified Residential Appraiser who resides in Grand Lake, Colorado. On information and belief, Defendant Stookey has resided in Grand Lake, Colorado for over a decade and is (or should be) well-versed with its real estate values.

GENERAL ALLEGATIONS

FORMATION OF ROCKY MOUNTAIN ESTATES

35. On or about March 4, 2005 Morris King and Ralph P. Chiarella formed RME through their closely-held companies M. King Holdings, LLC and Borgia Holdings, LLC.

36. RME was formed to develop and/or market the “Colorado Anglers Club No. 1 subdivision, Grand County, Colorado” (hereinafter the “Anglers Club Subdivision”).

37. The Anglers Club Subdivision was platted in 1950 for 270 lots.

UPSTREET DEVELOPMENTS

38. Sometime in the Fall of 2005, Lance Gutersohn, a Century 21 Real Estate Agent, met Jon Thompson and Michael Hawthorne (on behalf of Morris King and Ralph Chiarella) at a convention in Denver, Colorado.

39. Soon thereafter Upstreet Developments acquired options to purchase 40 of the Anglers Club Subdivision lots. At a later date, and for unknown reasons, Upstreet Developments transferred one of the Anglers Club Subdivision lots back to RME.

40. To effectuate the fraudulent scheme outlined below, several businesses were co-located at a single office in Grand Lake, Colorado; RME (Morris King and Ralph Chiarella), Morris King Construction Inc. (Morris King), Ain’t Life Grand Management, Inc. (Morris King), and Grand Lake Title, LLC (Kim Austin).

FRAUD AND CIVIL CONSPIRACY

Actions Concerning All Plaintiffs

41. Defendants Upstreet Developments, Jonathan Thompson, Michael Hawthorne, Morris King, and Ralph Chiarella implemented their investment model to the Plaintiffs through in-person investment presentations and seminars, electronic mail, telephone calls and U.S. Mail from approximately November, 2005 through October, 2006.

42. Defendants Upstreet Developments, Jonathan Thompson, Michael Hawthorne, Morris King, and Ralph Chiarella promised Plaintiffs that they would be able to acquire significant real estate in Grand County, Colorado, with only a modest \$2,500 down payment. In return, Defendants Upstreet Developments, Jonathan Thompson, and Michael Hawthorne promised Plaintiffs “instant equity” as high as \$60,000 and \$90,000 equity upon completion of the individual Plaintiffs’ homes. On information and belief, Upstreet Developments, Jonathan Thompson, Michael Hawthorne, Morris King and Ralph Chiarella either knew or should have

known that these representations were false.

43. Defendants Upstreet Developments, Jon Thompson, Michael Hawthorne, Morris King, and Ralph Chiarella represented to Plaintiffs that they would handle all aspects of the transactions including locating the properties, arranging mortgage financing, choosing which model of home the contractor would build, managing and maintaining the properties (should they wish to retain the properties as rental units), and selling the properties (should they wish to realize the promised equity upon completion). These Defendants told Plaintiffs that they would only have to allow their names and credit to be used.

44. Upstreet represented to investors that “[t]his project offers a substantial rate of return at the time of completing construction approx. 12 months” and “homes have the highest level of finish including granite countertops, natural wood trim, and many other features.” These representations were false.

45. In an April 28, 2006 e-mail to potential investors, including the Plaintiffs, Jonathan Thompson presented the following timeline for the Rocky Mountain Estates Project:

May 5, 2006 – Receipt of Investor Financial Information
May 10, 2006 – Purchase and Construction Contracts mailed to investors
May 17, 2006 – signed contract returned by investors with additional \$4,500 Earnest Money along with \$500 Hold money paid into escrow at Grand Lake Title.
May 31, 2006 – Closing
On or before June 30, 2006 – Ground Breaking
6-12 Months from Ground Breaking – Construction Complete

46. The April 28, 2006 e-mail to potential investors, including the Plaintiffs, also contained a statement that Jon Thompson had spoken with the appraiser who felt the completed homes and properties would be into the \$400,000’s.

47. Investors, including the Plaintiffs, were required by Defendant Upstreet to sign an Agreement to Hold Property and pay a \$500 deposit to Defendant Upstreet Developments. The Plaintiffs also paid an additional \$2,000 for each lot at closing.

48. On information and belief, the foregoing monies (\$2,500) have never been accounted for, either in a HUD-1 loan statement or in any other fashion by Defendants Jonathan Thompson and Paul Strange. Put another way, these funds were never applied to the closing costs.

49. On information and belief, Defendants Strange, Upstreet, Thompson and/or Hawthorne converted these funds for their personal benefit.

50. Upon information and belief, Defendants Upstreet Developments, Jonathan Thompson and Michael Hawthorne engaged in a pattern and practice of first, entering into

Contracts to Buy and Sell Real Estate and Construction Services Agreements with the individual buyers; then, purchasing each individual lot from RME at a price at or near current market value; and third, selling each individual lot to the individual buyers with whom they had entered into the Contracts to Buy and Sell Real Estate at a price ranging from \$30,360 to \$105,780 higher than the price paid by Upstreet Developments to RME for the same lot. This practice was not disclosed to the Plaintiffs.

51. For example, on June 26, 2006, Upstreet Developments entered into a Contract to Buy and Sell the lot now owned by Plaintiff Mills. Defendant Upstreet purchased the same lot from RME for \$70,840 on July 12, 2006 and sold the lot to Mills for \$119,995 on July 26, 2006.

52. Similarly, Defendant Upstreet Developments entered into a Contract to Buy and Sell the lot now owned by Steven and Christine Hadley on June 19, 2006. Upstreet purchased that property from RME for \$70,840 on July 13, 2006 and sold it to the Hadleys for \$119,995 on August 8, 2006.

53. This pattern is repeated throughout the sales at issue in this lawsuit.

54. Upon information and belief, the “instant equity” promised to investors by Upstreet resulted from Upstreet’s undisclosed and/or unlawful practice of flipping properties and/or using inflated appraisals.

55. Defendant Upstreet also induced Plaintiffs to purchase by promising that only nineteen or twenty lots (depending on the time at which claimed) RME lots would be sold to investors in 2006, in order to minimize the potential of a saturated real estate market within Grand county. In fact, on information and belief, approximately thirty-nine lots were sold to investors in 2006.

Inflated Appraisals of the Subject Properties

56. Under the Uniform Standards of Professional Appraisal Practice, as codified at C.R.S. §§ 12-61-701 *et seq.*, it is unlawful for a Real Estate Appraiser to: conduct an appraisal in a fraudulent manner or use misrepresentation in any such activity or to act (or fail to act) in a manner which does not meet the generally accepted standards of professional appraisal practice. C.R.S. § 12-61-710(1)(f) and (g). Similarly, it is unlawful for any person to accept a fee for an independent appraisal assignment that is contingent upon the reporting of a predetermined analysis, opinion, or conclusion reached. In general, Real Estate Appraisers call such activity “appraising to a predetermined value.”

57. In this case, Defendant Donald Stookey appraised to a predetermined value when he submitted appraisals for Plaintiffs’ Anglers Club Subdivision lots. Specifically, Defendant Stookey used wholly inappropriate comparables when determining the appraised value of Plaintiffs’ lots in order to bring the appraised values up to the price levels urged and/or suggested by Defendants Upstreet Development, Jonanthan Thompson, Morris King and Ralph Chiarella.

58. The Anglers Club Subdivision is approximately five miles south of the town of Grand Lake, Colorado. It can be described as a suburban, semi-rural development with relatively few amenities. The Town of Grand Lake, on the other hand, is a vibrant tourist Mecca that sits on the shores of Grand Lake. It is a mixture of commercial and residential properties with a large number of amenities (hotels, restaurants, gift shops, professional offices, a grocery store, etc.).

59. When Defendant Stookey chose comparables to give an appraised value for Plaintiffs' properties, he chose comparables located within the Town of Grand Lake *even though Grand Lake is five miles north of the Anglers Club Subdivision, even though the Town of Grand Lake and the Anglers Club Subdivision have completely different characteristics, and even though there were more appropriate (lower value) comparables closer to the Anglers Club Subdivision.*

60. Further, Defendant Stookey gave each and every one of the Anglers Club Subdivision lots a \$25,000 site-improvement credit for: wells-in-place, fully-paid tap fees, and driveways. These improvements did not exist at the time of his final appraisal reports nor do most of them exist now.

61. On information and belief, Defendant National City knew that Defendant Stookey had used inappropriate comparables for his appraisals.

62. Had Defendant Stookey chosen appropriate comparables, the appraised values of Plaintiffs' lots would have been nowhere near as high as the appraised values that were given to the Plaintiffs' and ultimately submitted to various underwriters.

63. On information and belief, Defendant Stookey unlawfully chose to provide inflated final opinions of value for Plaintiffs' homes/lots in furtherance of a conspiracy to defraud Plaintiffs.

64. On information and belief, Defendants Upstreet Developments, Jonathan Thompson, Chris Foster, Morris King and Ralph Chiarella urged and/or suggested to Defendant Stookey what comparables he should use when appraising Plaintiffs' lots. This information was misleading and used for the purpose of inflating the lot prices. Further, and on information and belief, Defendants Upstreet Developments, Jonathan Thompson, Chris Foster, Morris King, Ralph Chiarella, and Don Stookey all *knew* that the subject appraisals were unlawfully and unreasonably inflated.

65. Upon information and belief, the Stookey Appraisals were done between the date Defendant Upstreet Development entered into the Contracts for Purchase and Sale of Properties owned by the Plaintiffs and the Closing dates for those Properties.

66. Defendants Upstreet Developments, Jonathan Thompson, Chris Foster, Morris

King, Ralph Chiarella, and Paul Strange then used these bogus appraisals to: a) lure unsuspecting homebuyers into believing that their lots were worth more than the true value; b) increase the amount of funds that could be acquired from banks under various construction loans; c) defraud loan underwriters; and d) generally increase commissions for every person involved with the scheme including Defendants Grand Lake Title, Austin Title, Kim Austin, and Paul Strange.

67. Review appraisals done at various times during 2008 demonstrate that Defendant Stookey significantly overvalued the subject Properties.

68. For example, Jim Boehm's appraisal of Plaintiff T. Wayne Mills' property was \$95,000 less than that of Mr. Stookey and Mr. Boehm's appraisal of the Hadleys' property was \$85,000 less than that given by Mr. Stookey.

69. Defendant Paul Strange knew (or should have known) that the appraisals were inflated.

Paul Strange and the Loan Application Process

70. Defendant Paul Strange arranged for Plaintiffs to obtain financing for the purchase of the subject real properties through multiple mortgage companies.

71. The reason Defendants processed loans through multiple mortgage companies was to defraud the loan underwriters. Defendant Strange did not want individual loan underwriters to know that one or more of his clients had multiple "second homes" located in close proximity to each other.

72. By failing to disclose to the loan underwriters that various individuals had more than one loan in process, the mortgage companies were duped into providing loans that otherwise would not have been approved.

73. Defendant Strange breached his fiduciary duties to Plaintiffs (and was negligent) by purposely steering Plaintiffs towards stated income, stated asset loans when the Plaintiffs credit scores and financial wherewithal would have easily qualified them for full documentation loans. Had Strange provided the underwriters with full documentation loan packages then: a) the Plaintiffs would have received better interest rates; and b) the underwriters would have known that Plaintiffs had other loans being processed.

74. In addition to his loan-related activities, Defendant Strange acted as an agent of Upstreet, Jonathan Thompson, and Michael Hawthorne. He communicated the "investment model" to the Plaintiffs and, in many instances, was the only point of contact with any of the Defendants prior to signing the loan documents. In fact, Defendant Strange actively marketed the Upstreet Development lots and "investment model" to Plaintiffs by, among other things, making the initial contact with Plaintiffs (in some cases), relaying important due diligence

information to Plaintiffs, and communicating a sense of urgency in getting Plaintiffs to sign the loan documentation paperwork.

75. Defendant Strange also induced Plaintiffs to purchase properties by claiming, falsely, that “this deal is so good, that I’m buying a property in there myself,” and repeating this claim, in various forms and times and places through 2008. Upon information and belief, Paul Strange does not own any property in Upstreet Development’s Rocky Mountain Estates development.

76. Further, and on at least one occasion, Defendant Strange represented Defendants Mile High Construction and James Barnett and was the person responsible for presenting Plaintiffs Janet and Marlon Bridges with Mile High’s construction contract. Defendant Strange also represented to the Bridges that their house “finish” would be of the “highest quality.”

CONSTRUCTION DEFECT CLAIMS

ADS

77. ADS had a duty to build the Plaintiffs’ houses in a good and workmanlike manner, in a manner that is usual and customary with the trade, and in a manner that is compliant with applicable building codes. ADS failed to so build the Plaintiffs’ houses.

78. On the contrary, Plaintiffs’ homes are riddled with construction defects and code violations.

79. Even worse, ADS abandoned the Plaintiffs’ home construction projects and, on information and belief, has no intention of returning to finish said projects. Furthermore, ADS failed to secure the Plaintiffs’ homes and the homes were subject to weather-related damages and animal infestation-related damages.

80. Furthermore, multiple communications between at least some of the Plaintiffs and ADS indicated that ADS would pay the interest on the construction loans caused by the delay in construction. In other communications between ADS and the Plaintiffs, ADS offered to buy-out the Plaintiffs. For example, during a meeting in October 2007, Chris Foster of ADS offered to buy Plaintiffs Marlon and Janet Bridges out of their Property. ADS never followed through on this promise.

MILE HIGH

81. Mile High had a duty to build the Plaintiffs’ houses in a good and workmanlike manner, in a manner that is usual and customary with the trade, and in a manner that is compliant with applicable building codes. Mile High failed to so build the Plaintiffs’ houses.

82. On the contrary, Plaintiffs' homes are riddled with construction defects and code violations.

83. Even worse, Mile High abandoned the Plaintiffs' home construction projects and, on information and belief, has no intention of returning to finish said projects. Furthermore, Mile High failed to secure the Plaintiffs' homes and the homes were subject to weather-related damages and animal infestation-related damages.

ADS Builders

84. ADS Builders had a duty to build the Plaintiffs' houses in a good and workmanlike manner, in a manner that is usual and customary with the trade, and in a manner that is compliant with applicable building codes. Mile High failed to so build the Plaintiffs' houses.

85. On the contrary, Plaintiffs' homes are riddled with construction defects and code violations.

86. Even worse, ADS Builders abandoned the Plaintiffs' home construction projects and, on information and belief, has no intention of returning to finish said projects. Furthermore, ADS Builders failed to secure the Plaintiffs' homes and the homes were subject to weather-related damages and animal infestation-related damages.

Legacy

87. Legacy had a duty to build the Plaintiffs' houses in a good and workmanlike manner, in a manner that is usual and customary with the trade, and in a manner that is compliant with applicable building codes. Legacy failed to so build the Plaintiffs' houses.

88. On the contrary, Plaintiffs' homes are riddled with construction defects and code violations.

89. Even worse, Legacy abandoned the Plaintiffs' home construction projects and, on information and belief, has no intention of returning to finish said projects. Furthermore, Legacy failed to secure the Plaintiffs' homes and the homes were subject to weather-related damages and animal infestation-related damages.

ROCKY MOUNTAIN ESTATES

90. RME was under a duty to develop the Anglers Club Subdivision in a good and workmanlike manner, in a manner that is usual and customary in the trade, and in a manner that

is compliant with applicable building codes. RME failed to so develop the Anglers Club Subdivision.

91. The Anglers Club Subdivision's defects include, but are not limited to: improper drainage; improper grading; limited or no access to a substantial number of lots; improper and/or defective road construction; and an insufficient and/or improper well design and plan (too many wells in too close proximity to each other).

GRAND TITLE AND AUSTIN TITLE

92. Austin Title is an owner of Grand Lake title.

93. Grand Lake Title, Austin Title and Kim Austin failed to ensure all required documents required for closing were present and substantiated before proceeding with closing and disbursement of funds.

94. Grand Lake Title, Austin Title and Kim Austin, on information and belief, knew or should have known that the Plaintiffs were being sold lots at inflated prices..

NATIONAL CITY

95. On information and belief, National City knew or should have known that the appraisal reports at issue were inflated.

96. On information and belief, and prior to inappropriately disbursing funds, National City approached Defendant Stookey and asked him to explain his final value opinions. Defendant Stookey purportedly convinced National City that his final opinions of value were accurate and National City then began to disburse funds.

97. At a later stage in the project funding National City became aware that Defendant Stookey's appraisal reports were, as earlier suspected, inflated. National City then had several independent appraisers perform "review appraisals" to determine the correct appraised values for the subject properties. Those final value opinions came in at a significantly lower appraised value than Defendant Stookeys' final value opinions. Nonetheless, National City continued to inappropriately disburse funds.

98. Defendant National City was also made aware by Sandy Doudna – a local Mortgage Loan Officer in Grand Lake, Colorado – that: a) the appraisal reports were inflated; b) no permits had been pulled for any of the projects; and c) that there were discrepancies with the loan documents. Nonetheless, National City continued to inappropriately disburse funds.

99. Defendant National City continued to collect and accrue interest on the loans made to the Plaintiff's without revealing to the Plaintiffs that the appraisal reports were inflated even after Defendant National City notified Defendant Upstreet, the builders, and the Plaintiffs of its refusal to pay additional builder draws.

100. In 2007 and 2008, National City failed to return multiple communication attempts from at least one Plaintiff with questions and concerns on all of the above, thus failing in their fiduciary duty to Plaintiffs.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(FRAUD against Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy James Barnett, and Chris Foster)

101. The allegations of Paragraphs 1 through 100 are hereby incorporated into this claim for relief.

102. The following Defendants made a false representation of a past or present fact: Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy James Barnett, and Chris Foster.

103. The fact was material.

104. These Defendants made the representation knowing it to be false or while aware that they did not know whether the representation was true or false.

105. These Defendants made the representation with the intent that Plaintiffs rely on it.

106. Plaintiffs relied on the false representation.

107. The reliance was justified.

108. This reliance caused damage to the Plaintiffs.

SECOND CLAIM FOR RELIEF

(NEGLIGENT MISREPRESENTATION against Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS Builders, LLC, James Barnett, and Chris Foster)

109. The allegations of Paragraphs 1 through 109 are hereby incorporated into this claim for relief.

110. The following Defendants negligently gave false information to the Plaintiffs: Upstreet Developments, LLC, Jon Thompson, Michael G. Hawthorne, Rocky Mountain Estates, LLC, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS Builders, LLC, James Barnett, and Chris Foster.

111. The Plaintiffs reasonably relied on that information.

112. Harm resulted from that reliance.

113. This breach caused injury to the Plaintiffs.

THIRD CLAIM FOR RELIEF

(STRICT LIABILITY FOR MISREPRESENTATION against UPSTREET DEVELOPMENT AND ROCKY MOUNTAIN ESTATES)

114. The allegations of Paragraphs 1 through 114 are hereby incorporated into this claim for relief.

115. The Defendants sold the land and prospective homes located within Rocky Mountain Estates and owned by the Plaintiffs.

116. The Defendants were in the business of selling land and prospective homes for resale, use or consumption.

117. The Defendants misrepresented a fact concerning the character or quality of the land and prospective homes located within Rocky Mountain Estates and owned by the Plaintiffs that would be material to potential purchasers or users of the product.

118. The misrepresentation as made to potential purchasers or users as members of the public at large.

119. As a purchasers or user, Plaintiffs reasonably relied upon the misrepresentation.

120. Plaintiffs were persons who could reasonably be expected to use, consume or be

affected by the land and prospective homes.

121. Plaintiffs had injuries, losses and damages caused by the reasonable reliance of the Plaintiffs on the misrepresentation.

FOURTH CLAIM FOR RELIEF

(CONCEALMENT OR NONDISCLOSURE against Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster)

122. The allegations of Paragraphs 1 through 121 are hereby incorporated into this claim for relief.

123. The Defendants concealed past or present facts and/or failed to disclose a past or present facts that they had a duty to disclose.

124. The facts were material.

125. The Defendants concealed and/or failed to disclose the facts with the intent of creating a false impression of the actual facts in the minds of the Plaintiffs.

126. The Defendants concealed and/or failed to disclose the fact with the intent that the Plaintiffs take a course of action they might not have taken if they knew the actual facts.

127. The Plaintiffs took action relying on the assumption that the concealed or undisclosed fact did not exist or was different from what it actually was.

128. The Plaintiffs' reliance was justified.

129. This reliance caused injury, damages, and losses to the Plaintiffs.

FIFTH CLAIM FOR RELIEF

(BREACH OF FIDUCIARY DUTY against Paul Strange, Grand Lake Title, Austin Title, Kim Austin and Donald Stookey)

130. The allegations of Paragraphs 1 through 130 are hereby incorporated into this claim for relief.

131. The following Defendants were acting as fiduciaries of the Plaintiffs: Paul Strange, Grand Lake Title, Austin Title, Kim Austin and Donald Stookey.

132. These Defendants breached their fiduciary duties.
133. The Plaintiffs suffered damages.
134. The breach of fiduciary duty was a cause of Plaintiffs' damages.

SIXTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY against Upstreet Developments, Jonathan Thompson, Michael Hawthorne, Paul Strange, Rocky Mountain Estates, Morris King, Ralph Chiarella, Donald Stookey, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster)

135. The allegations of Paragraphs 1 through 135 are hereby incorporated into this claim for relief.

136. The following Defendants agreed, by words or conduct, to accomplish an unlawful goal or to accomplish a lawful goal through unlawful means: Upstreet Developments, Jon Thompson, Michael Hawthorne, Paul Strange, RME, Morris King, Ralph Chiarella, Donald Stookey, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster.

137. One or more unlawful acts were performed to accomplish the lawful goal or one or more lawful acts were performed to accomplish the unlawful goal.

138. The Plaintiffs suffered damages, losses, or both.

139. The Plaintiffs damages, losses, or both were caused by the acts performed to accomplish the goal.

SEVENTH CLAIM FOR RELIEF

(VIOLATION OF THE COLORADO ORGANIZED CRIME CONTROL ACT against Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, LLC, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster)

140. The allegations of Paragraphs 1 through 140 are hereby incorporated into this claim for relief.

141. The following Defendants violated one or more provisions of Section 18-17-104 of the Colorado Revised Statutes: Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, LLC, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy,

James Barnett, and Chris Foster.

142. The violations include, but are not limited to, engaging in a pattern of “racketeering activity” as defined by C.R.S. § 18-17-103(5).” Specifically, these Defendants’ offenses include, but are not limited to, theft and fraud.

143. The Plaintiffs’ were damaged, injured, or both by one or more of these violations.

EIGHTH CLAIM FOR RELIEF
(VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS CRIME CONTROL ACT against Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster)

144. The allegations of Paragraphs 1 through 144 are hereby incorporated into this claim for relief.

145. The following Defendants violated one or more provisions of the Racketeer Influenced and Corrupt Organizations Crime Control Act, 18 U.S.C. § 1962(C): Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, LLC, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster.

146. These Defendants engaged in conduct, as part of an enterprise,

147. These Defendants engaged in a pattern of “racketeering activity” as defined by 18 U.S.C § 1961.

148. The Plaintiffs’ were damaged, injured, or both by one or more of these violations.

NINTH CLAIM FOR RELIEF
(CIVIL THEFT pursuant to C.R.S. § 38-22-127 against ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster).

149. The allegations of Paragraphs 1 through 149 are hereby incorporated into this claim for relief.

150. The following Defendants received funds disbursed pursuant to a construction contract: ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster.

151. These Defendants were required to hold such disbursed funds in trust for the payment of subcontractors, laborers or material suppliers but failed to do so.

152. As a result of Defendants' actions, Plaintiffs have been damaged in an amount to be proven at trial.

TENTH CLAIM FOR RELIEF

(VIOLATION OF THE COLORADO CONSUMER PROTECTION ACT against Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster)

153. The allegations of Paragraphs 1 through 153 are hereby incorporated into this claim for relief.

154. The following Defendants engaged in one or more unfair or deceptive trade practice as defined in Colorado Revised Statutes, Section 6-1-105(1): Upstreet Developments, LLC, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster.

155. The challenged practice(s) occurred in the course of the Defendants' business, vocation, or occupation.

156. The challenged practice(s) significantly impact the public as actual or potential consumers of these Defendants' goods, services, or property.

157. The Plaintiffs suffered injury in fact to a legally protected interest.

158. The challenged practice(s) caused the Plaintiffs' injuries.

ELEVENTH CLAIM FOR RELIEF

(Negligence against Upstreet Developments, Jonathan Thompson, Michael G. Hawthorne, Rocky Mountain Estates, Morris King, Ralph Chiarella, Don Stookey, Paul Strange, Grand Lake Title, Austin Title, Kim Austin, ADS, ADS Builders, Mile High, Legacy, James Barnett, and Chris Foster)

159. The allegations of Paragraphs 1 through 159 are hereby incorporated into this claim for relief.

160. The Defendants owed duties to the Plaintiffs.

161. Defendants breached those duties.
162. Plaintiffs were damaged by these breaches.
163. Plaintiffs' damages were actually and proximately caused by these breaches.

TWELFTH CLAIM FOR RELIEF
(**Negligence** against ADS, ADS Builders, Mile High & Legacy)

164. The allegations of Paragraphs 1 through 163 are hereby incorporated into this claim for relief.

165. The Defendants owed duties to the Plaintiffs to construct, control, supervise, and design their homes in a good and workmanlike manner.

166. Defendants breached those duties.
167. Plaintiffs were damaged by these breaches.
168. Plaintiffs' damages were actually and proximately caused by these breaches.

THIRTEENTH CLAIM FOR RELIEF
(**Breach of Contract** against Upstreet Developments, Rocky Mountain Estates, Grand Lake Title, Austin Title, ADS, ADS Builders, Mile High, Legacy, Paul Strange, and National City Mortgage)

169. The allegations of Paragraphs 1 through 169 are hereby incorporated into this claim for relief.

170. The following contracts are both valid and binding: Contracts to Buy and Sell Real Estate between Plaintiffs and Upstreet Developments; express and implied contracts between Upstreet Development and/or ADS for the buy-back of Plaintiff's Properties; any express implied contracts between Upstreet Developments and Plaintiffs; contracts between Rocky Mountain Estates and Upstreet Developments relating to Plaintiff's Properties; title contracts between Plaintiffs and Grand Lake Title and/or Austin Title; express and implied construction contracts between Plaintiffs and Mile High, ADS, ADS Builders, and Legacy to build homes on Plaintiffs' properties; express or implied mortgage contracts between Plaintiffs and Paul Strange; express or implied mortgage contracts between Plaintiffs and National City Mortgage.

171. The following Defendants failed to perform those contracts: Upstreet Developments, Rocky Mountain Estates, Grand Lake Title, Austin Title, ADS, ADS Builders,

Mile High, Legacy, Paul Strange, and National City Mortgage.

172. The Plaintiffs' either performed their duties under said contracts or were justified in nonperformance.

173. The Plaintiffs suffered damages as a result.

FOURTEENTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT against all Defendants)

174. The allegations of Paragraphs 1 through 173 are hereby incorporated into this claim for relief.

175. Benefits were conferred on Defendants by Plaintiffs.

176. Defendants appreciated or realized said benefits.

177. Defendants accepted the benefits under such circumstances that it would be inequitable for them to retain the benefits without payment of their value.

178. As a result of Defendants' actions, Plaintiffs have been damaged in an amount to be proven at trial.

FIFTEENTH CLAIM FOR RELIEF
**(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
against UPSTREET DEVELOPMENT AND ROCKY MOUNTAIN ESTATES)**

179. The allegations of Paragraphs 1 through 178 are hereby incorporated into this claim for relief.

180. Defendants sold the land and prospective homes contained within Rocky Mountain Estates and owned by the Plaintiffs.

181. Plaintiffs are persons who were reasonably expected to use, consume or be affected by the product.

182. The Defendants were merchants with respect to the type of product involved herein.

183. The land and prospective homes were not of merchantable quality at the time of sale.

184. The breach of warranty caused the Plaintiffs injuries, damages and losses.

185. Within a reasonable time after the Plaintiffs discovered or should have discovered the alleged breach of warranty, the Plaintiffs notified the Defendants of such breach of warranty.

SIXTEENTH CLAIM FOR RELIEF
(BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
against UPSTREET DEVELOPMENT AND ROCKY MOUNTAIN ESTATES)

186. The allegations of Paragraphs 1 through 185 are hereby incorporated into this claim for relief.

187. Defendant sold the land and prospective homes contained within Rocky Mountain Estates and owned by the Plaintiffs.

188. The Defendant impliedly warranted that the land and prospective homes sold to Plaintiffs were suitable for the particular purpose of investment property.

189. Plaintiffs are persons who were reasonably expected to use, consume or be affected by the product.

190. The land and prospective homes were not fit for the particular purpose for which it was warranted.

191. The breach of implied warranty caused the Plaintiffs injuries, damages and losses.

192. Within a reasonable time after the Plaintiffs discovered or should have discovered the alleged breach of implied warranty, the Plaintiffs notified the Defendants of such breach of warranty.

SEVENTEENTH CLAIM FOR RELIEF
(BUILDING CONTRACTOR'S BREACH OF IMPLIED WARRANTY against
Upstreet Development, ADS, ADS Builders, Mile High & Legacy)

193. #. The allegations of Paragraphs 1 through 192 are hereby incorporated into this claim for relief.

194. As a business venture, the Defendants entered into a contract with the plaintiff to have homes built or to build homes for the Plaintiffs; and

195. When the defendant gave possession of the homes to the Plaintiffs, the homes did not comply with one or more of the warranties the law implies as part of such a construction contract.

196. The breach of warranty caused the Plaintiffs injuries, damages and losses.

WHEREFORE, Plaintiff prays for a judgment against Defendant and as relief requests:

- A. All actual, contractual, consequential, special, equitable, special, and extra-contractual damages in an amount to be determined at trial;
- B. Treble damages pursuant to statute;
- C. Prejudgment and post-judgment interest on any award of damages to the extent permitted by law;
- D. Costs of this action;
- E. Reasonable attorney fees; and
- F. Such other and further relief as this court may deem appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL CLAIMS SO TRIABLE.

Respectfully submitted: May 30, 2008.

KEYES MICHEL & PUMMELL, LLC

/s/ Marion A. Keyes

(original signature on file w/ firm)



Marion A. Keyes, #33324

Plaintiffs' Addresses:

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