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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**
11 **CV 2010-023098**

12 STATE OF ARIZONA, ex rel. TERRY
GODDARD, Attorney General,

13 Plaintiff,

14 -vs-

15 PULTE HOME CORPORATION, a
Michigan corporation; and PULTE
16 MORTGAGE, LLC, a Delaware Limited
Liability Company,

17 Defendants.
18

Case No:

**COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF**

19 Plaintiff, the State of Arizona, by and through its undersigned attorneys, brings this
 20 action to enjoin Defendants Pulte Home Corporation and Pulte Mortgage, LLC (collectively
 21 "Defendants" or "Pulte") from engaging in deceptive trade practices in the course of offering
 22 and selling consumer goods and services and to obtain relief for consumers harmed by the
 23 Defendants' unlawful practices.
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 25
 26

1 **PARTIES**

2 1. Plaintiff Terry Goddard is the Attorney General of Arizona and is responsible
3 for enforcement of the Arizona Consumer Fraud Act, Arizona Revised Statutes (“A.R.S.”) §
4 44-1521 *et seq.*

5 2. Pulte Home Corporation (“Pulte Home”) is a corporation incorporated and
6 headquartered in Michigan, with its principal place of business located at 100 Bloomfield
7 Hills Parkway, Suite 300, Bloomfield Hills, Michigan 48304. Pulte Home operates
8 homebuilding businesses in Arizona.

9 3. Pulte Mortgage LLC (“Pulte Mortgage”) is a limited liability company
10 organized under the laws of Delaware, with its principal place of business at 7390 S. Iola
11 Street Englewood, Colorado. Pulte Mortgage is a licensed mortgage banker in the State of
12 Arizona.

13 **JURISDICTION AND VENUE**

- 14 4. This Court has jurisdiction over the Defendants pursuant to A.R.S. § 44-1528.
15 5. Venue is proper in Maricopa County pursuant to A.R.S. §§ 12-401(1) and (17).

16 **DEFINITIONS**

17 The following terms shall have the following meanings:

- 18 6. “Affiliated business” has the same meaning as in Section 3(7) of the federal
19 Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2602(7).
20 7. “Arizona consumer or consumer” means a resident of the State of Arizona or
21 any person who is solicited by Pulte to purchase a home in Arizona built by or financed by
22 Pulte.
23 8. “Attorney General” means the Arizona Attorney General and any duly
24 authorized representative of the Office of the Arizona Attorney General.
25 9. “Effective Date” means the date the Court signs the Consent Judgment.
26

1 10. "Person" means any natural person and any corporation, partnership, joint
2 venture, limited liability company, formal or informal association and any other legal entity.

3 BACKGROUND

4 11. Pulte Home is a wholly owned subsidiary of Pulte Group, Inc. (fka Pulte
5 Homes, Inc.). It is the nation's largest homebuilder, operating in numerous markets across
6 the country, including the Phoenix and Tucson, Arizona metropolitan areas. According to
7 Pulte's website, Pulte Home is currently selling homes in 39 communities in and around the
8 Phoenix and Tucson areas.

9 12. Pulte Mortgage is a wholly owned subsidiary of PulteGroup, Inc. (fka Pulte
10 Homes, Inc.) and finances new home construction for customers of Pulte Homes, Centex, Del
11 Webb, and other homebuilding companies owned by Pulte Group, Inc. Since its beginning in
12 1972, Pulte Mortgage has provided financing services for more than 400,000 Pulte customers.

13 FACTUAL BACKGROUND

14 Pre-Qualification for Financing

15 13. Pulte Home has sales offices at all of its developments, where Pulte Home sales
16 staff steer consumers through the home buying process and introduce them to Pulte
17 Mortgage to finance their purchases.

18 14. Pulte Mortgage encourages Pulte Home's sales staff to orally "pre-qualify"
19 consumers to determine how much they can afford to spend on a home. The "pre-
20 qualification" process serves many purposes, including assuring consumers they can afford a
21 Pulte Home so that they will sign a purchase agreement.

22 15. During the oral "pre-qualification" process, Pulte Home sales representatives
23 orally gather information about consumers' credit scores, employment, income, debts and
24 assets. They evaluate consumers' mortgage preferences and desired monthly payment
25 amounts. No documents are provided by consumers or generated by Pulte Home sales
26 representatives during the oral "pre-qualification" process.

1 16. After only a few moments, based on the information solicited by Pulte Home
2 sales representatives and supplied by consumers, Pulte Home sales representatives tell
3 consumers that they appear to qualify for or fail to qualify for certain Pulte Mortgage loan
4 products at certain interest rates or monthly payments. Except for training Pulte Home sales
5 staff how to perform the oral "pre-qualification", Pulte Mortgage is uninvolved in the "pre-
6 qualification" process.

7 17. Pulte Mortgage instructs Pulte Homes' sales associates to use a written pre-
8 qualification process if it appears as if that is the only way to make the consumer sign a
9 purchase agreement. The written pre-qualification process requires Pulte Home sales
10 representatives to submit documents to Pulte Mortgage. This process takes anywhere from
11 24 to 72 hours. At the end of the process, Pulte Mortgage provides a written response
12 regarding the consumer's pre-qualification inquiry.

13 18. Pulte Home sales representatives only employ the pre-qualification process
14 before consumers sign purchase contracts. In fact, they are instructed not to offer "pre-
15 qualification" to consumers that have already signed purchase agreements.

16 19. Based upon representations made by Pulte Home sales representatives during
17 the oral "pre-qualification" process, several consumers believed that they had qualified for
18 financing at certain interest rates or monthly payments and entered into agreements to
19 purchase Pulte homes. It was not until later, that some consumers learned they did not
20 qualify for financing at the interest rates or payment amounts discussed during the oral "pre-
21 qualification" process.

22 20. Despite its name, Pulte's oral "pre-qualification" process does not pre-qualify
23 consumers for anything at all. Instead, it is mainly used to identify how much home
24 consumers can afford and to promote Pulte Mortgage.

1 Incentives for Financing Pulte Home Purchase with Pulte Mortgage

2 21. Pulte offers consumers incentives for using Pulte Mortgage and other affiliated
3 businesses to fund their purchases of Pulte homes. Pulte offers incentives in various forms,
4 including purchase price reductions, money toward upgrades or closing costs and interest rate
5 buy-downs.

6 22. Often, consumers visit Pulte Home sales offices after having pre-qualified for
7 financing from an outside lender. In some instances, Pulte Home sales staff informed
8 consumers that Pulte Mortgage could offer the same loan terms or loan product as the
9 consumers had pre-qualified for with the outside lender.

10 23. Such representations made by Pulte Home sales representatives and language
11 contained in some of Pulte Home's sales contracts led consumers to believe that they would
12 obtain loans from Pulte Mortgage or a Pulte preferred lender that had terms comparable to
13 those provided by other lenders in the community.

14 24. Until April 2007, Pulte Home's sales contracts contained language stating that
15 buyers were obligated to accept loans on terms and conditions reasonably comparable to
16 those terms and conditions generally offered for residential mortgages in their geographic
17 area under circumstances similar to the buyer's, including, but not limited to, the interest
18 rates.

19 25. This contract language misled several consumers who understood the
20 "reasonably comparable" language contained in Pulte Home's sales contracts to mean that
21 they were required to accept loans from Pulte Mortgage or a Pulte preferred lender only if the
22 offered loans were reasonably comparable to loans they could obtain from outside lenders.

23 26. The promise of comparable loan terms plus the incentives offered for using
24 Pulte Mortgage caused many consumers to choose Pulte Mortgage over outside lenders.

25 27. In several instances, Pulte Mortgage offered consumers, who had already
26 signed purchase agreements with Pulte Home, loan products that were substantially different

1 from and costlier than those for which they had pre-qualified with outside lenders or what
2 Pulte Home sales representatives discussed with them during Pulte's oral "pre-qualification"
3 process. Several consumers were able to obtain financing from outside lenders on more
4 favorable terms than offered by Pulte Mortgage or Pulte's preferred lenders.

5 28. Pulte Home requires consumers to sign purchase agreements, which require
6 consumers to pay earnest money deposits. Until May 2010, except for total destruction of the
7 home before a consumer took possession or a Pulte default of the purchase agreement, Pulte
8 only refunded earnest money deposits if consumers failed to qualify for financing and
9 followed its stringent refund protocol.

10 29. So long as Pulte Mortgage or a Pulte preferred lender approved a consumer's
11 loan—even if it was at a higher interest rate or monthly payment than discussed during
12 Pulte's oral "pre-qualification" process—Pulte refused to return the consumer's earnest
13 money deposit if the consumer opted not to take the loan—even one he could not afford.

14 30. Consumers were then faced with a dilemma, accept the unfavorable mortgage
15 terms offered by Pulte Mortgage or a Pulte preferred lender or forfeit their earnest money
16 deposits. Many consumers reluctantly opted to forfeit their earnest deposits rather than risk
17 defaulting on loans they could not afford.

18 31. In one instance, Pulte Home had orally "pre-qualified" a consumer for a loan
19 with a seven percent interest rate. The consumer then signed a purchase agreement, paid
20 \$5,000 as an earnest money deposit, and applied for a loan from Pulte Mortgage. Pulte
21 Mortgage later offered the consumer a loan with a 13.875 percent interest rate. The consumer
22 could not afford the loan which was offered and was forced to cancel the purchase agreement.
23 She requested a refund of her earnest deposit because of the drastic difference in the interest
24 rates quoted during the "pre-qualification" process and the loan product offered by Pulte
25 Mortgage. Pulte refused to refund her earnest money deposit.

26

1 Earnest Money Deposit Refunds

2 32. Until May 2010, Pulte Home's purchase agreements contained a loan approval
3 deadline, which, in most if not all instances, was within 60 days from the date consumers
4 signed their purchase agreements.

5 33. The purchase agreements required consumers to notify Pulte if they received
6 written notice that their loan application had been denied before the expiration of the loan
7 approval deadline.

8 34. According to the Pulte Home purchase agreements, consumers who provided
9 Pulte with a loan disapproval notice before the expiration of the loan approval deadline would
10 receive a refund of all but \$500 of their earnest money deposits. Pulte Home sales
11 representatives also informed consumers that they could obtain earnest money deposit
12 refunds, minus a \$500 administrative fee, if they were not approved for financing.

13 35. Neither Pulte's purchase agreements nor its representatives disclosed that a
14 consumer's receipt of a conditional loan approval negated the consumer's ability to obtain an
15 earnest money deposit refund. This was the case even if the consumer, having used his best
16 efforts, was unable to meet the conditions.

17 36. In several instances, Pulte Mortgage or Pulte's preferred lenders did not issue
18 loan disapproval notices to consumers until after their loan approval deadlines had expired.
19 In those instances, Pulte refused to refund consumers' earnest money deposits.

20 37. In one instance, a consumer timely notified Pulte that she had been denied a
21 loan and provided Pulte with her loan disapproval notice, thus meeting the requirements to
22 obtain a refund of her earnest money deposit. The Pulte Home sales associate asked the
23 consumer to sign a cancellation agreement stating she had buyer's remorse and forfeited her
24 earnest money deposit. The consumer refused to sign the cancellation agreement and Pulte
25 refused to refund her earnest money deposit.

26

1 Discrepancies Between English Language and Spanish Language Advertising Materials

2 38. Pulte targets the Spanish-speaking community with advertisements and a
3 Spanish-language website. It also makes Spanish-speaking sales associates available.
4 However, Pulte does not offer any contract documents in Spanish and does not provide
5 translators.

6 39. Pulte's Spanish-language internet marketing differs significantly from its
7 English-language marketing. For example, while Pulte's English website describes the
8 "advantages and risks" of various loan products, its Spanish-language website only describes
9 the "advantages" and fails to disclose the "risks" of various loan products.

10 CLAIM FOR RELIEF

11 Consumer Fraud Act, A.R.S. § 44-1521, et seq.

12 40. The allegations contained in paragraphs 1-39 are incorporated by reference as if
13 fully alleged herein.

14 41. Defendants have engaged in a course of trade or commerce which constitutes
15 deceptive acts or practices, and is therefore unlawful under A.R.S. § 44-1521 et seq., in that
16 Defendants:

- 17 a. Misrepresented that consumers had pre-qualified for financing at a certain
18 interest rate or monthly payment when they had not;
- 19 b. Represented that the loans offered to consumers by Pulte Mortgage were
20 reasonably comparable to those offered by other lenders when they were not;
- 21 c. Misrepresented the conditions under which consumers could obtain earnest
22 money deposit refunds, or failed to refund earnest money deposits when
23 consumers had met the conditions for refunds; and
- 24 d. Provided different disclosures in their English language sales materials than
25 their Spanish language sales materials.
- 26

1 42. While engaging in the acts and practices alleged in this Complaint, Defendants
2 were at all times acting willfully as defined by A.R.S. § 44-1531(A) and (B).

3 43. Defendants are liable for civil penalties of \$10,000 per willful violation of the
4 Consumer Fraud Act, as Defendants knew or should have known that their conduct was of the
5 nature prohibited by A.R.S. §§ 44-1522(A), 44-1531(A) and (B).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Plaintiff prays the Court will do as follows:

8 A. Adjudge and decree that Defendants have engaged in the conduct alleged
9 herein;

10 B. Adjudge that the Defendants' conduct is unlawful and in violation of A.R.S. §
11 44-1522(A);

12 C. Enjoin and restrain Defendants, their agents, employees, and all other persons
13 and entities, corporate or otherwise, in active concert or participation with any of them, from
14 engaging in such deceptive conduct;

15 D. Order Defendants to pay restitution pursuant to A.R.S. § 44-1528(A)(2);

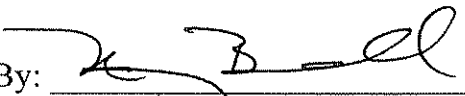
16 E. Order Defendants to pay all costs for the prosecution and investigation of this
17 action, as provided by A.R.S. § 44-1534;

18 F. Order Defendants to pay civil penalties pursuant to A.R.S. § 44-1531; and

19 G. Grant such other and further relief as the Court deems equitable and proper.

20 RESPECTFULLY SUBMITTED this 9th day of August, 2010.

21 TERRY GODDARD
22 Attorney General

23 By: 
24 SUSAN PLIMPTON SEGAL
25 Public Advocacy Division Chief Counsel
26 NANCY M. BONNELL
 Assistant Attorney General
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