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13  
14 **UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**  
16

17  
18 FRANK J. GRIMMELMANN, individually  
and on behalf of all other similarly situated,

19 Plaintiff,

20  
21 vs.

22  
23  
24 PULTE HOME CORPORATION, a Michigan  
Corporation; DEL WEBB CORPORATION, a  
25 Delaware Corporation; DEL WEBB'S  
COVENTRY HOMES, INC., an Arizona  
26 Corporation; ANTHEM ARIZONA, LLC, an  
Arizona Limited Liability Company; THE  
27 VILLAGES AT DESERT HILLS, INC., an  
28 Arizona Corporation; CITIZENS UTILITIES

Case No.:

**CLASS ACTION COMPLAINT FOR:**

- 1. Violation of Consumer Fraud Act, A.R.S. § 44-1521 et seq.;
- 2. Violation of Uniform State Anti-Trust Law, A.R.S. § 44-1402 et seq.;
- 3. Breach of Contract;
- 4. Negligent Misrepresentation;
- 5. Declaratory and Injunctive Relief.

COMPANY, a Delaware Corporation; } **DEMAND FOR JURY TRIAL**  
 CITIZENS WATER SERVICES COMPANY }  
 OF ARIZONA, an Arizona Corporation, }  
 CITIZENS WATER RESOURCES }  
 COMPANY OF ARIZONA, an Arizona }  
 Corporation; ARIZONA-AMERICAN }  
 WATER COMPANY, INC., an Arizona }  
 Corporation; and DOES 1 through 50, }  
 inclusive, }  
 Defendants. }

1. Plaintiff Frank J. Grimmelmann brings this Class Action Complaint on behalf of himself and all others similarly situated, based upon personal knowledge as to facts pertaining to himself, and upon information and belief as to all other matters based on the investigation of his attorneys, against Defendants PULTE HOME CORPORATION, DEL WEBB CORPORATION, DEL WEBB’S COVENTRY HOMES, INC., ANTHEM ARIZONA, LLC, THE VILLAGES AT DESERT HILLS, INC., CITIZENS UTILITIES COMPANY, CITIZENS WATER SERVICES COMPANY OF ARIZONA, CITIZENS WATER RESOURCES COMPANY OF ARIZONA, ARIZONA-AMERICAN WATER COMPANY, INC. (referred collectively hereinafter as "Defendants"), and states as follows:

**I.**  
**THE PARTIES**

2. Plaintiff is a residential property owner within the community of Anthem, in the County of Maricopa, in the State of Arizona, and he brings this action individually and as Class representative on behalf of all persons similarly situated, pursuant to *Federal Rule of Civil Procedure 23* and other applicable laws. Each Plaintiff Class member is a member of that group of individuals and/or entities who currently own homes within Anthem.

3. Plaintiff and members of his Class are informed and believe, and based thereon allege, that Defendant PULTE HOME CORPORATION, a Michigan corporation (“PULTE”), authorized and doing business in Maricopa County, Arizona, as the successor-in-interest of Defendant DEL WEBB CORPORATION, took part in or contributed to the planning, design,

1 development, construction and/or sale of the homes and other buildings in Anthem, and/or in the  
2 planning, design, development, construction and operation of the water and wastewater delivery  
3 system facilities serving the homes and other buildings and properties in Anthem.

4 4. Plaintiff and members of his Class are informed and believe, and based thereon  
5 allege, that Defendant DEL WEBB CORPORATION, a Delaware corporation (“DEL WEBB”),  
6 authorized and doing business in Maricopa County, Arizona, did, prior to and after merger with  
7 or acquisition by Defendant PULTE HOME CORPORATION, take part in or contribute to the  
8 planning, design, development, constructions, and/or sale of the homes and other buildings and  
9 properties in Anthem, and/or in the planning, design, development, construction and operation of  
10 the water and wastewater delivery system facilities serving the homes and other buildings and  
11 properties in Anthem.

12 5. Plaintiff and members of his Class are informed and believe, and based thereon  
13 allege, that Defendant DEL WEBB’S COVENTRY HOMES, INC., an Arizona corporation,  
14 authorized and doing business in Maricopa County, Arizona, did, prior to and after merger with  
15 or acquisition by PULTE HOME CORPORATION, take part in or contribute to the planning,  
16 design, development, construction and/or sale of the homes and other buildings and properties in  
17 Anthem, and/or in the planning, design, development and construction of the water and  
18 wastewater delivery system facilities serving the homes and other buildings and properties in  
19 Anthem.

20 6. Plaintiff and members of his Class are informed and believe, and based thereon  
21 allege, that Defendant ANTHEM ARIZONA, INC., an Arizona corporation, authorized and  
22 doing business in Maricopa County, Arizona, took part in or contributed to the planning, design,  
23 development, construction, and/or sale of the homes and other buildings and properties in  
24 Anthem and/or in the planning, design, development and construction of the water and  
25 wastewater delivery system facilities serving the homes and other buildings and properties in  
26 Anthem.

27 7. Plaintiff and members of his Class are informed and believe, and based thereon  
28 allege, that Defendant THE VILLAGES AT DESERT HILLS, INC., an Arizona corporation,

1 authorized and doing business in Maricopa County, Arizona, took part in or contributed to the  
2 planning, design, development, construction, and/or sale of the homes and other buildings and  
3 properties in Anthem and/or in the planning, design, development and construction of the water  
4 and wastewater delivery system facilities serving the homes and other buildings and properties in  
5 Anthem.

6 8. PULTE HOME CORPORATION, DEL WEBB CORPORATION, DEL  
7 WEBB'S COVENTRY HOMES, INC., ANTHEM ARIZONA, INC., and THE VILLAGES AT  
8 DESERT HILLS, INC. will collectively be referred to in this Complaint as "PULTE" or  
9 "PULTE DEFENDANTS."

10 9. Plaintiff and members of his Class are informed and believe, and based thereon  
11 allege, that Defendant CITIZENS UTILITIES COMPANY, a Delaware corporation, authorized  
12 and doing business in Maricopa County, Arizona, did, prior to and after merger with or  
13 acquisition by Defendant AMERICAN-ARIZONA WATER COMPANY, INC., take part in or  
14 contribute to the planning, design, development, construction and operation of the Water  
15 Facilities serving the homes and other buildings and properties in Anthem.

16 10. Plaintiff and members of his Class are informed and believe, and based thereon  
17 allege, that Defendant CITIZENS WATER SERVICES COMPANY OF ARIZONA, an Arizona  
18 corporation, authorized and doing business in Maricopa County, Arizona, and a subsidiary of  
19 CITIZENS UTILITIES COMPANY, did, prior to and after merger with or acquisition by  
20 Defendant AMERICAN-ARIZONA WATER COMPANY, INC., take part in or participate in  
21 the planning design, development, construction and operation of the water and wastewater  
22 delivery system facilities serving the homes and other buildings and properties in Anthem.

23 11. Plaintiff and members of his Class are informed and believe, and based thereon  
24 allege, that Defendant CITIZENS WATER RESOURCES COMPANY OF ARIZONA, an  
25 Arizona corporation, authorized and doing business in Maricopa County, Arizona, and a  
26 subsidiary of CITIZENS UTILITIES, did, prior to and after merger with or acquisition by  
27 Defendant AMERICAN-ARIZONA WATER COMPANY, INC., take part in or participate in  
28

1 the planning, design, development, construction and operation of the water and wastewater  
2 delivery system facilities serving the homes and other buildings and properties in Anthem.

3 12. Plaintiff and members of his Class are informed and believe, and based thereon  
4 allege, that Defendant AMERICAN-ARIZONA WATER COMPANY, INC., (“ARIZONA  
5 AMERICAN”) an Arizona corporation, authorized and doing business in Maricopa County,  
6 Arizona, participated in the planning, design, development, construction and operation of the  
7 water delivery system facilities serving the homes and other buildings and properties in Anthem.

8 13. Plaintiff and members of his Class are informed and believe, and based thereon  
9 allege, that Defendants planned, designed, constructed and operated the water delivery system  
10 facilities that supply water to and wastewater services for the homes and other buildings and  
11 properties in Anthem. Plaintiffs are further informed and believe, and based thereon allege, that  
12 the PULTE DEFENDANTS, planned, designed, constructed and placed the homes in the stream  
13 of commerce for sale to members of the general public.

14 14. Plaintiff and members of his Class are informed and believe, and based thereon  
15 allege, that PULTE HOME CORPORATION is the successor-in-interest to the DEL WEBB,  
16 DEL WEBB COVENTRY, ANTHEM ARIZONA, INC., and THE VILLAGES AT THE  
17 DESERT, INC.. As successor-in-interest, PULTE HOME CORPORATION is liable for the  
18 occurrences, damages and injuries alleged herein to the same extent as DEL WEBB, DEL  
19 WEBB’S COVENTRY HOMES, INC., ANTHEM ARIZONA, INC., and THE VILLAGES AT  
20 DESERT HILLS, INC. are liable for the alleged occurrences, damages and injuries.

21 15. Plaintiff and members of his Class are informed and believe, and based thereon  
22 allege, that ARIZONA-AMERICAN WATER COMPANY, INC. is the successor-in-interest to  
23 CITIZENS UTILITIES COMPANY, and its subsidiaries, CITIZENS WATER SERVICES  
24 COMPANY OF ARIZONA and CITIZENS WATER RESOURCES COMPANY OF  
25 ARIZONA. As successor-in-interest, ARIZONA-AMERICAN WATER COMPANY, INC. is  
26 liable for the occurrences, damages and injuries alleged herein to the same extent as CITIZENS  
27 is liable for the alleged occurrences, damages and injuries.



1           22.     Where applicable, if at all, Defendants are precluded by the doctrine of equitable  
2 estoppel from asserting the expiration of all applicable statutes of repose, including, but not  
3 limited to A.R.S. § 12-552, as a result (in part) of the justifiable reliance by Plaintiff and  
4 members of his Class on the actions and/or omissions of Defendants. Defendants are also  
5 precluded by the doctrine of equitable tolling from asserting the expiration of all applicable  
6 statutes of limitation, including, but not limited to, A.R.S §§ 12-541(5) and 12-548— again as a  
7 result of the Plaintiff and members of his Class justifiably relying upon Defendants’ actions  
8 and/or omissions.

9           23.     Reliance by Plaintiff and members of his Class arose, in part, from Defendants’  
10 silence with regard to any obligation Plaintiff and members of his Class would have to pay  
11 higher use fees and rates for water services in order to permit reimbursement to Defendants DEL  
12 WEBB and/or PULTE of the costs it invested in the creation of Anthem’s water and wastewater  
13 delivery system infrastructure.

14           24.     Reliance also arose, in part, from reception by Plaintiff and members of his Class  
15 of certain correspondence in which Defendants stated: “[p]lease be assured that the developer of  
16 Anthem followed Arizona Department of Real Estate disclosure requirements regarding water  
17 and sewer services.”

18           25.     Reliance also arose, in part, from, or is evident in, statements appearing in a July,  
19 2008 newspaper article running in the *Foothills Focus*— a newspaper Plaintiff believes is  
20 generally circulated throughout the Anthem community. The statements appearing in this  
21 newspaper article were those of Jacque Petroulakis, identified by the newspaper as PULTE’S  
22 Director of Public Affairs. What Ms. Petroulakis said was: “[w]e have said from the very  
23 beginning that our disclosures in this matter have been appropriate.” Ms. Petroulakis also  
24 mentioned that the Arizona Department of Real Estate had affirmed in writing that PULTE’S  
25 disclosures were appropriate. She was further quoted: “it is not all uncommon for a developer to  
26 fund a new utility structure, a portion of which is then refunded by the utility.”

27           26.     Plaintiff and members of his Class allege that these statements, and others, and  
28 the lack of any statement where a statement should have issued, were made, or were omitted,

1 with the intent to induce, and did in fact induce, Plaintiff and members of his Class to rely upon  
2 the statements or silences and to refrain from commencing a legal action within any applicable  
3 statutory time periods. Plaintiff and members of his Class further allege that such reliance was  
4 reasonable and resulted in an equitable tolling of the applicable statutes of limitation and/or in  
5 Defendants being estopped from asserting the bar of any applicable statutes of repose due to their  
6 wrongful conduct.

7 **IV.**  
8 **GENERAL ALLEGATIONS**

9 27. This action seeks damages and other relief from the Defendants for their failure to  
10 disclose to Anthem home purchasers that the costs of installing water infrastructure facilities  
11 supplying water to and wastewater treatment for Anthem residences and other Anthem buildings  
12 and properties was not included in the purchase price of Anthem homes, buildings and other  
13 properties, but would instead be borne by the property owners and residents living within  
14 Anthem through future rate hikes and use fees.

15 28. The development of the Anthem community began in the mid-1990s. At that  
16 time, DEL WEBB and its subsidiaries, who are named as Defendants in this Complaint,  
17 commenced planning for Anthem— a large-scale master planned community containing no less  
18 than 10,500 homes. Anthem was to be constructed on a 5,856 acre reserve, owned by DEL  
19 WEBB, adjacent to Interstate 17 in the County of Maricopa, approximately 30 miles north of the  
20 City of Phoenix.

21 29. In April of 1995, the Maricopa County Board of Supervisors approved the  
22 Development Master Plan for Anthem. The Master Plan was subsequently amended on two  
23 occasions. The Master Plan included proposed single-family homes, multi-family dwellings  
24 (including, but not limited to, apartments, town houses and condominiums), worship sites,  
25 professional offices, commercial development, schools and other services and amenities.  
26 Construction commenced soon after Board approval.

27 30. Simultaneous with the development of the Master Plan and the commencement of  
28 construction, DEL WEBB took part in and/or oversaw the creation of CITIZENS UTILITIES



1 COMPANY. This Company was incorporated in the State of Delaware, and was in fact  
2 controlled by DEL WEBB. The Purpose of CITIZENS was to act as a surrogate for DEL WEBB  
3 with respect to the operation of a water and waste water delivery system DEL WEBB was in the  
4 process of designing and constructing to serve the Anthem community. DEL WEBB would  
5 finance and build the system, then turn it over to CITIZENS to operate, all the while maintaining  
6 close control over CITIZENS and using it as a source of continuing profit.

7 31. After incorporating in Delaware, CITIZENS, at the behest of DEL WEBB, created  
8 two subsidiary entities under the laws of Arizona. These entities were called CITIZENS  
9 WATER SERVICES COMPANY OF ARIZONA and CITIZENS WATER RESOURCES  
10 COMPANY OF ARIZONA. These entities, like CITIZENS itself, were under the control of  
11 DEL WEBB, and were essentially surrogates for DEL WEBB.

12 32. As noted, it was DEL WEBB'S purpose to construct a water and wastewater  
13 delivery system to serve the Anthem community. The system it designed to this end collected  
14 water from the Rocky Mountain snow melt and conveyed that water, via canal, to the desert  
15 region where Anthem lay. It was also DEL WEBB's purpose to profit from the creation of this  
16 system at the expense of the future property purchasers and residents in the Anthem community.  
17 DEL WEBB's plan was to enter into an agreement with its own surrogate. The agreement called  
18 for DEL WEBB to finance and build the water system, in exchange for CITIZENS' later  
19 purchasing the system from DEL WEBB and then running it. The purchase would be paid for  
20 incrementally, via various use fees and rate hikes paid by Anthem residents and property owners.  
21 The agreement prohibited reimbursement of most of the costs of construction of the system if  
22 construction was completed later than 2014, which was the projected time for completion. In the  
23 event the system was completed earlier than that, CITIZENS would be required to fully  
24 reimburse DEL WEBB the costs of construction.

25 33. Following application to the Arizona Corporations Commission, CITIZENS was  
26 granted a Certificate of Convenience and Necessity to provide water and wastewater services in  
27 the Anthem development in June of 1998. With this Certificate in hand, DEL WEBB and its  
28 surrogate CITIZENS worked with Arizona governmental bodies to create the Anthem Water

1 District and the Anthem/Agua Fria Wastewater District. In accordance with the certificate,  
2 CITIZENS was permitted to charge initial minimum monthly wastewater rates for residential  
3 customers at \$ 16.00, plus a usage charge of \$ 2.00 per thousand gallons, and nearly identical  
4 charges for water usage. The combined initial monthly charge to individual residents or property  
5 owners for water and wastewater services was estimated to be \$ 70.00.

6 34. After commencement of construction of the Anthem Development, DEL WEBB  
7 merged with or was acquired by PULTE HOME CORPORATION. PULTE HOME  
8 CORPORATION assumed all of DEL WEBB'S prior rights, commitments and obligations with  
9 regard to the Anthem development. At approximately the same time, CITIZENS merged with or  
10 was acquired by ARIZONA-AMERICAN WATER COMPANY, INC. This merger or  
11 acquisition occurred in connection with the advertisement of bids for rights to operate the  
12 Anthem water and wastewater delivery system. Bidding had been initiated either by DEL  
13 WEBB or PULTE, or both. After much competition, DEL WEBB and/or PULTE entered into an  
14 agreement with ARIZONA-AMERICAN WATER COMPANY, whereby ARIZONA-  
15 AMERICAN would acquire CITIZENS and assume all obligations pursuant to the "agreement"  
16 between DEL WEBB and CITIZENS. The ostensible consequence of this new agreement would  
17 be that rather than simply paying itself back, DEL WEBB and/or PULTE would be reimbursed  
18 by a third party. In truth, however, those who would be reimbursing DEL WEBB and/or PULTE  
19 would be same as before: the residents of Anthem, including Plaintiff and members of his Class.

20 35. At the time of entering into its "agreement" with CITIZENS, and also at the time  
21 it entered into its agreement with ARIZONA-AMERICAN, DEL WEBB and/or PULTE,  
22 understood that its completion of the construction of the water and wastewater delivery system  
23 for Anthem would occur prior to 2014, and that DEL WEBB and/or PULTE would, thus, be  
24 entitled to nearly 100 percent reimbursement of its investment in the system. DEL WEBB  
25 and/or PULTE also understood that the extent of the reimbursement it would be entitled to would  
26 leave ARIZONA-AMERICAN with no choice but to raise utility rates so that it could both meet  
27 its obligations to DEL WEBB and/or PULTE and make a profit for itself.

1           36.     Despite DEL WEBB’s, PULTE’s and other Defendants’ knowledge of the fact  
2 that rates would inevitably increase, and that these rate increases— to be paid for by home  
3 buyers and residents in Anthem— would be for the purpose of paying for the water and waste  
4 water delivery system infrastructure, including the pipes leading into individual homes and  
5 commercial buildings, DEL WEBB and PULTE and other Defendants did not notify any person  
6 to whom it sold Anthem homes, including Plaintiff, of this fact. No person to whom DEL  
7 WEBB and/or PULTE sold an Anthem home or other building in the Anthem community was  
8 ever informed that they would essentially be responsible for paying for the water and wastewater  
9 delivery infrastructure and that this would occur in the form of steeply increasing utility rates  
10 over time. In fact, DEL WEBB and/or PULTE actually disclosed to home buyers the opposite:  
11 that there were no construction costs to be borne by the home buyer and home-owner beyond the  
12 listed purchase price.

13           37.     In order to conceal the reality that property buyers and residents in Anthem would  
14 be responsible for paying for DEL WEBB’S and/or PULTE’S costs arising from their creation of  
15 the water and wastewater delivery system infrastructure, and provide those entities with profit on  
16 their investment, DEL WEBB and/or PULTE entered into an agreement with ARIZONA-  
17 AMERICAN to delay ARIZONA-AMERICAN’s reimbursement obligations, which would, in  
18 turn, delay any need by ARIZONA-AMERICAN to seek authority from the Corporations  
19 Commission to raise utility rates payable by Anthem residents and property owners. DEL  
20 WEBB and/or PULTE sought to conceal the Anthem residents’ and property owners’ ultimate  
21 responsibility for paying the costs of the water and wastewater delivery system infrastructure in  
22 order not to deter potential property buyers from making purchases of vacant lots and finished  
23 homes and other buildings in the Anthem community. Failure to disclose material facts  
24 regarding future obligations associated with the properties to be purchased was aimed at  
25 maximizing sales of properties in the Anthem development, and maximizing resultant profits,  
26 and also, at ensuring that Defendants’ water system was served by enough customers to permit  
27 complete reimbursement of and profiting from Defendants’ investment.

1           38.     The failure to disclose this material information placed Defendants DEL WEBB  
2 and/or PULTE and other Defendants at odds with their common law and positive legal  
3 obligations. Defendants, of course, had a common law duty to disclose to the Plaintiff and  
4 members of his Class all material facts related to the transactions it entered into with the Plaintiff  
5 and those Class members. Defendants also had a publicly imposed duty to comply with  
6 Arizona’s subdivision and public reporting statutes (A.R.S. § 32-2181, *et seq.*) associated with  
7 the offer or sale of homes and other properties within Anthem to the public. Defendants’ public  
8 subdivision report that they provided to Anthem purchasers *failed* to properly disclose a “true  
9 statement of the nature of any improvements to be installed by the sub-divider, the estimated  
10 schedule for completion and the estimated costs related to the improvements that will be borne  
11 by purchasers of lots in the subdivision.” (A.R.S. §§ 32-2181(A)(18) and 32-2183(A)).  
12 Furthermore, Defendants *failed* to properly disclose to Anthem property purchasers a “true  
13 statement of the availability of sewage disposal facilities and other public utilities, including  
14 water...facilities in the subdivision, the estimated schedule for their installation, and the  
15 estimated costs related to the facilities and utilities that will be borne by purchasers of lots in the  
16 subdivision.” (A.R.S. §§ 32-2181(A)(19) and 32-2183(A)).

17           39.     Moreover, in some Public Subdivision Reports, issued pursuant to A.R.S. § 32-  
18 2181 *et seq.*, the PULTE DEFENDANTS *falsely* represented to home purchasers that the cost of  
19 installing the water infrastructure facilities was included in the price of their homes. In other  
20 Public Subdivision Reports, the PULTE DEFENDANTS *failed* to disclose to the home  
21 purchasers that the costs of installing water infrastructure facilities supplying water and  
22 wastewater treatment to Anthem residences and other properties were *not* included in the  
23 purchase price of the home. In no case were appropriately complete and truthful disclosures  
24 made.

25           40.     In or around the year 2004, ARIZONA-AMERICAN sought permission from the  
26 Arizona Corporations Commission to raise water rates payable by the residents and property  
27 owners of Anthem due to its desire to meet obligations arising out of its agreement with DEL  
28 WEBB and/or PULTE, while also maintaining profits for itself. The Commission refused to

1 permit a raise in water rates, and actually ordered a reduction in rates. However, the  
2 Commission did permit the raising of rates and use fees for wastewater services.

3 41. In 2007 the PULTE DEFENDANTS completed work on the Anthem water and  
4 wastewater system infrastructure. Completion of the work occurred *seven years ahead of*  
5 *schedule*. Completion of the work triggered ARIZONA-AMERICAN'S obligation to fully  
6 reimburse virtually the entire cost, or purported costs, of the PULTE DEFENDANTS'  
7 investment in the creation of the water and wastewater system infrastructure. The total amount to  
8 be reimbursed was approximately \$ 100,000,000.

9 42. In anticipation of the massive reimbursement it would soon be required to  
10 provide, ARIZONA-AMERICAN again sought an increase in rates and user fees. It was its  
11 purpose, well understood and anticipated by the PULTE DEFENDANTS, to pass the debt owed  
12 on the water and wastewater delivery system infrastructure to the residents and property owners  
13 of Anthem who had purchased homes and other properties from the PULTE DEFENDANTS, or  
14 from *mesne* owners. During public hearings, it was disclosed that this renewed effort to raise  
15 rates was the first of a two phase strategy to increase rates a total of one hundred percent above  
16 the amount set back in 1998, which the residents of Anthem would then be required to pay in  
17 order to allow ARIZONA-AMERICAN to reimburse the PULTE DEFENDANTS for costs of  
18 the water and wastewater delivery system infrastructure and retain residual profits for itself.

19 43. Despite opposition from a number of sources, including the residents and property  
20 owners of Anthem, the Arizona Corporations Commission approved an increase in rates for both  
21 water and wastewater services, chargeable by ARIZONA-AMERICAN, and to be paid by the  
22 residents and property owners of Anthem, including Plaintiff and members of his Class.

23 44. As a result of Defendants' failure to disclose material facts related to the sale of  
24 homes to Plaintiff and members of his Class, and the Defendants' common enrichment flowing  
25 from this failure to disclose, Plaintiff and his Class are aggrieved and seek remedy in accordance  
26 with the Causes of Action set forth in Section VI of this Complaint.

27 **V.**

28 **CLASS ACTION ALLEGATIONS**

1           45. Pursuant to Rule 23 of the *Federal Rules of Civil Procedure*, and other relevant  
2 authorities, Plaintiff, individually and on behalf of all persons similarly situated, seeks class-wide  
3 relief for harmful and unlawful conduct by Defendants.

4           46. The proposed Class that the Plaintiff seeks to represent is composed of current  
5 and former purchasers of Anthem Homes in the community of Anthem, in the County of  
6 Maricopa, within the State of Arizona.

7           47. The proposed Class that the Plaintiff seeks to represent is comprised of purchaser  
8 plaintiffs who bought their single family residences from Defendants in the so-called Country-  
9 Club and Parkside sections of Anthem, or who were secondary purchasers, and who were not  
10 provided with any disclosure of the fact that they would continue to owe money for the  
11 infrastructure connecting their homes to the sources of water for the Anthem community, and  
12 that this debt would be passed through to them by Defendants CITIZENS and ARIZONA-  
13 AMERICAN WATER COMPANY, INC. on behalf of the PULTE DEFENDANTS, and/or who  
14 were provided with an express statement by Defendants, including the PULTE DEFENDANTS,  
15 that all costs associated with the creation of infrastructure, including the costs of building the  
16 water system facilities leading into each purchaser's or each resident's home, was included in the  
17 price each individual purchaser paid for their residence.

18           48. The persons in the Class include thousands of individual owners of about 10,500  
19 homes within the Anthem community, and thus are so numerous that the joinder of all such  
20 persons is impracticable, and the disposition of their claims as a Class will benefit the parties and  
21 the Court.

22           49. There is a well-defined commonality of interest in the questions of law and of fact  
23 involving and affecting the Class members to be represented in that all of these individuals have  
24 been harmed by the Defendants' misrepresentations in connection with the sale of the homes  
25 within Anthem.

26           50. The claims of Plaintiff alleged in this Complaint are typical of those claims that  
27 could be alleged by any member of the Class, and the relief sought is typical of the relief that  
28 would be sought by each member of the Class in separate actions.

1           51. Plaintiff will fairly and adequately represent and protect the interests of all  
2 members of the Class. Plaintiff has proven himself as a community organizer of the Anthem  
3 residents in fighting the rate increases discussed herein. He has spent countless hours  
4 communicating with Anthem residents about the issues surrounding the unfair water utility  
5 increases and fighting for the interests of those residents. Plaintiff is committed to continuing to  
6 act in the interests of the Anthem residents as described in and evidenced by this Complaint.  
7 There are no known conflicts of interest between the named Class representative and Class  
8 members. If any conflicts do arise, other former and current Class members are available to  
9 serve as Class representatives.

10           52. The prosecution of separate actions by individual members of the Plaintiff Class  
11 would create a risk of inconsistent and/or varying adjudications with respect to the individual  
12 members of the Class, establishing incompatible standards of conduct for the Defendant and  
13 resulting in the impairment of Class members' rights and the disposition of their interests  
14 through actions to which they were not parties.

15           53. Common issues predominate with respect to the class members' claims,  
16 including, without limitation, whether Defendants failed to properly disclose to home purchasers  
17 that the cost of the water delivery system facilities were not included in the purchase price of the  
18 homes and that the home purchasers would ultimately have to pay for the installation of those  
19 facilities.

20           54. Proceeding in reliance on the Class form of action is superior to numerous  
21 individual actions as a means of adjudicating those claims. Since the damages suffered by  
22 individual Class members, while not inconsequential, may be relatively small, the expense and  
23 burden of individual litigation by each member makes, or may make, it impractical for Class  
24 members to seek redress individually for the wrongful conduct alleged in this Complaint.  
25 Should separate actions be brought, or be required to be brought, by each individual Class  
26 member, the resulting multiplicity of lawsuits would cause undue hardship and expense for both  
27 the Court and the litigants. The prosecution of separate actions would also create a risk of  
28 inconsistent rulings, which might be dispositive of the interests of other Class members who are

1 not parties to the adjudications and/or may substantially impede their ability to adequately  
2 protect their interests. Moreover, the Representative Plaintiffs are informed, believe and thereon  
3 allege that Defendants, in engineering or essentially mandating the passing through to the  
4 Plaintiff and members of his Class of the undisclosed costs of the Anthem water delivery system  
5 infrastructure, have acted, and/or have refused to act, on grounds generally applicable to all  
6 claims, thereby rendering injunctive and monetary relief for *all* members of the Class an  
7 appropriate remedy.

8 55. Plaintiff has retained adequate counsel. The counsel retained by Plaintiff are  
9 experienced and competent in civil litigation and class actions throughout the United States, and  
10 have served, on a number of occasions, as class counsel by Court appointment in other matters.

11 **VI.**

12 **CLAIMS FOR RELIEF**

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Consumer Fraud Act)**  
15 **(By All Plaintiffs Against All Defendants)**

16 56. Plaintiff and members of his Class re-allege paragraphs 1 through 55 of this  
17 Complaint and incorporate those paragraphs by reference as if fully set forth in this First Cause  
18 of Action.

19 57. Arizona Revised Statute § 44-1522 provides that the “act, use or employment by  
20 any person of any deception, deceptive act or practice, fraud, false pretense, false promise,  
21 misrepresentation, or concealment, suppression or omission of any material fact with intent that  
22 others rely upon such concealment, suppression or omission, in connection with the sale or  
23 advertisement of any merchandise whether or not any person has in fact been misled, deceived or  
24 damaged thereby, is declared to be an unlawful practice.”

25 58. Defendants made material omissions or misrepresentations in connection with the  
26 sale of the homes within Anthem to Plaintiff and members of his Class and to others from whom  
27 some Class members directly purchased their homes.  
28





1 reimbursement would be virtually total. It was well understood that the construction of the  
2 system would be completed sooner than 2014, and that the costs agreed upon would in fact be  
3 due, and that CITIZENS and then ARIZONA AMERICAN would, of necessity, pass their  
4 reimbursement obligation on to those using the water it provided: the residents of Anthem, who  
5 had purchased properties directly from DEL WEBB and its related Defendants, or who had  
6 obtained their properties from mesne owners.

7 65. Though each Defendant knew that the reimbursements would be due from  
8 ARIZONA-AMERICAN, and that ARIZONA-AMERICAN would pass the value of these  
9 reimbursements on to Anthem residents, none of the Defendants informed the Plaintiff and  
10 members of his Class of these obligations at the time they purchased their Anthem properties. In  
11 fact, on occasion, Defendants actually represented that there would be no further costs arising  
12 from the construction of the water system infrastructure payable by Plaintiff and members of his  
13 Class beyond the price each paid for their home. The *purpose* of the Defendants' failure to  
14 disclose, and/or actual misstatement of fact, was to induce Plaintiff and members of his Class to  
15 purchase properties in Anthem, as opposed to other communities, and thereby enrich Defendants  
16 at the expense both of the Plaintiff and members of his Class and of Defendants' competitors.

17 66. The *effect* of the failure to disclose the terms of contracts Defendants had with one  
18 another directly impacted the financial well-being of Plaintiff and members of his Class. The  
19 effect of the failure to disclose was to secretly impose a duty on Plaintiff and member of his  
20 Class to pay the costs of constructing the water system, despite the fact that they were not parties  
21 to the contracts that created that duty in the first place. The effect, *also*, was to restrain trade by  
22 deterring Plaintiff and members of his Class from considering options to purchase homes and  
23 other properties in places other than the Anthem community. This was a direct restraint on trade  
24 and an interference with intrastate commerce and commercial competition flowing directly and  
25 proximately from the contracts entered into by the Defendants with one another.

26 67. As a direct and proximate result of Defendants breach of duty pursuant to  
27 Arizona's Uniform State Anti-Trust Act, Plaintiff and members of his Class have been injured,  
28 and are therefore entitled to relief as set forth in Section VII of this Complaint.

**THIRD CAUSE OF ACTION**

**(Breach of Contract)  
(By All Plaintiffs Purchasing From Pulte Defendants  
Against All Pulte Defendants)**

68. Plaintiff and members of his Class re-allege paragraphs 1 through 67 of this Complaint and incorporate these paragraphs by reference as if fully set forth in this Third Cause of Action.

69. The PULTE DEFENDANTS entered into agreements with Plaintiff and numerous members of Plaintiff’s Class. Pursuant to each of these agreements, Defendants attested to the costs to be incurred by Plaintiff and his Class members as a result of Plaintiff and members of his Class accepting conveyance of an improved, or partially improved lot, or unimproved lot, within the Anthem development. In reliance on these attestations, and after providing consideration in the form of a promise to pay or actual payment of the purchase price, Plaintiff and members of his Class accepted conveyance to them of particular parcels of real property, improved or otherwise, owned by Defendants and lying within the Anthem community.

70. With respect to each of these agreements, Defendants failed to disclose to Plaintiff and members of his Class that Plaintiff and members of his Class would be responsible for paying the costs of the water and wastewater delivery system infrastructure which the PULTE DEFENDANTS had constructed and then sold to CITIZENS UTILITIES COMPANY and/or ARIZONA-AMERICAN WATER COMPANY, INC. In fact, Defendants on occasion informed Plaintiff and members of his Class that they would bear no costs associated with creation of the Anthem water and wastewater delivery system infrastructure beyond the price each paid for their Anthem property.

71. The failure to disclose the payment obligation, or otherwise be forthcoming about this payment obligation, and then the subsequent imposition upon Plaintiff and members of his Class of this obligation, which had never been agreed to by them, or even disclosed to them, represents a breach of a material term of the contracts formed by Plaintiff and individual members of his Class with the Defendants.



1 installation of the water and wastewater delivery system facilities were not included in the  
2 purchase price of the homes and that the home purchasers would ultimately have to pay for the  
3 installation of these facilities through future rate hikes and use fees.

4 78. Plaintiff and members of his Class justifiably relied upon Defendants' false  
5 information.

6 79. As a direct and proximate result of Defendants' actions, Plaintiff and members of  
7 his Class have been damaged in that they have been, and will continue to be, required to pay the  
8 costs for water and wastewater infrastructure that they reasonably believed were already included  
9 in the purchase price of their properties.

10 80. As a direct and proximate result of Defendants breach of duty pursuant to this  
11 Cause of Action, and due to their resultant injury, Plaintiff and members of his Class are entitled  
12 to relief as set forth in Section VII of this Complaint.

13  
14 **FIFTH CAUSE OF ACTION**

15 **(Declaratory and Injunctive Relief)**  
16 **(By All Plaintiffs Against All Defendants)**

17 81. Plaintiff and members of his Class re-allege paragraphs 1 through 80 of this  
18 Complaint and incorporate these paragraphs by reference as if fully set forth in this Fifth Cause  
19 of Action.

20 82. An actual controversy has arisen and now exists between Plaintiff and members  
21 of his Class on the one side and Defendants on the other concerning the parties' respective  
22 obligations and liabilities arising from the increase in rates and use fees connected with the water  
23 and wastewater system infrastructure constructed and operated by the Defendants. The nature of  
24 this controversy, and the theoretical remedies thereto, have been articulated by the Plaintiff and  
25 his Class via four substantive causes of action, each of which provides a vehicle not merely for  
26 damages, but also for declaratory and injunctive relief.

27 83. Plaintiff and members of his Class contend that any costs arising from  
28 construction of the water and wastewater system infrastructure in Anthem owing or supposedly

1 owing to the PULTE DEFENDANTS is the responsibility either of the PULTE DEFENDANTS,  
2 or ARIZONA-AMERICAN WATER COMPANY, INC., as a result of the application of one, or  
3 several, or all, of Plaintiff's theories as embodied in the four preceding causes of action.

4 84. Unless all the rights, duties, and obligations of Plaintiff and Plaintiff's Class on  
5 the one side and Defendants on the other related to the costs of the water and wastewater system  
6 infrastructure in Anthem are determined in this action, there will be a multiplicity of actions to  
7 determine those rights, duties, and obligations of said Defendants to Plaintiff, and to all other  
8 persons, private or public, who have suffered or may suffer damages or assert claims related to  
9 the costs and charges arising from construction of the Anthem water and wastewater system  
10 infrastructure.

11 85. Plaintiff and members of his Class are not responsible for the payments of costs  
12 arising from construction and operation of the Anthem water and wastewater system  
13 infrastructure. They never consented to pay these costs, and they were never notified, at the time  
14 they entered into contracts for purchase of their properties in Anthem, or afterward, that they  
15 would be responsible for payment of such costs. Defendants, however, claim the right to recover  
16 construction costs from Plaintiffs and members of his class through large rate hikes and use fees.  
17 As a consequence, Plaintiff and members of his Class seek, and are entitled to, a judicial  
18 declaration that:

19 (a) Defendants are solely liable for the costs of constructing the Anthem water  
20 and wastewater system infrastructure and cannot pass these costs on to the Plaintiff and members  
21 of his Class;

22 (b) In the event that Plaintiff and members of his Class are adjudged liable for  
23 the costs of the Anthem water and wastewater system infrastructure, such liability is purely  
24 secondary, imputed, or technical. Primary and actual liability attaches to Defendants and is a  
25 direct and proximate result of the acts and omissions of Defendants; and

26 (c) Defendants are liable to Plaintiff and members of his Class to contribute to  
27 and reimburse Plaintiff and Class, or to indemnify Plaintiff and Class, or provide restitution, for  
28 all losses suffered by them as a result of the rate hikes and increased use fees charged by

1 Defendants to supposedly reimburse Defendants for construction costs associated with the  
2 Anthem water and wastewater system infrastructure. To not permit contribution, or  
3 reimbursement or indemnification, or restitution to the Plaintiff and members of his Class, would  
4 enable the Defendants to be unjustly enriched.

5 **VII.**

6 **RELIEF**

7 **WHEREFORE**, Plaintiff and members of his Class pray for judgment against each  
8 named Defendant as follows:

- 9 1. For General and Special Damages according to proof at the time of trial as  
10 provided by law;
- 11 2. For Restitution;
- 12 3. For Punitive Damages;
- 13 4. For Declaratory Relief;
- 14 5. For Injunctive Relief;
- 15 6. For costs and expenses incurred herein;
- 16 7. For reasonable attorneys' fees and reasonable experts' fees pursuant to applicable  
17 law; and
- 18 8. For such other and further relief as the Court deems just and proper.

19  
20  
21 DATED: October \_\_\_\_, 2008

***BOATES & CRUMP***

22  
23  
24 \_\_\_\_\_  
25 Samuel T. Crump, Sr., Esq.  
26 *Attorneys for Plaintiff & Class*  
27  
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial by jury on all causes of action triable thereby.

3  
4  
5 DATED: October \_\_\_\_, 2008

***BOATES & CRUMP***

6  
7  
8 \_\_\_\_\_  
9 Samuel T. Crump, Sr., Esq.  
10 *Attorneys for Plaintiff & Class*  
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