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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 DANIEL RAY ACOSTA

18
19 PLAINTIFF,

20 vs.

21 eLOGHOMES.

22
23 DEFENDANT.
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Case No:

Complaint For:

1. **Breach of Contract**
2. **Violations Of Consumer Legal Remedies Act, California Civil Code § 1750 et seq;**
3. **Violations Of Business and Professions Code § 17200 et seq.**
4. **Conversion**

DEMAND FOR JURY TRIAL

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INTRODUCTION

1. Plaintiff DANIEL RAY ACOSTA by his attorneys, brings this action to challenge the actions of Defendant eLOGHOMES with regard to the unlawful retention and conversion by eLOGHOMES of funds to which Plaintiff ACOSTA was entitled under a written contract with eLOGHOMES and pursuant to sales and marketing representations made by eLOGHOMES.

2. Unless otherwise indicated, the use of any defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that defendant named.

PARTIES

3. Plaintiff DANIEL RAY ACOSTA (“PLAINTIFF”) is a natural person who resides in the County of Los Angeles, State of California.

4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant eLOGHOMES (“DEFENDANT”) is a company located in North Carolina and conducting business in the State of California.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to diversity jurisdiction under 28 U.S.C. § 1332(a). The amount in controversy is over \$75,000. Furthermore, Plaintiff resides

1 in California while DEFENDANT's principal place of business is in North Carolina.
2 Thus diversity exists.
3

4 6. This action arises out of DEFENDANT'S: (i) breach of a written contract with
5 PLAINTIFF for the construction of a home in South Lake Tahoe, California; (ii)
6 violations of the Consumer Legal Remedies Act, California Civil Code § 1750 et
7 seq; (iii) violations of the Business and Professions Code § 17200 et seq.; and (iv)
8 conversion of funds.

9 7. Because DEFENDANT conducts business within the State of
10 California, personal jurisdiction is established.
11

12 8. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
13 PLAINTIFF resides in the County of Los Angeles, State of California which is
14 within this judicial district; (ii) the conduct complained of herein occurred within
15 this judicial district; and, (iii) DEFENDANT conducts business within this judicial
16 district.
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19 **FACTUAL ALLEGATIONS**
20

21 9. PLAINTIFF, a resident of Los Angeles, sought to hire a construction
22 company to build a second home in South Lake Tahoe, California (the
23 "PROJECT").
24

25 10. PLAINTIFF researched construction companies and selected DEFENDANT
26 because DEFENDANT offered to discount the sales price by Fifty percent (50%).
27
28

1 11. The building plans for a home in South Lake Tahoe, California are required
2 to address the issue of “Snowload.” “Snowload” is the amount of snow that the roof
3 of a structure is expected to bear, expressed in pounds per square foot.
4

5
6 12. PLAINTIFF submitted building plans to DEFENDANT and, after reviewing
7 them, DEFENDANT told PLAINTIFF that the Snowload issue could be resolved
8 by using larger rafters to construct the garage roof.
9

10 13. DEFENDANT offered PLAINTIFF a price of \$222,646.00, discounted by
11 50% to \$111,323.00, which included the cost of using larger rafters to resolve the
12 Snowload issue.
13

14 14. PLAINTIFF agreed to the discounted price and DEFENDANT provided
15 PLAINTIFF with a proposed written contract entitled SALES AGREEMENT (the
16 “CONTRACT” or ”SALES AGREEMENT”) A true and correct copy of the
17 CONTRACT is attached as Exhibit “A” and incorporated by reference.
18
19

20 15. As a further inducement for PLAINTIFF to hire DEFENDANT, the
21 CONTRACT, at paragraph 13, promised PLAINTIFF the right to cancel the
22 CONTRACT and, if the cancellation occurred prior to delivery of materials,
23 PLAINTIFF was to receive a refund of the DEPOSIT reduced only by 7.5% of the
24 sales price (\$8,349.22).
25
26

27 16. PLAINTIFF signed the CONTRACT on April 20, 2023.
28

1 17. DEFENDANT signed the CONTRACT on April 26, 2023.

2
3 18. Also on April 26, 2023, promptly after DEFENDANT signed the
4 CONTRACT, PLAINTIFF wired to DEFENDANT a DEPOSIT of \$42,372.32
5 required by DEFENDANT.
6

7 19. DEFENDANT never intended to construct the PROJECT for the agreed upon
8 “Discounted” sales price of \$111, 323.00.
9

10 20. On April 28, 2023, two days after DEFENDANT received PLAINTIFF’S
11 DEPOSIT, DEFENDANT informed PLAINTIFF that the use of larger rafters for
12 the garage roof would not solve the Snowload issue, as DEFENDANT had
13 previously represented. Instead, DEFENDANT informed PLAINTIFF that
14 significant design changes were needed to meet local safety regulations. According
15 to DEFENDANT the required changes in design would increase the sales price for
16 the PROJECT by more than \$86,000.00, from \$111,323.00 to \$197.858.
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19
20 21. The DEFENDANT knew or should have known that the use of larger rafters
21 alone would not meet the Snowload requirements at the construction site.
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23 22. Instead of disclosing this information to PLAINTIFF, DEFENDANT
24 knowingly and intentionally withheld the information in order to keep the sales
25 price low and acceptable to PLAINTIFF.
26
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1 23. DEFENDANT’S failure to disclose the essential Snowload safety
2 information in order to keep the sales price artificially low rendered the
3 CONTRACT void and unenforceable.
4

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6 24. PLAINTIFF and DEFENDANT entered into negotiations for a new
7 CONTRACT which included the additional cost of the design changes. However,
8 PLAINTIFF declined to accept the price increase of over \$86,000 for the redesigned
9 PROJECT.
10

11
12 25. On or about May 26, 2023, with the CONTRACT no longer in force and no
13 new agreement existing between the PARTIES, PLAINTIFF requested a full
14 refund of his DEPOSIT on the void CONTRACT.
15

16 26. DEFENDANT refused to issue a refund of any amount.

17
18 27. Even assuming, *arguendo*, that the CONTRACT was still in force,
19 PLAINTIFF was entitled to a refund of 92.5% of his DEPOSIT, or \$34,023.10,
20 because he cancelled the CONTRACT prior to the delivery of any materials. If the
21 CONTRACT were still in force, DEFENDANT’s refusal to issue any refund would
22 have been a breach of the agreement. If the CONTRACT were not in full force and
23 effect, DEFENDANT has effectively converted PLAINTIFF’S DEPOSIT without
24 providing any services in return, unjustly enriching DEFENDANT.
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1 28. On or about June 22, 2023, PLAINTIFF's attorney sent a letter to
2 DEFENDANT (the "CLRA LETTER") notifying DEFENDANT that it had
3 violated the *California Consumer Legal Remedies Act*, California Civil Code § 1750
4 et seq, by promising PLAINTIFF a refund of 92.5 % of his DEPOSIT if
5 PLAINTIFF cancelled the CONTRACT before the delivery of any materials; but,
6 instead, when PLAINTIFF did timely cancel the CONTRACT, wrongfully
7 choosing to keep PLAINTIFF's entire DEPOSIT rather than refunding any amount.
8
9 A true and correct copy of this CLRA LETTER is attached as Exhibit "B" and
10 incorporated by reference.
11
12

13 29. The CLRA LETTER requested that DEFENDANT cure its violations by
14 refunding PLAINTIFF's deposit in full within 30 days.
15
16

17 30. To date, DEFENDANT has not issued a refund of any amount to
18 PLAINTIFF, but rather has retained PLAINTIFF's entire DEPOSIT.
19
20

21 31. Had PLAINTIFF been refunded the money, PLAINTIFF could have kept the
22 money in an interest-bearing account, earning interest on the refunded amount for
23 PLAINTIFF. Instead, Defendant is earning interest on the money that should have
24 been refunded.
25

26 32. PLAINTIFF has suffered severe emotional and mental distress as a result of
27 DEFENDANT'S actions and inactions.
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3 **CAUSES OF ACTION**
4 **COUNT I**
5 **BREACH OF CONTRACT**
6

7 33. PLAINTIFF re-alleges and incorporates by reference all of the above
8 paragraphs of this Complaint as though fully stated herein.

9 34. PLAINTIFF performed all of his obligations under the CONTRACT.
10

11 35. DEFENDANT knowingly and intentionally concealed from PLAINTIFF the
12 essential fact that the PROJECT, as designed, would not support the South Lake
13 Tahoe winter Snowload; and, that a redesign of the PROJECT, necessary for safety
14 reasons, would cost PLAINTIFF an additional \$86,535.00 over and above the
15 agreed upon sales price. Thus, the CONTRACT was unconscionable and should be
16 voided.
17
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19 36. Even if the CONTRACT were not void, DEFENDANT breached the terms
20 of the CONTRACT by refusing to refund any of PLAINTIFF's DEPOSIT when
21 PLAINTIFF cancelled the CONTRACT before any materials had been delivered.
22

23 37. By keeping PLAINTIFF's deposit and refusing to refund any amount,
24 DEFENDANT caused PLAINTIFF damages in an amount subject to proof at trial.
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COUNT II

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2 **VIOLATIONS OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
3 **CAL CIV. CODE §§ ET. SEQ.**

4 38. PLAINTIFF re-alleges and incorporates by reference all of the above
5 paragraphs of this Complaint as though fully stated herein.
6

7 39. The Consumers Legal Remedies Act, California Civil Code Section 1750, *et*
8 *seq.*, (hereinafter “CLRA”), sets forth a list of “unfair or deceptive” practices in a
9 “transaction” relating to the sale of “goods” or “services” to a “consumer.” The
10 Legislature’s intent in promulgating the CLRA is expressed in Civil Code Section
11 1760, which provides, *inter alia*, that its terms are to be:
12
13

14
15 Construed liberally and applied to promote its
16 underlying purposes, which are to protect consumers
17 against unfair and deceptive business practices and to
18 provide efficient and economical procedures to secure
19 such protection.

20 40. The CONTRACT was for the sale of “services” by DEFENDANT as defined
21 by California Civil Code Section 1761(b).
22

23 41. The CONTRACT was also for the sale of “goods” by DEFENDANT as
24 defined by California Civil Code Section 1761(a).
25

26 42. PLAINTIFF is a “consumer” as defined pursuant to Civil Code Section
27 1761(d).
28

1 43. The sale of “goods” and “services” to PLAINTIFF by DEFENDANT
2
3 constitutes a “transaction” as defined pursuant to Civil Code Section 1761(e).

4 44. Civil Code §§ 1770(a) (5) and (9) provide that:

5
6 (a) The following unfair methods of competition and unfair or deceptive acts
7 or practices undertaken by any person in a transaction intended to result
8 or which results in the sale or lease of goods or services to any consumer
9 are unlawful:

10 (5) Representing that goods or services have.... Characteristics...uses [or]...
11 benefits...that they do not have....

12 (9) Advertising goods or services with intent not to sell them as advertised.

13
14 45. DEFENDANT violated the CLRA at Civil Code Section 1770 (5) and (9)
15 when:

- 16
17 a. DEFENDANT falsely represented that larger rafters would support the
18 Snowload on the garage roof, when they would not provide this benefit.
19
20 b. DEFENDANT falsely represented that PLAINTIFF would enjoy the
21 benefit of a refund if he cancelled the CONTRACT prior to the delivery
22 of materials, when no such benefit would be provided;
23
24 c. DEFENDANT had no intention of solving the Snowload problem
25 at the quoted price simply by using larger rafters; and,
26
27 d. DEFENDANT had no intention of refunding any amount
28 of PLAINTIFF’s DEPOSIT if PLAINTIFF cancelled

1
2 the CONTRACT prior to the delivery of materials.

3
4 46. On or about June 22, 2023, PLAINTIFF sent a notice letter to DEFENDANT
5 pursuant to the Cal Civil Code § 1782(a) giving DEFENDANT 30-days to remedy
6 its failure to provide a refund of PLAINTIFF's deposit. DEFENDANT refused to
7 refund the deposit.
8

9
10 47. On information and belief, DEFENDANT's violations of the CLRA, as set
11 forth herein, were done with awareness of the fact that the conduct alleged was
12 wrongful and was motivated solely by DEFENDANT's self-interest, monetary
13 gain, and increased profit. PLAINTIFF further alleges that DEFENDANT
14 committed these acts knowing the harm that would result to PLAINTIFF and
15 DEFENDANT engaged in such unfair and deceptive conduct notwithstanding such
16 knowledge.
17

18
19 48. PLAINTIFF suffered an "injury in fact" because DEFENDANT intentionally
20 took and wrongfully retained PLAINTIFF's money.
21

22
23 49. As a direct and proximate result of DEFENDANT's violations of the CLRA,
24 PLAINTIFF is entitled to a declaration that DEFENDANT violated the Consumer
25 Legal Remedies Act.
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1 50. As of the filing of this Complaint, DEFENDANT has not complied with
2
3 PLAINTIFF’s demand letter pursuant to California Civil Code § 1782, which was
4
5 mailed via certified mail to DEFENDANT on or about June 22, 2023.

6 51. PLAINTIFF is also entitled to, and seeks, injunctive relief prohibiting such
7
8 conduct in the future; money damages, restitution, punitive damages, attorney’s fees
9
10 and costs.

11 **COUNT III**
12 **FOR VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW**
13 **CAL BUS. & PROF, CODE §§ 17200 ET. SEQ.**

14 52. PLAINTIFF realleges and incorporates by reference all of the above
15
16 paragraphs of this Complaint as though fully stated herein.

17 53. PLAINTIFF and DEFENDANT are each “person(s)” as that term is defined
18
19 by Cal. Bus. & Prof. C. § 17201. Cal. Bus & Prof. C. § 17204 authorizes a private
20
21 right of action on both an individual and representative basis.

22 54. Cal. Bus. & Prof. C. § 17204, a provision of the Unfair Competition Law (B
23
24 & P C §§ 17200–17209), confers standing to prosecute actions for relief not only
25
26 on the public officials named therein, but on private individuals, i.e., “any person
27
28 acting for the interests of itself, its members or the general public.” Thus, a private
PLAINTIFF who has suffered a financial injury may sue to obtain relief for others.

1 55. “Unfair competition” is defined by Bus. & Prof. Code § 17200 as
2 encompassing several types of business “wrongs,” including: (1) an “unlawful”
3 business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent”
4 business act or practice, and (4) “unfair, deceptive, untrue or misleading
5 advertising.” The definitions in § 17200 are drafted in the disjunctive, meaning that
6 each of these “wrongs” operates independently from the others.
7

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9
10 56. An “injunction” is “the primary form of relief available under the UCL to
11 protect consumers from unfair business practices.” *In re Tobacco II Cases*, 46
12 Cal.4th 298, 319 (2009); *see also, Clayworth v. Pfizer, Inc.*, 49 Cal.4th 758, 789
13 (2010) (“[i]f a party has standing under” the UCL, “it may seek injunctive relief”).
14
15

16 **A. “Unlawful” Prong**

17
18 57. DEFENDANT’S actions, inactions and misrepresentations set forth herein
19 constitute unlawful business practices.
20

21 58. The practices by DEFENDANT described herein constitute negligence and
22 conversion.
23

24 59. DEFENDANT violated Cal. Bus. & Prof. Code §§17200, *et. seq.* through
25 unfair, unlawful, and deceptive business practices. As a result of DEFENDANT’S
26 violations, California’s Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et*
27 *seq.*, provides a cause of action for an “unlawful” business acts or practices
28

1 perpetrated on consumers. Specifically, DEFENDANT converted PLAINTIFF'S
2 MONEY, and violated the CLRA, and/or breached a contract with PLAINTIFF.

3
4 60. DEFENDANT had other reasonably available alternatives to further its
5 legitimate business interests, other than the conduct described herein.

6
7 61. PLAINTIFF suffered actual monetary financial injury in that DEFENDANT
8 stole and converted PLAINTIFF's DEPOSIT.

9
10 62. PLAINTIFF reserves the right to allege further conduct that constitutes other
11 unfair business acts or practices. Such conduct is ongoing and continues to this date.

12
13 63. PLAINTIFF seeks public injunctive relief to benefit the general public
14 directly by bringing an end to DEFENDANT's unlawful business practices which
15 threaten future injury to the general public.

16
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18 **B. "Unfair" Prong**

19 64. DEFENDANT's actions, inactions, and representations constitute an "unfair"
20 business act or practice under § 17200 in that DEFENDANT's conduct is
21 substantially injurious to consumers, offends public policy, and is immoral,
22 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
23 alleged benefits attributable to such conduct.

24
25
26 65. Without limitation, the business practices describe herein are "unfair" and
27 shock the conscience because they offend established public policy, violate
28

1 California statutory protections, and are objectively immoral, unethical, oppressive,
2 unscrupulous and/or substantially injurious to consumers in that DEFENDANT's
3 conduct caused PLAINTIFF to suffer financial damage due to the theft and
4 conversion of PLAINTIFF's DEPOSIT.
5

6
7 66. DEFENDANT could and should have furthered its legitimate business
8 interests by refunding DEFENDANT's DEPOSIT as it was obligated to do under its
9 CONTRACT with PLAINTIFF.
10

11 67. PLAINTIFF could not have reasonably avoided the injury he suffered.
12

13 68. PLAINTIFF reserves the right to allege further conduct that constitutes other
14 unfair business acts or practices. Such conduct is ongoing and continues to this date,
15 and is a source of considerable revenue to DEFENDANT.
16

17 69. PLAINTIFF seeks an injunction requiring DEFENDANT to immediately
18 return the money to PLAINTIFF that was wrongfully retained, taken and converted
19 by DEFENDANT.
20

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22 **COUNT IV**
23 **CONVERSION**
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25 70. PLAINTIFF realleges and incorporates by reference all of the above
26 paragraphs of this Complaint as though fully stated herein.
27
28

1 71. PLAINTIFF had the right to a full refund of his DEPOSIT of \$42,372.32 when
2
3 DEFENDANT voided the CONTRACT by increasing the purchase price by over
4 \$86,000.

5
6 72. In the alternative, DEFENDANT was entitled to a refund of 92.5% of his
7 DEPOSIT because he cancelled the CONTRACT prior to the delivery of materials.

8
9 73. DEFENDANT prevented PLAINTIFF from taking possession of his refund
10 by wrongfully, knowingly and intentionally refusing to refund any amount of
11 PLAINTIFF's DEPOSIT.

12
13 74. PLAINTIFF never consented to DEFENDANT's retention of his DEPOSIT.

14
15 75. PLAINTIFF was harmed by DEFENDANT's refusal to refund his DEPOSIT

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17 76. DEFENDANT's knowing, wrongful and intentionally refusal to refund
18 PLAINTIFF's DEPOSIT was a substantial factor in causing PLAINTIFF's harm

19 **PRAYER FOR RELIEF**

20
21 WHEREFORE, PLAINTIFF prays that judgment be entered against
22 DEFENDANT for:

23
24 **FIRST CAUSE OF ACTION FOR
25 BREACH OF CONTRACT**

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 - Compensatory damages, nominal damages, and punitive damages.

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28 **SECOND CAUSE OF ACTION FOR
VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT**

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CAL. BUS. & PROF. CODE §§ 1750, *ET SEQ.*

- Actual damages, injunctive relief, restitution, and punitive damages pursuant to Cal. Civ. Code § 1780(a); and
- an award of costs and attorney’s fees pursuant to Cal. Civ. Code § 1780(d).

**THIRD CAUSE OF ACTION FOR
VIOLATIONS OF CALIFORNIA’S UNFAIR COMPETITION LAW
CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.***

- Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17203; and
- Recovery of reasonable attorneys’ fees pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5.

**FOURTH CAUSE OF ACTION FOR
CONVERSION**

- Actual damages, injunctive relief, restitution, and punitive damages.

TRIAL BY JURY

77. Pursuant to the seventh amendment to the Constitution of the United States of America, PLAINTIFF is entitled to, and demands a trial by jury.

Date: November 13, 2023

/s/Ryan L. McBride
Ryan L. McBride, Esq.
Attorney for PLAINTIFF