

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>_____, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. BEAZER HOMES USA, INC., ALLAN P. MERRILL, and ROBERT L. SALOMON, Defendants.</p>	}	<p>Case No.</p> <p><u>CLASS ACTION COMPLAINT</u></p> <p><u>JURY TRIAL DEMANDED</u></p>
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Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Beazer Homes USA, Inc. (“Beazer Homes” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons other than Defendants who purchased or otherwise acquired Beazer Homes securities between August 1, 2014 and May 2, 2019, both dates inclusive (the “Class Period”), seeking to recover damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Beazer Homes was founded in 1985 and is headquartered in Atlanta, Georgia. The Company operates as a homebuilder in the United States.

3. Beazer Homes designs, constructs, and sells single-family and multi-family homes for entry-level, move-up, or retirement-oriented home buyers under the Beazer Homes, Gatherings, and Choice Plans names. The Company sells its homes through commissioned new home sales counselors and independent brokers in Arizona, California, Nevada, Texas, Delaware, Indiana, Maryland, Tennessee, Virginia, Florida, Georgia, North Carolina, and South Carolina.

4. Throughout the Class Period, Defendants made materially false and misleading statements regarding the Company’s business, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Beazer Homes’ California assets classified as land held for future development were deteriorating in value or improperly valued; (ii) the foregoing created a foreseeable risk of an eventual substantial impairment that would negatively impact the profitability of the Company; and (iii) as a result, the Company’s public statements were materially false and misleading at all relevant times.

5. On May 2, 2019, Beazer Homes issued a press release announcing its financial and operating results for the second quarter of 2019 (the “May 2019 Press Release”). Among other

issues, Beazer Homes announced a net loss from continuing operations of \$100.8 million for the quarter, reflecting a \$147.6 million impairment on certain California assets the Company had acquired before 2007. According to Defendants, all of the assets at issue were either currently or previously classified as land held for future development.

6. On this news, Beazer Homes' stock price fell \$1.73 per share, or 12.15%, to close at \$12.51 per share on May 3, 2019.

7. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

8. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

10. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Beazer Homes' securities trade on the New York Stock Exchange ("NYSE"), located within this Judicial District.

11. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

12. Plaintiff, as set forth in the attached Certification, acquired Beazer Homes' securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

13. Defendant Beazer Homes is a Delaware corporation with its principal executive offices located at 1000 Abernathy Road, Suite 260, Atlanta, Georgia. Beazer Homes' securities trade on the NYSE under the symbol "BZH".

14. Defendant Allan P. Merrill ("Merrill") has served as Beazer Homes' President and Chief Executive Officer at all relevant times.

15. Defendant Robert L. Salomon ("Salomon") has served as Beazer Homes' Executive Vice President and Chief Financial Officer at all relevant times.

16. The Defendants referenced above in ¶¶ 14-15 are sometimes referred to herein as the "Individual Defendants."

17. The Individual Defendants possessed the power and authority to control the contents of Beazer Homes' SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of Beazer Homes' SEC filings and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with Beazer Homes, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

SUBSTANTIVE ALLEGATIONS

Background

18. Beazer Homes was founded in 1985 and is headquartered in Atlanta, Georgia. The Company operates as a homebuilder in the United States.

19. Beazer Homes designs, constructs, and sells single-family and multi-family homes for entry-level, move-up, or retirement-oriented home buyers under the Beazer Homes, Gatherings, and Choice Plans names. The Company sells its homes through commissioned new home sales counselors and independent brokers in Arizona, California, Nevada, Texas, Delaware, Indiana, Maryland, Tennessee, Virginia, Florida, Georgia, North Carolina, and South Carolina.

Materially False and Misleading Statements Issued During the Class Period

20. The Class Period begins on August 1, 2014. On July 31, 2014, post-market, Beazer Homes filed its Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarterly period ended June 30, 2014 (the "3Q 2014 10-Q").¹ For the quarter, Defendants reported a total value of \$309.516 million in land held for future development, \$262.481 million of which were attributable to Beazer Homes' West Segment.²

21. With regard to Beazer Homes' valuation of its land held for future development, the 3Q 2014 10-Q stated, in relevant part:

Inventory Valuation. We assess our inventory assets no less than quarterly for recoverability For those communities for which construction and development activities are expected to occur in the future or have been idled (land held for future development), all applicable interest and real estate taxes are expensed as incurred and the inventory is stated at cost unless facts and circumstances indicate that the carrying value of the assets may not be recoverable. We record assets held for sale at the lower of the carrying value or fair value less costs to sell.

¹ Beazer Homes operates on a fiscal year that ends on September 30 of a given year.

² Beazer Homes' homebuilding operations are divided into three reportable segments: West, East, and Southeast. The "West Segment" is comprised of the states of Arizona, California, Nevada, and Texas.

* * *

During the nine months ended June 30, 2014, we began development on a large project in California that was previously included in land held for future development.

22. Appended as exhibits to the 3Q 2014 10-Q were signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”), wherein the Individual Defendants “certifie[d] that the [3Q 2014 10-Q] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the [3Q 2014 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

23. On November 13, 2014, Beazer Homes filed its Annual Report on Form 10-K with the SEC, reporting the Company’s financial and operating results for the fiscal year ended September 30, 2014 (the “2014 10-K”). For 2014, Defendants reported a total value of \$301.048 million in land held for future development, \$260.898 million of which were attributable to Beazer Homes’ West Segment. Of the West Segment’s total 4,078 lots held for future development, 3,241 were attributable to California.

24. With regard to Beazer Homes’ valuation of its land held for future development, the 2014 10-K stated, in relevant part:

Asset Valuation - Land Held for Future Development

For those communities for which construction and development activities are expected to occur in the future or have been idled (land held for future development), all applicable interest and real estate taxes are expensed as incurred and the inventory is stated at cost unless facts and circumstances indicate that the carrying value of the assets may not be recoverable. The future enactment of a development plan or the occurrence of events and circumstances may indicate that the carrying amount of an asset may not be recoverable. We evaluate the potential development plans of each community in land held for future development if changes in facts and circumstances occur which would give rise to a more detailed analysis for a change in the status of a community to active status or held for development.

(Emphasis in original.)

25. The 2014 10-K also contained merely generic, boilerplate representations concerning the risk that market factors, macro-economic factors, and other factors outside Defendants' control could negatively impact the Company's financial and operating results. Specifically, the 2014 10-K stated, in relevant part:

The market value of our land and/or homes may decline, leading to impairments and reduced profitability.

We regularly acquire land for replacement and expansion of land inventory within our existing and new markets. The market value of land, building lots and housing inventories can fluctuate significantly as a result of changing market conditions and the measures we employ to manage inventory risk may not be adequate to insulate our operations from a severe drop in inventory values. When market conditions are such that land values are not appreciating, previously entered into option agreements may become less desirable, at which time we may elect to forgo deposits and preacquisition costs and terminate the agreements. In a situation of adverse market conditions, we may incur impairment charges or have to sell land at a loss which would adversely affect our financial condition, results of operations and stockholders' equity and our ability to comply with certain covenants in our debt instruments linked to tangible net worth.

Our home sales and operating revenues could decline due to macro-economic and other factors outside of our control, such as changes in consumer confidence, declines in employment levels and increases in the quantity and decreases in the price of new homes and resale homes in the market.

Changes in national and regional economic conditions, as well as local economic conditions where we conduct our operations and where prospective purchasers of our homes live, may result in more caution on the part of homebuyers and, consequently, fewer home purchases. These economic uncertainties involve, among other things, conditions of supply and demand in local markets and changes in consumer confidence and income, employment levels and government regulations. These risks and uncertainties could periodically have an adverse effect on consumer demand and the pricing of our homes, which could cause our operating revenues to decline. Additional reductions in our revenues could, in turn, further negatively affect the market price of our securities.

The homebuilding industry is cyclical. A severe downturn in the industry, as recently experienced, could adversely affect our business, results of operations and stockholders' equity.

During periods of downturn in the industry, housing markets across the United States may experience an oversupply of both new and resale home inventory, an increase in foreclosures, reduced levels of consumer demand for new homes, increased cancellation rates, aggressive price competition among homebuilders and increased incentives for home sales. In the event of a downturn, we may temporarily experience a material reduction in revenues and margins. Continued weakness in the homebuilding market could adversely affect our business, results of operations and stockholders' equity as compared to prior periods and could result in additional inventory impairments in the future.

(Emphasis in original.)

26. Appended as exhibits to the 2014 10-K were signed SOX certifications wherein the Individual Defendants "certifie[d] that the [2014 10-K] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the [2014 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

27. On November 10, 2015, Beazer Homes filed its Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the fiscal year ended September 30, 2015 (the "2015 10-K"). For 2015, Defendants reported a total value of \$270.990 million in land held for future development, \$230.778 million of which were attributable to Beazer Homes' West Segment. Of the West Segment's total 3,813 lots held for future development, 2,602 were attributable to California.

28. The 2015 10-K also contained substantively the same statements as those quoted in ¶ 24 above regarding Beazer Homes' valuation of its land held for future development.

29. Additionally, the 2015 10-K contained substantively the same merely generic, boilerplate representations as those quoted in ¶ 25 above concerning the risk that market factors, macro-economic factors, and other factors outside Defendants' control could negatively impact the Company's financial and operating results.

30. Appended as exhibits to the 2015 10-K were signed SOX certifications wherein the Individual Defendants “certifie[d] that the [2015 10-K] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the [2015 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

31. On November 15, 2016, Beazer Homes filed its Annual Report on Form 10-K with the SEC, reporting the Company’s financial and operating results for the fiscal year ended September 30, 2016 (the “2016 10-K”). For 2016, Defendants reported a total value of \$213.006 million in land held for future development, \$172.015 million of which were attributable to Beazer Homes’ West Segment. Of the West Segment’s total 2,795 lots held for future development, 2,136 were attributable to California.

32. The 2016 10-K noted that gross margins were negatively impacted, in partial part, by Defendants’ “activation of assets formerly classified as land held for future development, which generally have lower margins[.]” According to the 2016 10-K, Defendants “continued to activate certain parcels of land held for future development so that these assets can begin to generate revenue for the Company.”

33. The 2016 10-K also contained substantively the same statements as those quoted in ¶ 24 above regarding Beazer Homes’ valuation of its land held for future development.

34. Additionally, the 2016 10-K contained substantively the same merely generic, boilerplate representations as those quoted in ¶ 25 above concerning the risk that market factors, macro-economic factors, and other factors outside Defendants’ control could negatively impact the Company’s financial and operating results.

35. Appended as exhibits to the 2016 10-K were signed SOX certifications wherein the Individual Defendants “certifie[d] that the [2016 10-K] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the [2016 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

36. On November 14, 2017, Beazer Homes filed its Annual Report on Form 10-K with the SEC, reporting the Company’s financial and operating results for the fiscal year ended September 30, 2017 (the “2017 10-K”). For 2017, Defendants reported a total value of \$112.565 million in land held for future development, \$87.231 million of which were attributable to Beazer Homes’ West Segment. Of the West Segment’s total 1,100 lots held for future development, 828 were attributable to California.

37. The 2017 10-K again noted that gross margins were negatively impacted, in partial part, by Defendants’ “activation of assets formerly classified as land held for future development, which generally have lower margins[.]” According to the 2017 10-K, Defendants were employing a “number of strategies to improve capital efficiency,” including the “activation of previously land held for future development communities.” The 2017 10-K also touted that “[d]uring the current fiscal year, [the Company’s] land held for future development balance ha[d] declined by approximately \$100 million” because Defendants had “activated multiple parcels for homebuilding activities.”

38. The 2017 10-K also contained substantively the same statements as those quoted in ¶ 24 above regarding Beazer Homes’ valuation of its land held for future development.

39. Additionally, the 2017 10-K contained substantively the same merely generic, boilerplate representations as those quoted in ¶ 25 above concerning the risk that market factors,

macro-economic factors, and other factors outside Defendants' control could negatively impact the Company's financial and operating results.

40. Appended as exhibits to the 2017 10-K were signed SOX certifications wherein the Individual Defendants "certifie[d] that the [2017 10-K] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the [2017 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

41. On November 13, 2018, Beazer Homes filed its Annual Report on Form 10-K with the SEC, reporting the Company's financial and operating results for the fiscal year ended September 30, 2018 (the "2018 10-K"). For 2018, Defendants reported a total value of \$83.173 million in land held for future development, \$58.125 million of which were attributable to Beazer Homes' West Segment. Of the West Segment's total 817 lots held for future development, 578 were attributable to California.

42. Under the 2018 10-K's "Long-Term Business Strategy" section, Defendants added a new item, touting that "[t]o improve [Beazer Homes'] return on assets, [the Company] expect[s] to benefit from [*inter alia*] the activation of a number of assets that were previously classified as land held for future development[.]" The 2018 10-K also touted how "[d]uring the current fiscal year, [the Company's] land held for future development balance declined by approximately \$29.4 million due to the activation of multiple parcels for homebuilding activities, leaving a remaining balance of \$83.2 million as of September 30, 2018." Nonetheless, the 2018 10-K noted that, going forward, Beazer Homes' gross margins would continue to be negatively impacted by Defendants' "activation of land assets formerly classified as land held for future development, which generally have lower margins[.]"

43. The 2018 10-K also contained substantively the same statements as those quoted in ¶ 24 above regarding Beazer Homes' valuation of its land held for future development.

44. Additionally, the 2018 10-K contained substantively similar, merely generic, boilerplate representations as those quoted in ¶ 25 above concerning the risk that market factors, macro-economic factors, and other factors outside Defendants' control could negatively impact the Company's financial and operating results.

45. Appended as exhibits to the 2018 10-K were signed SOX certifications wherein the Individual Defendants "certifie[d] that the [2018 10-K] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the [2018 10-K] fairly presents, in all material respects, the financial condition and results of operations of the Company."

46. On February 4, 2019, Beazer Homes filed its Quarterly Report on Form 10-Q with the SEC, reporting the Company's financial and operating results for the quarterly period ended December 31, 2018 (the "1Q 2019 10-Q"). For the quarter, Defendants reported a total value of \$83.177 million in land held for future development, \$58.129 million of which were attributable to Beazer Homes' West Segment.

47. The 1Q 2019 10-Q also contained substantively the same statements as those quoted in ¶ 21 above regarding Beazer Homes' valuation of its land held for future development.

48. As in Beazer Homes' prior Form 10-Ks, Defendants touted their ongoing strategy of "activating" assets formerly classified as land held for future development to improve capital efficiency, while noting that these same efforts negatively impacted the Company's gross margins, and would continue to do so going forward.

49. Appended as exhibits to the 1Q 2019 10-Q were signed SOX certifications wherein the Individual Defendants “certifie[d] that the [1Q 2019 10-Q] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the [1Q 2019 10-Q] fairly presents, in all material respects, the financial condition and results of operations of the Company.”

50. The statements referenced in ¶¶ 20-49 were materially false and misleading because Defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operational and compliance policies. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (i) Beazer Homes’ California assets classified as land held for future development were deteriorating in value or improperly valuated; (ii) the foregoing created a foreseeable risk of an eventual substantial impairment that would negatively impact the profitability of the Company; and (iii) as a result, the Company’s public statements were materially false and misleading at all relevant times.

The Truth Begins to Emerge

51. On May 2, 2019, Beazer Homes issued a press release announcing its financial and operating results for the second quarter of 2019. Among other issues, Beazer Homes announced a net loss from continuing operations of \$100.8 million for the quarter, reflecting a \$147.6 million impairment on certain California assets the Company acquired before 2007. According to Defendants, all of the assets at issue were either currently or previously classified as land held for future development. Specifically, Defendant Merrill, as quoted in the May 2019 Press Release, stated, in relevant part:

During the quarter, we also took impairments on several of our California assets. In response to recent changes in market conditions, we concluded that it had become necessary to reduce prices in some of our active communities, all of which were previously classified as land held for future development. Additionally, after

a thorough review of our California assets, we made a strategic decision to sell or activate all of the remaining assets which were still classified as land held for future development. Although these decisions led to an impairment this quarter, our actions will enable us to increase our sales pace, generate cash more quickly and redeploy this capital to more attractive investments.

* * *

Impairments. Of the total impairments during the quarter, \$109.0 million related to 9 formerly land held for future development communities that are currently generating sales or are under development in Southern California and reflected the deterioration in conditions that occurred in their respective markets. Concurrently, the Company performed a strategic review of its remaining land held for future development assets in California and now plans to sell all of these parcels. As a result, land held for sale impairment charges totaling \$38.6 million were recognized on 6 of these communities. The Company no longer has any land held for future development assets in California.

52. Later that day, on a conference call with analysts and investors to discuss Beazer Homes' second quarter earnings, Defendant Merrill provided additional information concerning the impairments caused by California assets classified as land held for future development, stating, in relevant part:

Of course, the other big news in the second quarter was the impairments on certain California assets. These non-cash impairments totaled \$148 million on a pre-tax basis and \$107 million on an after-tax basis.

The impairments related to 15 assets, all of which were currently or previously classified as land held for future development. 14 of these assets were acquired before 2007. The impairments occurred in two categories. The first related to nine projects that are under development or/are actively selling. Assets that fell into this category contributed \$109 million of the pre-tax impairment and were spread across Southern California. The second category related to six communities that we have decided to sell that were still classified as land held for future development. The pre-tax impairment related to these assets was \$39 million, split between Northern and Southern California.

After these adjustments, we have no remaining land held for future development in California.

53. Analysts expressed concern regarding the timing of the impairments, given that the California assets had been on Beazer's books for more than 11 years. During the earnings call, an

analyst questioned the timing of the impairments, and received an evasive answer from Defendant Merrill:

Alan S. Ratner, Zelman & Associates LLC: So on the impaired projects, sounds like they've been on the books for a while, have they been previously impaired during the downturn? Or was this the first charge that you took on them?

Defendant Merrill: I would be a little reluctant to answer it definitively. One or more of them may have had an impairment, but they have not been impaired since 2007 or '08 because once they went into the land held category where the assessment was, they could be recovered, they weren't annually tested for impairment in the same way. So it's reasonably fair to assume they were largely untouched.

54. On this news, Beazer Homes' stock price fell \$1.73 per share, or 12.15%, to close at \$12.51 per share on May 3, 2019.

55. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Beazer Homes securities during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

57. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Beazer Homes' securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be

ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Beazer Homes or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

58. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

59. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

60. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Beazer Homes;
- whether the Individual Defendants caused Beazer Homes to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Beazer Homes securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

61. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

62. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Beazer Homes securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NYSE and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Beazer Homes' securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

63. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

64. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants)

65. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

66. This Count is asserted against Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

67. During the Class Period, Defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Beazer Homes securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Beazer Homes securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

68. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Beazer Homes securities. Such reports, filings, releases and statements

were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Beazer Homes' finances and business prospects.

69. By virtue of their positions at Beazer Homes, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.

70. Information showing that Defendants acted knowingly or with reckless disregard for the truth is peculiarly within Defendants' knowledge and control. As the senior managers and/or directors of Beazer Homes, the Individual Defendants had knowledge of the details of Beazer Homes' internal affairs.

71. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Beazer Homes. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Beazer Homes' businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Beazer Homes' securities was artificially inflated throughout the Class Period.

In ignorance of the adverse facts concerning Beazer Homes' business and financial condition which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Beazer Homes securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by Defendants, and were damaged thereby.

72. During the Class Period, Beazer Homes' securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Beazer Homes' securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Beazer Homes' securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Beazer Homes' securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

73. By reason of the conduct alleged herein, Defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

74. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure

that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II

(Violations of Section 20(a) of the Exchange Act Against The Individual Defendants)

75. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

76. During the Class Period, the Individual Defendants participated in the operation and management of Beazer Homes, and conducted and participated, directly and indirectly, in the conduct of Beazer Homes' business affairs. Because of their senior positions, they knew the adverse non-public information about Beazer Homes' misstatement of income and expenses and false financial statements.

77. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Beazer Homes' financial condition and results of operations, and to correct promptly any public statements issued by Beazer Homes which had become materially false or misleading.

78. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Beazer Homes disseminated in the marketplace during the Class Period concerning Beazer Homes' results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Beazer Homes to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Beazer Homes within the meaning of Section 20(a) of the Exchange Act. In this capacity, they

participated in the unlawful conduct alleged which artificially inflated the market price of Beazer Homes securities.

79. Each of the Individual Defendants, therefore, acted as a controlling person of Beazer Homes. By reason of their senior management positions and/or being directors of Beazer Homes, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Beazer Homes to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Beazer Homes and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

80. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Beazer Homes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.