



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

SHEET METAL WORKERS' NATIONAL )  
PENSION FUND, Individually and on behalf of all )  
others similarly situated, )

Plaintiff, )

vs. )

C.A. No. \_\_\_\_\_

IAN J. MCCARTHY, MICHAEL T. RAND, )  
LAURENT ALPERT, BRIAN C. BEAZER, )  
LARRY T. SOLARI, KATIE J. BAYNE, )  
STEPHEN P. ZELNAK, JR., PETER G. )  
LEEMPUTTE, JAMES O'LEARY, KENNETH J. )  
GARY and MAUREEN E. O'CONNELL, )

Defendants, )

-and- )

BEAZER HOMES USA, INC., )  
a Delaware corporation, )

Nominal Defendant. )

**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**

For its Verified Shareholder Derivative Complaint (the "Complaint"), plaintiff Sheet Metal Workers' National Pension Fund ("Plaintiff"), by its attorneys, alleges the following upon personal knowledge as to itself, and upon information and belief as to all other allegations, based upon their attorneys' investigation of material pertinent to the claims herein alleged:

**NATURE OF THE ACTION**

1. This is a shareholder derivative action brought on behalf of nominal defendant Beazer Homes USA, Inc. ("Beazer" of "the Company") by one of its shareholders against its entire Board of Directors (the "Board") for breach of their fiduciary duties of care, good faith and loyalty, waste of Beazer's corporate assets, and unjust enrichment that, among other things, has

substantially damaged the Company, its reputation, and goodwill. Among other things, the

Individual Defendants (as defined below):

- Failed to ensure that the Company implemented adequate internal controls to prevent a variety of improper business practices, including the Company's mortgage origination and brokerage subsidiary operating in an illegal manner that resulted in governmental investigations by the Internal Revenue Service ("IRS"), the United States Department of Justice ("DOJ"), the United States Department of Housing and Urban Development ("HUD"), and the Federal Bureau of Investigation ("FBI");
- Failed to cause the Company to implement adequate internal controls to prevent fraud related to the reporting of the Company's financial condition;
- Caused the Company to issue materially false and misleading financial statements;
- Failed to cause the Company to implement adequate internal controls to prevent insider trading by the Company's senior management; and
- Improperly granted bonus compensation to management, including cash bonuses, stock, and stock options.

2. In addition, several defendants misappropriated and misused proprietary, non-public material corporate information to personally profit by illegally trading in the Company's stock on the basis of that information.

3. Defendants' breaches of their fiduciary duties have subjected the Company to, among other things:

- Substantial criminal and civil penalties and sanctions, including the Company's potential loss of its ability to operate a mortgage origination and brokering business;
- Damage to the Company's reputation with mortgage lenders and governmental guarantors such as Fannie Mae;
- A loss of financial goodwill;
- A loss of goodwill of the Company's name and brand for purposes of marketing and selling homes;

- Damage to the Company's reputation in the financial community resulting in higher borrowing costs for operations;
- Substantial expenses resulting from costly internal investigations and related legal defense costs;
- Damages and legal defense costs for securities fraud class action litigation and consumer fraud class action litigations; and
- Substantial additional future costs to remediate its failed corporate governance processes and institutional operations.

#### **PARTIES**

4. Plaintiff brings this action derivatively in the right and for the benefit of Beazer to redress injuries suffered by Beazer as a direct result of the Individual Defendants' breaches of fiduciary duty alleged herein. Plaintiff will adequately and fairly represent the interests of Beazer in enforcing and prosecuting its rights. Plaintiff is and was a continuous owner of the stock of Beazer during the times relevant to the wrong doing alleged herein, and is a shareholder of the Company.

5. Nominal defendant Beazer is a Delaware corporation with its principal place of business located at 1000 Abernathy Road, Suite 1200, Atlanta, GA 30328. Beazer, through its subsidiaries, designs, builds, and sells single-family homes in the United States. The Company "offers homes at various price points to appeal to homebuyers across various demographic segments." However; approximately 52% of its building and marketing activities target the low to moderate-income housing market. Through its subsidiaries, including Beazer Mortgage Corporation ("Beazer Mortgage"), the Company also provides mortgage origination, brokering, and processing services for its homebuyers, as well as title services to home buyers in many of its markets.

6. Defendant Ian J. McCarthy (“McCarthy”) is, and during the relevant period was, President and Chief Executive Officer of the Company and has served as a director of the Company since its initial public offering in 1994.

7. Defendant Michael H. Furlow (“Furlow”) is, and during the relevant period was, Executive Vice President and Chief Operating Officer of the Company.

8. Defendant James O’Leary (“O’Leary”), until his resignation effective March 23, 2007, was the Company’s Executive Vice President and Chief Financial Officer. O’Leary remained with the Company in an advisory capacity until May 1, 2007.

9. Defendant Kenneth J. Gary (“Gary”), until his termination “for cause” on or about February 12, 2007, had been the Company’s General Counsel and Executive Vice President.

10. Defendant Michael T. Rand (“Rand”), until his termination for cause on June 27, 2007, had been the Company’s Senior Vice President and Chief Accounting Officer.

11. Defendants McCarthy, Furlow, O’Leary, Gary and Rand are, collectively, referred to herein as the “Management Defendants.”

12. Defendant Laurent Alpert (“Alpert”) has served as a director of the Company since February 2002. During the relevant period, although he had knowledge of Beazer’s precarious financial position, Alpert sold 16,000 of his personal shares in the Company for \$691,040.

13. Defendant Brian C. Beazer (“B. Beazer”) is the Non-Executive Chairman of the Board and has served as a director of the Company since its initial public offering in 1994. From 1968 to 1983, B. Beazer was Chief Executive Officer of Beazer PLC, a United Kingdom company affiliated with Beazer. From 1983 until December 1, 1991, he served as Chairman and CEO of

that company. Among other things, B. Beazer also is a Director of Beazer Japan, Ltd, another entity affiliated with Beazer.

14. Defendant Larry T. Solari (“Solari”), has served as a director of the Company since its initial public offering in 1994.

15. Defendant Katie J. Bayne (“Bayne”) has served as a director of the Company since December 2003.

16. Defendant Stephen P. Zelnak, Jr. (“Zelnak”) has served as a director of Beazer Homes since February 2003.

17. Defendant Peter G. Leemputte (“Leemputte”) has been a director of the Company since August 2005.

18. Defendant Maureen E. O’Connell (“O’Connell”) served as a director of the Company from May 2002 until her sudden retirement effective February 5, 2007. While on the board, O’Connell was a member of the Audit Committee and the Nominating/Corporate Governance Committee.

19. Collectively, the defendants named in paragraphs 6-10 and 12-18 are referred to as the “Individual Defendants.” Collectively, the defendants names in paragraphs 6 and 12-18 are referred to as the “Board Member Defendants.”

#### **SUBSTANTIVE ALLEGATIONS**

20. On March 30, 2005, the Company announced a \$130 million impairment charge on nearly all of the goodwill from the 2002 acquisition of Crossman Communities Inc. (“Crossman”). The impairment was necessitated by Crossman’s underperforming operations in Indiana, Ohio, Kentucky, and Charlotte, N.C. As a result, the Company needed to increase, or at least maintain, its sales revenue to avoid further goodwill write-offs and significant write-downs

in the value of its large real estate asset portfolio. This became even more urgent in advance of the widely-reported downturn of the U.S. housing market.

21. To increase or maintain home sales revenue and income, and avoid additional goodwill write-downs, the Company ramped up its illegal mortgage lending practices that had been occurring since at least 2001. Because many of Beazer's low to moderate housing market customers (the majority of Beazer's home sales target market) obtained FHA backed mortgages, those customers and Beazer were subject to strict FHA mortgage lending and underwriting rules. According to a series of investigative news articles into Beazer Homes' sales and mortgage lending practices published by *The Charlotte Observer* beginning on March 18, 2007, on mortgage loan application forms Beazer routinely: (1) misrepresented their home buyer customers' income; (2) understated the customers' debts; and (3) overstated the customers' future ability to make mortgage loan payments. These practices enabled Beazer to sell more homes and thereby make more money on its mortgage origination business. This, in turn, allowed the Company to conceal its declining business model.

22. One such editorial article published by *The Charlotte Observer* on March 18, 2007 by Rick Thames, titled "*Easy-credit Loans Can Be Hard On Us All: Observer Series Shows Destabilizing Threat To Entire Communities,*" stated in part:

A team of reporters and editors spent more than six months assembling and analyzing data on the troubled history of a 10-year-old subdivision in Cabarrus County.

Southern Chase is a cluster of "starter" homes where prices originally started below \$80,000 built by Beazer Homes USA, one of the nation's largest developers of such housing. Lenders already have foreclosed on roughly one out of every five of its 406 homes.

In all, Beazer has built about 20 starter developments in Mecklenburg County. The foreclosure rates in at least nine are higher than what we discovered in Southern Chase.

No authority compiled those statistics. In North Carolina, no authority has kept track of foreclosures. We learned it by reviewing thousands of public records: county deeds, property records, federal lending data, building permits and bankruptcy filings.

We also went door to door, asking permission to review residents' personal loan and mortgage documents. A number of them agreed. Gradually, more patterns emerged:

--Beazer often exerted control in each step of the home-buying process. It sold the home, *selected an appraiser*, and even *arranged financing*.

--*When customers couldn't afford a down payment, the company covered the cost. It also raised selling prices, at least in part to recover that expense.*

--It arranged mortgages with low initial payments that shot up after the first two years. *In qualifying buyers, it routinely projected their incomes would also increase substantially within two years. In at least some cases, there was no reason to believe that.*

--In the case of four loans we were able to thoroughly examine, *documents either overstated borrowers' income or understated their debts.*

--As deals came unglued, selling wasn't necessarily an option. Nearly half of the homes now have lower appraised values than when they were new.

(Emphasis added).

23. Just three days after publication of the first articles published by *The Charlotte Observer* stating that Beazer was being investigated by federal housing officials for potential violations of federal lending rules, Beazer announced on March 21, 2007, that Defendant O'Leary, the Company's then-Chief Financial Officer and Executive Vice President, had resigned.

24. On March 26, 2007, Beazer announced that it and its subsidiaries, including Beazer Mortgage, had been served with a class action complaint on behalf of North Carolina residents who purchased homes in subdivisions in North Carolina containing homes constructed by Beazer. The complaint alleges that the Company utilized unfair trade practices to allow low income purchasers to qualify for mortgage loans they could not afford and that, as a result, the

foreclosure rate in these subdivisions was significantly higher than the statewide average. More specifically, the suit alleged that the Company improperly helped prospective home buyers qualify for mortgage loans through a complex scheme involving, among other things: (1) advising or encouraging prospective home buyers to falsify information set forth on their respective loan applications; and/or (2) altering information provided by prospective buyers set forth on their loan applications.

25. In addition, other Beazer practices have come to light that reflect poorly on the Company and its internal controls. For example, Beazer has been sued for shoddy or defective home construction and has been criticized for over-paying real estate agents in the form of very high, non-market, commissions effectively designed to further push sales of Beazer's homes. Beazer also has been connected to improper kickback practices with title insurance companies, such as First American Title, under which the title company would "reinsure" any title business referred from the homebuilder with the homebuilders' own captive reinsurance entities, resulting in the homebuilder receiving up to 50% of the fee charged for the title insurance and little, if any, risk exposure.

26. On March 27, 2007, *BusinessWeek.com* published a news article titled "Feds Are Investigating Homebuilder Beazer," stating, among other things, that:

*BusinessWeek* has learned that federal investigators have opened a broad criminal probe into lending practices, some financial transactions, and other dealings at Beazer Homes USA (BZH).

.....

The North Carolina field offices of the Federal Bureau of Investigation, the Internal Revenue Service, and the Justice Dept. have recently opened a joint investigation into the company over such matters.

The Inspector General of Housing & Urban Development is also part of the group since a large percentage of Beazer's loans were made to low-income borrowers and insured by the federal government through the Government National Mortgage Assn., according to people familiar with the investigation.

"Actively Pursuing Fraud"

Investigators, however, are not limiting their probe to possible mortgage fraud. **"There's all sorts of potential fraud issues here,"** FBI spokesman Ken Lucas told *BusinessWeek*. **"We're looking at all types of [potential] fraud associated with Beazer—corporate, mortgage, investments."**

....

#### High Foreclosure Rate

The joint investigation stems from a series of articles that ran in *The Charlotte Observer* in mid-March, detailing allegations of abusive lending practices and unusually high foreclosure rates in a handful of Beazer housing developments in North Carolina. The paper's investigation alleges that foreclosure rates in several Beazer developments ran at around 20%, compared with the national average of 3%. At the time, Beazer said in a written statement that the high foreclosure rates were an anomaly. Still, such allegations have also sparked a class action against Beazer. . . .

(Emphasis added). The same day, Beazer publicly responded to *The Charlotte Observer's* allegations that the Company had engaged in a variety of improper consumer practices relating to its mortgage loan origination and broker activities in conjunction with its home sales practices, and admitted that it was under investigation by the FBI as a result.

27. Then, on March 28, Beazer further announced that it had received a grand jury subpoena from the United States Attorney's Office in the Western District of North Carolina seeking the production of documents generally relating to its mortgage business. Beazer noted that the subpoena was issued upon application of the Office of Housing and Urban Development, Office of Inspector General, and focused on the Company's mortgage origination services.

28. The securities market for Beazer stock (which trades under the symbol "BZH" on the New York Stock Exchange) reacted sharply and immediately to this news, causing a drop in Beazer's stock price of approximately \$3 per share in the twenty-four hour period following the March 27, 2007 *BusinessWeek.com* article. Neither the market nor the general public, for that matter, had any warning prior to the *BusinessWeek.com* article that Beazer Homes was potentially engaging in improper mortgage lending practices and that its prior financial statements and results of operations might be inaccurate in any way.

29. The seriousness of the allegations, and the market's reaction to them, is reflected in the views of Wall Street financial analysts. According to securities analysts quoted in a March 28, 2007, news article in *The Wall Street Journal*, titled "*Federal Officials Contact Beazer Over Mortgage-Lending Business,*"

"The Department of Justice would not get involved in it unless there was some potential violation of law," A.G. Edwards & Sons analyst Gregory Gieber said, although he added that it's unclear at this point if there will turn out to be a violation.

Meanwhile, J.P. Morgan Securities analyst Michael Rehaut said in a research note that he's troubled by the reference to "corporate and investments" in the statement by the FBI's Mr. Lucas, which implies that the investigation could be relatively widespread and not just focused on mortgages.

30. Indeed, since the March 27 and 28, 2007 events, Beazer has lost more than \$831 million in market capitalization, with the price of its stock dropping over \$21.20 per share (over 66%) from its March 26, 2007, closing price of \$32.22 per share, compared to its August 22, 2007, per share closing price of \$11.02.

31. This previously undisclosed information reflected, among other things, that:

- The Company failed to disclose that one of the reasons for its purported strong financial performance – which consistently met or exceeded guidance – was the result of improper mortgage lending practices;
- The Company failed to disclose known contingencies;
- The Company, and specifically the Individual Defendants, had failed to implement adequate systems of internal operational or financial controls that would ensure Beazer Homes' reported financial statements were true, accurate or reliable;
- The Company's financial statements failed to comply with either Generally Accepted Accounting Principals ("GAAP") or United States Securities and Exchange Commission ("SEC") rules; and
- The Company's financial statements, as a whole, were materially false and misleading.

32. On March 29, 2007, Beazer announced the filing of a securities fraud class action complaint against the Company, defendants McCarthy, O'Leary, Rand, and Gary, alleging that the defendants therein mislead investors about the Company's business and prospects because they concealed facts related to the Company's improper mortgage lending practices. Among other things, the plaintiff in that securities fraud complaint alleged that during the relevant period, defendants issued materially false and misleading statements regarding the Company's business and prospects, and failed to disclose to the investing public that: (a) Beazer lacked requisite internal controls over its lending practices; (b) Beazer's business was growing in large part due to its improper lending practices to low-income borrowers; (c) many of Beazer's home buyers would not be able to pay their loans after the first two years, which would lead to decreased sales and earnings and numerous foreclosures; and (d) given the increased volatility in the lending market, the Company had no reasonable basis to make projections about its 2007 financial results.

33. During this period, in violation of their fiduciary duties of care, good faith, and loyalty, the Individual Defendants knew and consciously disregarded (or were reckless or grossly negligent in not knowing and failing to prevent) the Company's improper and illegal mortgage origination and brokering practices, and improper consumer fraud activity that, when coupled with the Company's lack of internal controls over its lending procedures, would damage the Company.

34. Then, on May 1, 2007, Beazer received notice that the SEC had commenced an informal inquiry to determine whether any person or entity related to Beazer Homes had violated federal securities laws.

35. The SEC's informal investigation was elevated to a "formal" investigation on July 20, 2007, less than a month after the Company announced on June 27, 2007, that it had terminated Rand "for cause, under the terms of his employment agreement, due to violations of

the Company's ethics policy stemming from attempts to destroy documents in violation of the Company's document retention policy."

36. On August 10, 2007, Beazer filed with the SEC Form 12b-25, Notification of Late Filing, announcing that the Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2007 would not be timely filed with the SEC. According to Beazer:

The Company's delay in filing the Form 10-Q is the result of an independent internal investigation being conducted by the Audit Committee of the Beazer Homes Board of Directors into Beazer Homes' mortgage origination business, including, among other things, an *investigation of certain evidence that the Company's subsidiary, Beazer Mortgage Corporation, violated U.S. Department of Housing and Urban Development ("HUD") regulations and may have violated certain other laws and regulations in connection with certain of its mortgage origination activities.* The Audit Committee has retained independent legal counsel which, in turn, has retained independent forensic accountants, to assist with the investigation. During the course of the investigation, *it was also discovered that the Company's former Chief Accounting Officer caused reserves and other accrued liabilities, relating primarily to land development costs and costs to complete houses, to have been recorded in prior accounting periods in excess of amounts that would have been appropriate under generally accepted accounting principles. These reserves and other accrued liabilities, if reversed in subsequent accounting periods, could have been used to reduce the Company's operating expenses by amounts that would not have been appropriate under generally accepted accounting principles.* Other accounts and amounts reported in prior period financial statements may also have been affected.

(Emphasis added).

37. The pressure Beazer is now receiving from its debt holders underscores the seriousness of these developments. On August 21, 2007, Beazer announced in a Form 8-K filed with the SEC that it had sued U.S. Bank National Association, the trustee under the indentures governing the Company's \$1.3 billion in outstanding senior notes. Beazer's suit sought declaratory relief that its failure to timely file its Form 10-Q should not constitute an event of default that would give note holders the right to accelerate repayment of the \$1.3 billion in debt. On August 27, 2007, the United States District Court for the Northern District of Georgia, where the suit was filed, declined to provide any relief unless Beazer formally applied for an injunction.

Beazer did not do that and, on September 7, 2007, received a notice of default on its debt. Beazer's stock price declined approximately another 10% on this bad news.

38. While permitting the Company to lack or evade appropriate internal financial and operational controls and engage in illegal and fraudulent consumer mortgage lending practices, all in breach of their fiduciary duties of good faith and loyalty, the Individual Defendants further breached their fiduciary duties by permitting Beazer to issue materially false and misleading financial statements and waste corporate assets by, among other things: (1) engaging in – or failing to prevent – insider trading by certain of the Individual Defendants; (2) authorizing the buyback of Company stock at artificially inflated prices at a time when certain of the Individual Defendants were engaged in insider trading; and (3) granting undeserved and excessive bonus and/or incentive compensation to the Management Defendants, and Defendant B. Beazer, in the form of cash, stock and stock options.

**Issuance of Materially False & Misleading Financial Statements**

39. The Individual Defendants, by virtue of their fiduciary duty of loyalty, had an obligation to the Company to make sure Beazer's public statements and financial reports fairly represented, in all material aspects, the Company's operations, business prospects, and financial condition. To perform sufficiently these duties, the Individual Defendants had to know and understand the material, non-public information to be either disclosed or omitted from the Company's public statements.

40. For example, between at least March 30, 2005 through March 27, 2007, defendants concealed information from shareholders about Beazer's improper mortgage lending practices by, among other things, publicly issuing materially false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth therein, not false and misleading.

41. In essence, defendants' public statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company's operations, the reasons for its purported financial performance, and known contingencies, all in violation of the federal securities laws and GAAP. Thus, the Company's financial statements contained in the Company's Form 10-Qs, 10-Q/As, 10-Ks and 10-K/As filed with the SEC were presented in a manner that violated the principle of fair financial reporting, numerous GAAP rules and SEC rules including Item 303 of Regulation S-K, 17 C.F.R. 229.303 and Regulation S-X, 17 C.F.R. § 210.4-01(a)(1).

42. The Individual Defendants knew, or were reckless in not knowing, the facts that indicated that the Company's year-end and interim financial statements, press releases, public statements, and filings with the SEC, which were disseminated to the investing public during the securities fraud class period, were materially false and misleading for the reasons set forth herein. Had the true operational practices and financial condition of the Company been disclosed, the Company's common stock would have traded at prices well below that which it did.

43. The Individual Defendants either failed to keep adequately informed about the Company's financial statements, financial condition, and internal financial reporting controls, or, if adequately informed about such matters, either permitted it to occur or failed to ensure that the Company maintained and followed adequate internal controls, policies, practices and procedures to prevent this fraudulent activity from occurring.

#### **Engaging In – Or Failing To Prevent – Insider Trading**

44. While the Company was issuing favorable, yet materially false and misleading statements which are the subject of securities fraud litigation, the Management Defendants sold over **583,000 shares** of their Company stock, for more than **\$32 million** to personally profit from the artificial inflation in the Company's stock price:

<b>Defendant</b>	<b>Date</b>	<b># of shares sold/disposed</b>	<b>Proceeds</b>
Furlow, COO			
	4/17/2006	6,266	\$396,575
	11/21/2005	179,997	\$12,398,193
	8/2/2005	39,324	\$2,607,967
	8/2/2005	7,865	\$521,606
<b>Total</b>		<b>233,452</b>	<b>\$15,924,341</b>
McCarthy, CEO			
	11/14/2006	179,535	\$7,732,572
	9/25/2006	6,802	\$277,726
	4/17/2006	13,149	\$832,200
	9/26/2005	67,101	\$3,811,337
<b>Total</b>		<b>266,587</b>	<b>\$12,653,835</b>
O'Leary, CFO			
	3/23/2007	17,394	\$587,569
	11/13/2006	33,549	\$1,437,910
<b>Total</b>		<b>50,943</b>	<b>\$2,025,479</b>
Rand, CAO			
	9/25/2006	455	\$18,578
	4/17/2006	934	\$59,113
	2/2/2006	6,723	\$460,659
	9/30/2005	13,543	\$790,234
	9/26/2005	10,409	\$591,231
<b>Total</b>		<b>32,064</b>	<b>\$1,842,124</b>
<b>Grand Total</b>		<b>583,046</b>	<b>\$32,445,779</b>

45. While in possession of adverse non-public information regarding Beazer's reckless lending practices and lack of internal controls, Defendant Alpert sold 16,000 of his personally held shares for proceeds of \$691,040, on November 14, 2006.

46. While in possession of adverse non-public information regarding Beazer's reckless lending practices and lack of internal controls, Defendant B. Beazer sold 44,886 of his personally held shares for proceeds of \$2,308,487, on May 23, 2005.

47. While in possession of adverse non-public information regarding Beazer's reckless lending practices and lack of internal controls, Defendant O'Connell sold 15,000 of her personally held shares for proceeds of \$823,050, on June 7, 2005, and another 6,000 shares for proceeds of \$124,980 on December 5, 2006.

48. The Management Defendants, and defendants Alpert, B. Beazer and O'Connell are collectively referred to herein as the "Insider Selling Defendants."

49. Thus, notwithstanding their access to material non-public information concerning the Company's deteriorating business model, true financial condition and reasons therefore, the improper sales and lending activities, and the potential impact of such improper activities on the Company's reported financial condition and future operations, as well as their duty to disclose such adverse information before selling Beazer stock, the Insider Selling Defendants capitalized on their insider knowledge and sold their stock at artificially inflated prices and at highly suspicious times.

50. In engaging in this activity or failing to prevent it, the Individual Defendants breached their fiduciary duty of loyalty. Moreover, the Individual Defendants that did not engage in such insider trading further breached their fiduciary duties in either failing to keep adequately informed about the Insider Selling Management Defendants' insider trading activity or, if adequately informed about it, either affirmatively sanctioning such activity or failing to ensure that the Company maintained and followed adequate internal controls, policies, practices and procedures to prevent such activity.

**Authorizing The Buyback of Company Stock at Artificially Inflated Prices**

51. The Individual Defendants, by virtue of their fiduciary duty of loyalty, had an obligation to the Company to make sure the Company's assets were not wasted. To perform sufficiently these duties, the Individual Defendants had to know and understand the reasons for

the Company's inflated stock price and the adverse effect to the Company to continue stock repurchases at a time when the Company's stock price was artificially inflated due to defendants' materially false and misleading disclosures.

52. On November 18, 2005, Beazer announced that the Board had "authorized the expansion of the Company's existing share repurchase program from 2 million shares as of September 30, 2005, to a total of 10 million shares" and that the Company "expect[ed] to execute the repurchase program within the next 36 months, with \$200-\$250 million allocated to share repurchases in fiscal 2006." Following release of Beazer's fourth quarter 2005 and fiscal year 2005 financial results, the Company already had repurchased 500,000 shares. In addition, Beazer also announced that it would "fund this expanded share repurchase program by redeploying its cash by limiting or curtailing operations in certain markets, reinvesting in higher margin markets and accelerating cash generation through increased profitability. . . . Given the further development of this strategy, the Company is also reviewing its existing compensation programs, including better aligning the interests of management and its shareholders within the context of this program."

53. Beazer announced on January 19, 2006, that, during the first quarter of fiscal 2006, it had repurchased 1,014,600 shares of common stock at approximately \$66 per share, for a total expenditure of approximately \$67.0 million. Beazer also stated that it "expect[ed] to make share repurchases of \$200 - \$250 million in fiscal 2006."

54. On April 27, 2006, Beazer announced that, during the second quarter of fiscal 2006, the company had repurchased an additional 1,007,200 shares of common stock, for approximately \$66.2 million or \$65.73 per share. "Year to date, the company has repurchased 2,021,800 shares, for a total of \$133.2 million."

55. On July 27, 2006, Beazer announced that, during the third quarter of fiscal 2006, it had repurchased another 1,069,100 shares of stock for approximately \$50.1 million or \$46.88 per share. In total, to date, Beazer stated that the Company “had repurchased 3,090,900 shares, for a total of \$183.3 million.”

56. In authorizing the share repurchase program at a time when the Company’s stock price was artificially inflated as a result of the false and misleading statements issued by the Company, the Individual Defendants either: (1) improperly caused the stock price to inflate by virtue of their own fraud; (2) failed to keep adequately informed about the reasons the Company’s stock price was inflated; or (3) if adequately informed about those reasons, failed to take necessary corrective measures, including terminating the stock repurchase activity.

**Award of Excessive and Undeserved Bonus Compensation**

57. The Individual Defendants by virtue of their fiduciary duty of loyalty had an obligation to the Company to make sure the Company’s assets were not wasted in connection with the grant of bonus and incentive compensation to certain of the Individual Defendants, as recommended by the Compensation Committee. To perform sufficiently these duties, the Individual Defendants had to know and understand the reasons for the Company’s purported financial condition and achievement of corporate goals providing the basis for such compensation awards.

58. On February 3, 2005, the Board approved the Executive Value Created Incentive Plan (“EVCIP”), which provided certain of the Individual Defendants additional incentive bonus compensation based on “*Value Created*,” defined as earnings before interest and taxes (“EBIT”) minus a capital charge based on capital employed: [*Value Created* = EBIT - (capital charge × capital employed)]. Thus, to the extent the Company’s revenues could be increased

and/or expenses could be reduced, EBIT would increase, along with the amount of additional incentive compensation that was granted under the plan.

59. According to the EVCIP, participation in the plan “is at the discretion of the Compensation Committee of the Board of Directors and is generally available only to officers who are full-time employees of Beazer Homes USA, Inc. at the level of Corporate Senior Vice President and above.”

60. Defendant B. Beazer received cash incentive compensation awards of \$200,000 in 2004; \$281,250 in 2005; and \$316,605 in 2006. That incentive compensation, when combined with his basic annual compensation, gave Defendant B. Beazer total compensation of \$412,000 in 2004; \$506,000 in 2005; and \$541,605 in 2006. In stark contrast, the other directors earned total compensation of just \$30,000 in 2004 and \$35,000 in 2005 and 2006.

61. Defendants McCarthy, Furlow, O’Leary, Gary and Rand received the following cash and non-cash base and incentive compensation for 2004, 2005, and 2006:

Name and Principal Position	Fiscal Year	Annual Compensation			Long-term Compensation				All Other Compensation(5)(6)
		Salary	Bonus(1)	Other Annual Compensation(2)	Awards/Payments				
					Restricted Stock Awards(3)	Number of Securities Underlying Options(4)	LTIP Payouts		
Ian J. McCarthy:	2006	\$ 1,200,000	\$ 7,133,653	—	\$ 12,479,980	427,676	—	\$ 792,808	
President and	2005	\$ 1,125,000	\$ 7,654,348	—	\$ 1,259,972	41,379	—	\$ 735,702	
Chief Executive Officer	2004	\$ 887,500	\$ 5,488,875	—	\$ 1,190,021	45,129	—	\$ 600,111	
Michael H. Furlow:	2006	\$ 800,000	\$ 3,200,844	—	\$ 5,760,030	194,378	—	\$ 384,398	
Executive Vice	2005	\$ 762,500	\$ 3,689,274	—	\$ 780,032	25,614	—	\$ 377,167	
President and Chief Operating Officer	2004	\$ 637,500	\$ 3,378,982	—	\$ 720,044	27,306	—	\$ 329,960	
James O’Leary:	2006	\$ 560,000	\$ 1,707,930	—	\$ 3,957,303	134,559	—	\$ 204,870	
Executive Vice	2005	\$ 535,000	\$ 1,982,225	—	\$ 490,674	16,113	—	\$ 200,030	
President and Chief Financial Officer	2004	\$ 452,500	\$ 1,845,406	—	\$ 458,704	17,394	—	\$ 174,673	
Kenneth J. Gary:	2006	\$ 390,000	\$ 390,047	—	\$ 1,138,814	37,447	—	\$ 39,548	
Executive Vice	2005	\$ 203,125	\$ 530,937	—	\$ 765,267	—	—	\$ 37,157	
President, General	2004	—	—	—	—	—	—	—	

Counsel								
Michael T. Rand:	2006	\$ 280,500	\$ 389,955		\$ 59,415	1,197	—	\$ 54,258
Senior Vice	2005	\$ 267,500	\$ 439,560	—	\$ 57,209	1,878	—	\$ 47,289
President, Chief	2004	\$ 257,500	\$ 399,013	—	\$ 54,977	2,085	—	\$ 38,326
Accounting Officer								

62. Defendants McCarthy, Furlow, O'Leary, Gary and Rand received the following stock option grants in 2004, 2005 and 2006 as part of their bonus incentive compensation:

**Beazer Homes USA**  
**2004 - 2006 Option Grant Summary**  
**Source: Proxy Statements**

<u>Name</u>	<u>Options Granted</u>	<u>Aggregate Options Exercised</u>	<u>Value Realized</u>
<b>McCarthy</b>			
<i>FY 2004</i>	45,129	423,381	\$11,200,675
<i>FY 2005</i>	41,379	-	\$0
<i>FY 2006</i>	33,860	-	\$0
	393,816	-	\$0
<b>Total:</b>	<b>514,184</b>	<b>423,381</b>	<b>\$11,200,675</b>
<b>Furlow</b>			
<i>FY 2004</i>	27,306	-	\$0
<i>FY 2005</i>	25,614	215,541	\$7,434,366
<i>FY 2006</i>	19,349	69,144	\$3,332,632
	175,029		
<b>Total:</b>	<b>247,298</b>	<b>284,685</b>	<b>\$10,766,998</b>
<b>O'Leary</b>			
<i>FY 2004</i>	17,394	-	\$0
<i>FY 2005</i>	16,113	-	\$0
<i>FY 2006</i>	12,039	-	\$0
	122,520	-	\$0
<b>Total:</b>	<b>168,066</b>	<b>-</b>	<b>\$0</b>
<b>Rand</b>			
<i>FY 2004</i>	2,085	11,970	\$316,636
<i>FY 2005</i>	1,878	4,572	\$125,090
<i>FY 2006</i>	1,197	6,723	\$320,659
<b>Total:</b>	<b>5,160</b>	<b>23,265</b>	<b>\$762,385</b>
<b>Gary</b>			
<i>FY 2004</i>	-	-	\$0
<i>FY 2005</i>	-	-	\$0
<i>FY 2006</i>	5,039	-	\$0
	32,408	-	\$0
<b>Total:</b>	<b>37,447</b>	<b>-</b>	<b>\$0</b>

<i>FY 2004</i>	91,914	435,351	\$ 11,517,311
<i>FY 2005</i>	84,984	220,113	\$ 7,559,456
<i>FY 2006</i>	<u>795,257</u>	<u>75,867</u>	<u>\$ 3,653,291</u>
<b>Grand Total:</b>	<b>972,155</b>	<b>731,331</b>	<b>\$22,730,058</b>

63. The Board Member Defendants awarded themselves the following stock and stock option grants in 2004, 2005, and 2006 as part of their bonus incentive compensation:

Director Defendant	Date	Restricted Stock Award	Options Granted
Alpert	2/10/2004	1,500	1,500
	11/4/2004	1,500	1,500
	11/15/2005	<u>1,500</u>	<u>1,500</u>
		4,500	4,500
Bayne	2/10/2004	1,500	1,500
	11/4/2004	1,500	1,500
	11/15/2005	<u>1,500</u>	<u>1,500</u>
	4,500	4,500	
B. Beazer	2/10/2004	3,540	4,425
	11/4/2004	3,066	3,831
	11/15/2005	<u>1,992</u>	<u>2,490</u>
		8,598	10,746
Leemputte	8/3/2005		5,000
	11/15/2005	<u>1,500</u>	<u>1,500</u>
		1,500	6,500
O'Connell	2/10/2004	1,500	1,500
	11/4/2004	1,500	1,500
	11/15/2005	<u>1,500</u>	<u>1,500</u>
		4,500	4,500
Solari	2/10/2004	1,500	1,500

	11/4/2004	1,500	1,500
	11/15/2005	<u>1,500</u>	<u>1,500</u>
		4,500	4,500
Zelnak	2/10/2004	1,500	1,500
	11/4/2004	1,500	1,500
	11/15/2005	<u>1,500</u>	<u>1,500</u>
		4,500	4,500

64. The cash and stock bonus incentive compensation awarded to the Individual Defendants was excessive and undeserved in light of the fact that such compensation was awarded due to the purported financial results the Company obtained, but that such results were based on the unsustainable, fraudulent and illegal activities alleged herein.

65. The EVCIP, and other bonus compensation paid to the Management Defendants, incentivized them to engage in the improper and illegal conduct alleged herein and the various other litigations against the Company. To be sure, in close proximity to public disclosure of the improper conduct occurring at the Company:

- Gary was terminated for cause” on February 12, 2007, “for a pattern of personal conduct which includes violations of company policies.”
- O’Leary resigned on March 21, 2007, just three days after public disclosure that Beazer was being investigated for potential violations of federal lending rules; and
- Rand was terminated on June 27, 2007, after being caught shredding documents and artificially reducing the Company’s operating expenses in violation of GAAP.

66. In awarding the excessive and undeserved bonus and incentive compensation to themselves the Individual Defendants either failed to discover, or affirmatively concealed (and then rewarded), the illegal activity that caused the Company’s financial results to appear to warrant such bonus or incentive compensation. In making these awards, the Individual Defendants breached their fiduciary duties to the Company.

## DAMAGES TO THE COMPANY

67. The Individual Defendants' breach of their fiduciary duties in connection with Beazer's illegal mortgage practices and related securities fraud alone expose the Company to a wide variety of financial harm including:

- Demands by purchasers of mortgage backed securities (securitized with improperly underwritten mortgages) sold by Beazer to take-back or unwind those transactions;
- Restatements of Beazer's revenue and income due to GAAP revenue recognition principles and standards;
- A loss of financial goodwill;
- Substantial expenses resulting from costly governmental and internal investigations and related legal defense costs;
- Damages and legal defense costs for securities fraud class action litigation, consumer fraud class action litigation and ERISA litigation;
- Substantial criminal, civil and/or regulatory penalties and sanctions, including the potential loss of its licensing for, or ability to operate, the mortgage origination and brokering business;
- Costs related to compensation, severance and benefits paid to the defendants who have breached their fiduciary duties to Beazer; and
- Substantial additional future costs to remediate its failed corporate governance processes and institutional operations.

68. In addition, the Individual Defendants' breach of their fiduciary duties relating to the illegal mortgage practices also have exposed the Company to other harm resulting from injury to Beazer's corporate image and reputation, including:

- A loss of goodwill of the Company's name and brand for purposes of marketing and selling homes;
- Damage to the Company's reputation in the financial community resulting in higher borrowing costs for operations; *i.e.* the "liar's discount;" and
- Damage to the Company's reputation with mortgage lenders and governmental guarantors such as Fannie Mae.

69. Further, as a result of the Individual Defendants' breach of their fiduciary duties the Corporation's assets have been wasted to the extent (apart from that identified above) the Company also has:

- Expended \$183 million to purchase shares of the Company's stock at artificially inflated prices resulting from the Individual Defendants' fraudulent conduct;
- Awarded over 972,000 in undeserved stock options as bonus or incentive compensation to the Management Defendants for the period 2004 to 2006;
- Awarded over \$38 million in undeserved cash bonus compensation to the Management Defendants for the period 2004 to 2006;
- Awarded over \$29 million in undeserved restricted stock grants as bonus or incentive compensation to the Management Defendants for the period 2004 to 2006; and
- Awarded a total of \$797,855 in undeserved cash incentive compensation to Defendant B. Beazer for the period 2004 to 2006.

#### **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

70. The current Board of Beazer consists of the following seven Individual Defendants: Alpert, Bayne, B. Beazer, Leemputte, McCarthy, Solari and Zelnak. Plaintiff has not made any demand on the present Board of Beazer to institute this action because such a demand would be a futile, wasteful, and useless act, particularly for the following reasons:

#### **The Entire Board Has Breached Its Fiduciary Duties And Cannot Exercise Independent Judgment To Prosecute Litigation Against Themselves**

71. Beazer's Board of Directors consists of seven of Individual Defendants who are the primary wrongdoers. To bring this suit, all of the directors of Beazer would be forced to sue themselves and persons with whom they have extensive business and personal relationships, which they will not do, thereby excusing demand. Indeed, the entire Board is antagonistic to this lawsuit.

72. As more fully detailed herein, the Board Member Defendants participated in, approved and/or permitted the wrongs alleged to have occurred and participated in efforts to conceal or disguise those wrongs from Beazer's shareholders, or recklessly and/or negligently disregarded the wrongs complained of, and are therefore not disinterested parties, as each faces a substantial likelihood of liability for his or her conduct as described herein.

73. By virtue of their specific duties as Board members, each of the Board Member Defendants was charged with the management of the Company and to conduct its business affairs. Each of these defendants breached the fiduciary duties that they owed to Beazer and its shareholders because they caused or failed to prevent and correct the internal control deficiencies, improper statements, and financials.

74. In addition, as alleged in the securities fraud litigation, each of Beazer's Board Member Defendants authorized and/or allowed the Company to release inaccurate statements directly to the public or securities analysts that were then made available and disseminated to shareholders.

75. The Board Member Defendants cannot exercise independent objective judgment in deciding whether to bring this action or whether to vigorously prosecute this action because its members are interested personally in the outcome as it is their actions that have subjected Beazer to potentially hundreds of millions of dollars in total liability for violations of applicable securities laws, engaging in consumer fraud, damaging the Company's goodwill, and engaging in potentially criminal conduct.

76. In the event the Board Member Defendants were to bring this derivative action against themselves, they would be forced to expose their own misconduct which also underlies allegations against certain of them and the Company in pending securities fraud class action litigation, ERISA class action litigation, consumer fraud class action litigation, and numerous

ongoing governmental investigations. The potential total liability arising from such civil litigation and criminal investigations is likely to exceed the limits of insurance coverage available to the Individual Defendants exposing them to personal liability. Thus, the Board Member Defendants cannot exercise the independent judgment to prosecute the claims alleged herein since it would require them to take positions contrary to their defenses in the pending class action litigations and criminal investigations.

77. Indeed, as a result of the wrongdoings complained of, Beazer has and will continue to be exposed to substantial losses. However, to date, the Board Member Defendants have not filed any lawsuits against themselves, or others who were responsible for the wrongful conduct.

**Board Members' Personal Financial Interests Preclude the Board From Exercising Independent Judgment To Prosecute Litigation Against Themselves**

78. As alleged in further detail in this Complaint, each of the Individual Defendants directly benefited from the alleged wrongdoings at issue in this action. For example, Defendants McCarthy and B. Beazer each received substantial cash, stock and stock option bonus and incentive compensation resulting from the wrongdoing alleged herein. As further detailed herein, Defendants McCarthy, Alpert, B. Beazer and O'Connell generated substantial proceeds from insider trading. And, all of the Board Member Defendants were awarded stock and stock option grants. Each of the Board Member Defendants face the substantial likelihood of disgorgement of their wrongful enrichment and therefore cannot exercise independent judgment in deciding whether to initiate and prosecute this litigation.

79. In addition, to the extent Beazer's Board members are protected against personal liability arising from any acts of mismanagement, abuse of control and breach of fiduciary duty, such as those alleged in this Complaint, by directors' and officers' liability insurance, the defendants caused the Company to purchase that insurance for their protection with corporate funds, i.e.,

monies belonging to the shareholders of Beazer. However, the “insured versus insured exclusion” typically contained in such policies precludes coverage for claims by a corporation against its own officers and directors for engaging in wrongful conduct. As a result, if Beazer’s Board members were to bring this action against themselves, coverage under the directors’ and officers’ policy may be denied by the insurance carrier, exposing the directors to substantial personal liability. None of the Board Member Defendants therefore can exercise independent judgment to bring this litigation if it may result in direct financial harm to them. In contrast, a derivative action such as this litigation, does not run afoul of the “insured versus insured exclusion” enabling the Company to seek recovery from its insurers.

80. Defendants Solari, Bayne and Zelnak served as members of the Board’s Compensation Committee.

81. Beazer’s Compensation Committee reviewed and approved corporate goals and objectives relevant to Defendant McCarthy’ compensation as CEO; evaluated his performance; determined and approved his compensation level; reviewed and established compensation for other Board Member Defendants, including Defendant B. Beazer; prepared the Annual Report on compensation; and administered the Company’s equity and other compensation plans, including the award of bonus compensation of cash, stock and stock options. As the members of the Compensation Committee control the other Board Member Defendants’ compensation and bonus awards, none of the remaining Board Member Defendants can exercise independent judgment to institute this action against Defendants Solari, Bayne and Zelnak for fear of jeopardizing their personal financial compensation. Thus, demand on the other Board Member Defendants is futile.

**Board Member's Knowledge Of And Complicity In the Alleged Wrongful Conduct  
Precludes the Board From Exercising Independent Judgment To Prosecute Litigation  
Against Themselves**

82. Because they had the ability to review internal corporate documents; request documents for review; communicate directly with other senior Company managers, corporate officers, and employees; and attend management and Board meetings; each of the Board Member Defendants either knew about the matters alleged herein and failed to take appropriate action, or failed to obtain adequate information about the matters alleged herein so they could remain properly informed about the Company's practices, policies, controls, and business operations.

83. Defendants O'Connell, Alpert, Leemputte, and Zelnak served as members of the Board's Audit Committee during the relevant period.

84. Beazer's Audit Committee is directly responsible for, and participates in, general oversight of the accounting and financial reporting process of the Company and audits of its financial statements, including: (i) the Company's systems of internal controls; (ii) the Company's compliance with legal and ethical requirements; (iii) the qualifications and independence of the Company's independent auditors; (iv) the Company's financial risk; and (v) the performance of the Company's internal audit function.

85. Defendants O'Connell, Alpert, Leemputte, and Zelnak breached their fiduciary duty of loyalty because the Audit Committee participated in the preparation of improper financial statements and earnings press releases that contained false and/or misleading material information. Furthermore, the Audit Committee (and Board) failed to ensure that the Company implement requisite internal controls over its lending practices to prevent the Company from making loans to unqualified persons. Finally, these Defendants had the opportunity, but failed to review and correct Beazer's improper financial statements and other public disclosures.

86. Therefore, Individual Defendants O'Connell, Alpert, Leemputte, and Zelnak face a sufficiently substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile.

87. Defendants Zelnak, B. Beazer and Leemputte served as members of the Board's Finance Committee.

88. Beazer's Finance Committee provides assistance to the Board in fulfilling its responsibilities with respect to the oversight of corporate finance, including, without limitation, financial and capital markets matters, equity and debt financings, major issuances, major acquisitions and divestitures, share repurchases, and dividend policy.

89. As further detailed herein, Defendants Zelnak, B. Beazer and Leemputte breached their fiduciary duties to the Company by authorizing the share repurchase program and causing the Company to purchase shares of the Company's stock at an artificially inflated price due to defendants' securities fraud and illegal mortgage lending origination and brokering practices. Moreover, the FBI is currently investigating the propriety of the Company's corporate and investment policies.

90. Accordingly, Defendants Zelnak, B. Beazer and Leemputte face a sufficiently substantial likelihood of liability for their breaches of fiduciary duties and demand upon them also is futile.

**Other Individual Issues Preclude Board Members From Exercising Independent Judgment To Prosecute Litigation Against Themselves**

91. The principal professional occupation of Defendant McCarthy is his employment with Beazer, pursuant to which he received and continues to receive substantial monetary compensations and other benefits. Accordingly, Defendant McCarthy lacks independence from Defendants Solari, Bayne, and Zelnak, interested Defendants who exert influence over Defendant McCarthy's compensation by virtue of their position as members of the Compensation Committee.

This lack of independence renders Defendant McCarthy incapable of impartially considering a demand to commence and vigorously prosecute this action.

92. Defendant B. Beazer served as the CEO of Beazer PLC, a United Kingdom Company affiliated with Beazer that provided homebuilding, contracting, and real estate sales with annual revenue of approximately \$3.4 billion. Defendant B. Beazer also serves as a Director of Beazer Japan, Ltd., another entity affiliated with Beazer. By his specialized expertise in the design, building, and sale of single-family homes, as well as mortgage origination services, Defendant B. Beazer was in a unique position to understand the business of Beazer, as well as its internal controls, accounting practices, finances, markets and present and future business prospects. Moreover, B. Beazer is a founder of the Company and therefore cannot exercise independent judgment to prosecute this action. In addition, as further alleged herein, Defendant B. Beazer received hundreds of thousands of dollars in cash incentive compensation and stock in 2004, 2005, and 2006, which was based, in part, upon the wrongful conduct alleged herein.

93. Because of his unique qualifications, B. Beazer had a heightened ability and duty to understand and properly monitor Beazer's internal controls and operational practices, and ensure the accuracy and fairness of Beazer's public statements and financials. Nonetheless, as further detailed herein, Defendant B. Beazer breached his duties and because of his breach of duties, any demand upon him is futile.

94. Defendant Leemputte is the Audit Committee's "financial expert" pursuant to SEC regulations and New York Stock Exchange listing standards. Defendant Leemputte also is the Senior Vice President and CFO of Brunswick Corporation, a publicly traded global leader in the leisure products industry. Before joining Brunswick, Defendant Leemputte served as the Executive Vice President, Chief Financial Officer and Administrative Officer of Chicago Title Corporation. Because of his financial expertise and experience, Defendant Leemputte was in a

special position to understand Beazer's business in addition to the adequacy of its internal controls, accounting practices, finances and both present and future business prospects. Defendant Leemputte also had a heightened ability and duty to understand and properly monitor Beazer's internal controls and operational practices, and ensure the accuracy and fairness of Beazer's public statements and financials. Nevertheless, Defendant Leemputte breached his duties and allowed or caused the improper public statements and financials described herein. Because of his breach of his duties, any demand upon him is futile.

### **COUNT I**

#### **(Against The Individual Defendants for Breach of Fiduciary Duty)**

95. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

96. The Individual Defendants owed and owe Beazer fiduciary obligations. By reason of their fiduciary relationships, these defendants owed and owe Beazer the highest obligation of good faith, fair dealing, loyalty and due care.

97. The Individual Defendants, and each of them, violated and breached their fiduciary duties of loyalty, reasonable inquiry, oversight, good faith and supervision as alleged herein.

98. Each of the Individual Defendants had actual or constructive knowledge of the wrongdoing alleged herein. As such, the Individual Defendants' actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

99. As a direct and proximate result of the Individual Defendants' failure to perform their fiduciary obligations, Beazer has sustained significant damages. As a result of the misconduct alleged herein, the Individual Defendants are liable to the Company.

100. Plaintiff, on behalf of Beazer, has no adequate remedy at law.

**COUNT II**

**(Against The Insider Selling Defendants For Breach Of Fiduciary Duties For Insider Trading And Misappropriation of Information)**

101. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

102. At the time of the stock sales set forth herein, the Insider Selling Defendants knew the information described above, and sold Beazer common stock on the basis of such information.

103. The information described above was proprietary non-public information concerning the Company's financial condition and future business prospects. It was a proprietary asset belonging to the Company, which the Insider Selling Defendants used for their own benefit when they sold Beazer common stock.

104. At the time of their stock sales, the Insider Selling Defendants knew that the Company's revenues were materially overstated. The Insider Selling Defendants' sales of Beazer common stock while in possession and control of this material adverse non-public information was a breach of their fiduciary duties of loyalty.

105. Since the use of the Company's proprietary information for their own gain constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to the imposition of a constructive trust on any profits the Insider Selling Defendants obtained thereby.

**COUNT III**

**(Against The Individual Defendants For Waste Of Corporate Assets)**

106. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

107. As a result of the individual Defendants and the Company's reckless lending practices, lack of internal controls, and by failing to properly consider the interests of the Company and its public shareholders by failing to conduct proper supervision, the Individual Defendants have caused Beazer to waste valuable corporate assets by, among other things, overpaying for the Company's stock at a time when it was artificially inflated as a result of defendants' wrongdoing; paying undeserving incentive based bonuses to the Management Defendants and Defendant B. Beazer; paying unjustified severance packages to former executives involved in the alleged wrongdoing; and having to incur potentially hundreds of millions of dollars of legal liability and/or legal costs to investigate, defend and resolve the various criminal, civil and regulatory proceedings arising from defendants' wrongful actions.

108. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

109. Plaintiff on behalf of Beazer has no adequate remedy at law.

#### **COUNT IV**

##### **(Against The Individual Defendants For Unjust Enrichment)**

110. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

111. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Beazer.

112. Plaintiff, as a shareholder and representative of Beazer, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff demands judgment as follows:

A. Against all of the Individual Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of their fiduciary duties;

B. Directing Beazer to take all necessary actions to reform and improve their corporate governance and internal procedures to comply with applicable laws and to protect Beazer and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote for Corporate Governance Policies that include (i) a proposal to strengthen the Boards' supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board; (ii) a provision to permit the shareholders of Beazer to nominate at least three candidates for election to the Board; and (iii) tests to strengthen the internal audit and control functions;

C. Extraordinary equitable and/or injunctive relief as permitted by law, equity and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that Plaintiff on behalf of Beazer has an effective remedy;

D. Awarding to Beazer restitution from the defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the defendants;

E. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

Dated: September 12, 2007

**RIGRODSKY & LONG, P.A.**

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