

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

TIMOTHY D. PRUITT)
INDIVIDUALLY AND)
ON BEHALF OF ALL OTHER PERSONS)
IN THE UNITED STATES SIMILARLY)
SITUATED,)

Plaintiff,)

v.)

JURY DEMANDED

**PLAINTIFF'S ORIGINAL
COMPLAINT**

KAUFMAN AND BROAD HOME)
CORPORATION, N/K/A, KB HOME,)
KB HOME, INC., KB HOME,)
KB LONE STAR, L.P., AND)
KB HOME - LAREDO, L.P.)

**PLAINTIFF'S ORIGINAL COMPLAINT, APPLICATION FOR
CERTIFICATION AS NATIONWIDE NATIONWIDE TIMOTHY PRUITT
CLASS ACTION AND APPLICATION FOR TEMPORARY RESTRAINING
ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Timothy Pruitt, individually and for all other persons similarly situated in the United States, hereinafter collectively referred to as "Plaintiff," bring this lawsuit as a NATIONWIDE Class Action seeking, inter alia, a Temporary Restraining Order and Temporary and Permanent Injunction against, **Kaufman and Broad Home Corporations, n/k/a KB Home, KB Home, Inc., KB Home, KB Lone Star, L.P., and KB Home - Laredo**, hereinafter referred to as "KB Home," and would respectfully show the Court the following:

A. PARTIES

1. Plaintiff, Timothy Pruitt, is an individual who resides at 3293 St. Kathryn Loop, Laredo, Webb County, Texas 78046.
2. Defendant Kaufman and Broad Home Corporation, n/k/a KB Home, is a Delaware Corporation that does not maintain a regular place of business or a designated agent for service of process in this state, accordingly, said Defendant may be served by serving the Texas Secretary of State, with process to be forwarded to Defendant's registered agent, Mr. David B. Simons, 10990 Wilshire Blvd., Suite 700, Los Angeles, California 90024.
3. Defendant, KB Home, Inc., is a Texas corporation and may be served with process by serving its registered agent, Corporation Service Company, 800 Brazos, Suite 750, Austin, Texas 78701.
4. Defendant, KB Home, is a Texas corporation and may be served with process by serving its registered agent, Corporation Service Company, 800 Brazos, Suite 750, Austin, Texas 78701.
5. Defendant, KB Lone Star, L.P., is a Texas domestic limited partnership and may be served with process by serving its registered agent, Corporation Service Company, 800 Brazos, Suite, 750, Austin, Texas 78701.
6. Defendant, KB Home - Laredo, L.P., is a Texas domestic limited partnership and may be served with process by serving its registered agent, Corporation Service Company, 800 Brazos, Suite 750, Austin, Texas 78701.
7. KB Home also does business through the following assumed names, affiliates, subsidiaries, and representatives, among others:

1. Kaufman and Broad of Texas, LTD.
2. Defendant, KBSA, Inc.
3. KB Realty, Inc.
4. K.B. Kustom Homes, Inc.
5. KB Home 1102, L.P.
6. KB Home Insurance Agency of Texas Holdings, Inc.
7. KB Home Mortgage Company
8. Rateone Home Loans, L.L.C.
9. Lewis Homes
10. Kaufman and Broad Capital Corporation;
11. Kaufman and Broad Home Corporation;
12. General Homes, a Division of Kaufman and Broad;
13. General Homes, A Division of KB Home;
14. Kaufman and Broad Lone Star, L.P.;
15. KB Home Houston;
16. Answer Homes;
17. Brookwood Homes;
18. Classic Custom Homes;
19. Classic Homes;
20. Ellfive Partners, LTD.;
21. Hallmark Homes;
22. Homestead Homes;
23. Kaufman and Broad;
24. Kaufman and Broad Austin;
25. Kaufman and Broad of San Antonio;
26. KB Home Austin;
27. KB Home Dallas/Ft. Worth;
28. KB Home San Antonio;
29. Legend Homes;
30. Monogram Homes;
31. Rayco, LTD.;
32. San Antonio Homebuyers Club;
33. Starwood Homes;
34. Texas Homebuyers Club;
35. Danmark Custom Homes;
36. New Home Solutions Realty;
37. Homes 1102, L.L.C.;
38. Wood Young & Company, Inc.;
39. Kaufman and Broad Mortgage Company;
40. KB Mortgage Company;
41. Rateone Home Loans;
42. Rateone Holdings, Inc.;
43. KB Home Holdings, Inc.;
44. Kaufman and Broad Holdings, Inc.;
45. KB Home Sales - Northern California, Inc.;
46. Kaufman and Broad Home Sales of Northern California, Inc.;
47. KB Home Sales - Southern California, Inc.;

48. Kaufman and Broad Home Sales, Inc.;
49. Kaufman and Broad Homes Sales, Inc.;
50. KB Home Insurance Agency, Inc.;
51. Kaufman and Broad Insurance Agency, Inc.;
52. Pacific Sun Insurance Agency, Inc.;
53. KB Home Land Company;
54. Kaufman and Broad Land Company;
55. KB Home North Bay, Inc.;
56. Kaufman and Broad of Northern California, Inc.;
57. Kay Building Company;
58. KB Home Sacramento, Inc.;
59. Kaufman and Broad of Sacramento, Inc.;
60. KB Holdings Two, Inc.;
61. KB City Ranch, Inc.;
62. KB Home City Ranch, Inc.;
63. KB Home Patterson, Inc.;
64. BKJ Construction Company, Inc.;
65. Kaufman and Broad Patterson, Inc.;
66. KB Home Greater Los Angeles, Inc.;
67. Essex Land Company;
68. Kaufman and Broad Homes, Inc.;
69. Kaufman and Broad of Southern California, Inc.;
70. Donna Land Company;
71. International Mortgage Company;
72. International Mortgage Company (to transact business in California as Illinois International Mortgage Company);
73. Illinois International Mortgage Company;
74. Kaufman and Broad Mortgage Company;
75. KB Home Architecture, Inc.;
76. K&B Multi-Housing Advisors, Inc.;
77. Kaufman and Broad Architecture, Inc.;
78. KB Home Central Valley, Inc.;
79. Kaufman and Broad - Central Valley, Inc.;
80. Kaufman and Broad-Modesto/Central Valley, Inc.;
81. Kaufman and Broad of Sacramento, Inc.;
82. Kaufman and Broad of Fresno, Inc.;
83. KB Home South Bay, Inc.;
84. Kaufman and Broad - South Bay, Inc.;
85. KB Home Coastal, Inc.;
86. Kaufman and Broad - South Coast, Inc.;
87. Kaufman and Broad Coastal, Inc.;
88. Vintage Communities, Inc.;
89. Vintage Homes, Inc.;
90. Kaufman and Broad - South Valleys, Inc.;

B. JURISDICTION

8. The Court has jurisdiction over this lawsuit because it involves the interpretation and enforcement of a federal consent decree between KB Home and the United States of America entered in the United States District Court. 28 U.S.C. § 1331.

C. FACTS

9. KB Home has committed illegal and prohibited acts through its successors, assigns, officers, agents, representatives, employees, related corporations, subsidiaries, divisions and other devices in connection with its production, advertising, offering for sale or sale of on-site residential housing. (Plaintiff's Exhibit 1.)

10. Plaintiff, Timothy Pruitt is a consumer customer who purchased a single-family residence in Laredo, Webb County, Texas from KB Home by 'purchase agreement.' (Plaintiff's Exhibit 2.) In connection with every home purchase, KB Home provides a consumer purchaser two different warranty agreements. One is known as the RWC Warranty, a third party warranty allegedly in favor of the home purchaser related to defects in the house. (Plaintiff's Exhibit 3.) KB Home also issued its own warranty agreement. (Plaintiff's Exhibit 4.)

11. All three of these documents are required by KB Home as part of all purchase transactions related to the tens of thousands of homes KB Home sells to consumers each year. These three documents all specifically require binding arbitration of any dispute the consumer purchase may have related to defects in or problems with the house that is purchased. KB Home controls and owns home building and sales operations in California, Arizona, Nevada, Colorado, New Mexico, Texas and Florida. Binding arbitration requirements are found in all the purchase agreements imposed on consumers

in each of these states by KB Home's Parent, either directly or through prohibited devices.

12. KB Home in all corporate or business forms they assume to sell homes to consumers, are the subject of a 1979 Federal Trade Commission Consent Decree that specifically requires KB Home to issue a Warranty related to its sales of homes nationwide that does **not** require or provide for binding arbitration of the consumers' claims and complaints. Specifically, KB Home is required, as a matter of law, to use a warranty agreement that conforms to the 'HOW Warranty form' in use at the time of the 1979 Federal Agency Decree; the relevant HOW Warranty does **not** provide for or allow binding arbitration. (Plaintiff's Exhibit 5.) Subsequently, KB Home was made the subject of enforcement action by the United States in a lawsuit in the United States District Court for the Southern District of California in 1991, which resulted in yet another Consent Order; this time fining KB Home for violations of the FTC Decree and making the provisions of that Decree a permanent United States District Court Order. (Plaintiff's Exhibits 6 and 7). Then, in 1995, KB Home sought 'relief' from the relevant provisions of the Consent Decree and Order, by letter to the Federal Trade Commission from their Senior Vice-President and General Counsel. The FTC replied and made clear that any requirement of or agreement by the homebuyer to 'binding arbitration' would constitute a violation of the 1979 Decree by KB Home, and therefore, also a violation of the 1991 Court Order. (Plaintiff's Exhibit 8.)

**D. COUNT I - ILLEGALITY OF CONTRACT TERM – BINDING
ARBITRATION**

13. The requirement of and terms providing for 'binding arbitration' found in the purchase agreement and two warranty agreements, as well as any other documents or

forms used by KB Home in the sale of homes throughout the United States are illegal and therefore unenforceable. *Ralston Purina v. McKendrick*, 850 SW2d 629, 639 (Tex. App.—San Antonio 1993, writ denied.); *Plumlee v. Paddock*, 832 SW2d 757 (Tex. App.- Fort Worth 1992, writ denied); *SEC v. AMX, International Inc.*, 7 F.3d 71 (5th Cir. 1993) (holding that a disgorgement order was a properly enforceable part of a consent decree order).

E. COUNT II – DECLARATORY JUDGMENT

14. Based on the facts alleged herein, Plaintiff seeks individually and on behalf of the class of persons similarly situated in the United States that this Court issue a declaratory judgment under Federal Rule of Civil Procedure 57, 28 U.S.C. Sections 2201 and 2202, and Federal Rule of Civil Procedure 23 declaring that the ‘binding arbitration’ provisions of any document, contract, warranty or agreement of KB Home and any of its representatives, successors, assigns, subsidiaries, parents, partners, affiliates or related companies are illegal, void and unenforceable in accordance with established law and equity.

F. CLASS ACTION

15. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Timothy Pruitt bring this action on behalf of himself and all others persons in the United States who are similarly situated, as representative of the following class:

All KB Home home-buying customers in the United States who entered into any agreement with KB Home or any of its representatives, successors, assigns, subsidiaries, parents, partners, affiliates or related companies that provides for binding arbitration of any disputes between the buyer and KB Home.

As described below, this action satisfies the numerosity, commonality, typicality, and adequacy of representation requirements of Fed. R. Civ. P. 23(a).

16. Moreover, the above described illegal ‘binding arbitration’ terms are found in the KB Home purchase agreements and warranty agreements that are daily being forced upon thousands of consumers in KB Home home sale transactions across the United States. KB Home engages in this conduct, despite the actual knowledge that it is carried out in direct violation of a federal court order. KB Home continues to annually victimize thousands of new KB Home consumer customers by asserting ‘binding arbitration’ if a consumer complains that the warranty service is inadequate. Texas has a large concentration of KB Home subdivisions and sales, with approximately 50,000 home sales, meaning 50,000 illegal contracts giving KB Home the ostensible right to compel binding arbitration of any consumers warranty service disputes.

17. If KB Home is not immediately restrained they will continue to carry out this “Binding Arbitration Scheme”; thousands of annual new home buyer customers nationwide will be misled as to their legal rights and remedies and subjected to illegal contract provisions; and KB Home will continue to assert binding arbitration when consumers make warranty complaints. Plaintiff and Plaintiff’s Class also seek a Temporary and Permanent Injunction against such conduct by KB Home in the future.

a. Numerosity

18. The persons in the proposed Plaintiff Class are so numerous that joinder of all members is impracticable and would severely tax limited judicial resources. Although the exact number of class members is unknown to Plaintiff at this time, it is estimated to be more than 50,000 in Texas and well over 100,000 nationwide, and is readily ascertainable by appropriate discovery – KB Home maintains records of all information necessary to easily determine who these class members are. However, Plaintiff is

informed and believes that the proposed plaintiff class includes at least 50,000 members in Texas alone.

b. Commonality

19. There are common questions of law or fact affecting the class. Specifically, predominant common questions include:

Illegality of Contract Term

(i) Whether KB Home and any of its representatives, successors, assigns, subsidiaries, parents, partners, affiliates or related companies are legally compelled to offer a warranty that does not provide for binding arbitration of consumer disputes; (ii) Whether KB Home requires such an agreement to binding arbitration in their sales/purchase contracts and warranty agreements and (iii) Whether such a contract or warranty term is therefore illegal and unenforceable.

c. Typicality

20. The claims of Plaintiff, Timothy Pruitt, are typical of the claims of the rest of the class plaintiffs in that each class member is a home buyer customer of KB Home or one of its successors, assigns, subsidiaries, parents, partners, affiliates or related companies. Each class member has the same form of contract and warranty agreements with KB Home related to their home purchased. Each class member received a contract form from KB Home that purportedly requires binding arbitration of any dispute. Each class member suffers the same harm. They are misled as to their legal rights and remedies and subject to the threat that no matter the warranty wrongdoing, they will be required to have costly binding arbitration.

d. Fair and Adequate Representation

21. Timothy Pruitt will fairly and adequately represent the interests of the Plaintiff Class as Class Representatives. In support of this proposition, Plaintiff would show:

(i) The proposed Plaintiff Class Representatives are members of the proposed class;

(ii) The proposed Plaintiff Class Representatives have expressed an interest in representing the interests of the class, have individually been misled through sales documents as to his legal rights and remedies and subjected to the threat of binding arbitration, caused by the KB Home scheme, Plaintiff has undertaken independent investigation and research concerning the scheme;

(iii) The proposed Plaintiff Class Representative has retained Alice Oliver-Parrott, David H. Burrow, Robert L. Collins, Maria Teresa Arguindegui and their associated counsel who are experienced and adequate Plaintiff's class counsel, as their attorneys individually and on behalf of the proposed plaintiffs class;

(iv) The proposed Class Representatives have no interest adverse to other members of the class;

(v) The proposed Class Representative have suffered the same harm as the class; and

e. Benefits of Class Action

22. Common questions of law or fact predominate over any questions affecting only individual members. The substantive issues that control the outcome of the litigation are:

(i) Whether and how KB Home and its successors, assigns, subsidiaries, parents, partners, affiliates or related companies are prohibited from requiring an agreement that compels binding arbitration of consumer claims and disputes;

(ii) Whether and how KB Home requires agreements that provide for such binding arbitration.

23. These common issues will predominate in the trial on the merits of this case. These issues are common to all members of the Plaintiff Class. In addition, a class action in this case is superior to other available methods for the fair and efficient adjudication of the controversy because individual class members lack the resources to bring the action for themselves, and because the relief sought is in the form of action for Declaratory relief, coupled with the resulting predominate need for a permanent injunction that will benefit all members of the Plaintiff Class, as well as benefiting those tens of thousands of consumers who would otherwise likely be future victims of the KB Home Scheme; which makes it economically unfeasible and unlikely to result in the fair and efficient administration of justice if these tens of thousands of individual cases were filed and tried on an individual basis.

G. TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

24. Plaintiff and those similarly situated will suffer irreparable harm if KB Home and its successors, assigns, subsidiaries, parents, partners, affiliates or related companies, and those acting in concert with them are not immediately restrained and enjoined during the pendency of this case. KB Home continues daily to deny warranty and repair responsibilities to its consumer customers daily across the United States based on KB Home's wrongful claim that the consumer 'can not sue KB Home' and that the consumer is forced to submit to 'binding arbitration' due to KB Home's inclusion of the illegal 'binding arbitration' clauses in the form purchase agreement and form warranty

agreements as described hereinabove. (Plaintiff's Exhibit 9, the letter from KB Home counsel dated 12/18/02).

25. There is no adequate remedy at law as KB Home misleads home buyers as to their legal rights and remedies and preclude any consumer from asserting their legal remedy by use of the illegal 'binding arbitration' provision in its contracts. Further, as demonstrated by the evidence attached to this Complaint, there is a substantial likelihood Plaintiff and Plaintiff's Class will prevail on the merits of this case. There is no excuse or legitimate reason why KB Home is not compelled as a matter of law with the Permanent Injunction made a part of the 1991 federal Court Order and the 1979 FTC Consent Decree.

26. The threatened harm of KB Home daily misrepresenting the legal rights and remedies of consumers far outweighs the harm a temporary restraining order and subsequent preliminary injunction would cause KB Home. KB Home has actual awareness of their legal obligations under the FTC Consent Decree, but choose to flagrantly ignore and violate their responsibilities daily, to the harm of thousands of consumers across the country.

27. Issuance of a temporary restraining order and subsequent preliminary injunction by this court is in the public interest. Comity and law enforcement are in the public interest. Protection of American consumers from an unscrupulous multinational conglomerate, and enforcement of federal regulatory actions and prior federal court Order's is likewise in the public interest. The issuance of a temporary restraining order and subsequent preliminary injunction in this case would immediately allow consumers to know their true legal rights and redress their complaints, if necessary, in accordance with established law and a system of justice designed to protect the public interest.

28. Plaintiff is prepared to post bond as deemed appropriate by the Court for issuance of a temporary restraining order and subsequent preliminary injunction.

29. Plaintiff requests the Court to issue an immediate temporary restraining order, and subsequently a preliminary injunction, restraining KB Home and its successors, assigns, subsidiaries, parents, partners, affiliates or related companies from: (a.) claiming that any consumer they have sold a home to is subject to any agreement that requires 'binding arbitration', (b.) seeking to require 'binding arbitration' in relation to any consumer's complaints concerning any matter related to the purchase or ownership of a KB Home (c.) asserting any claim that 'binding arbitration' may be insisted upon by KB Home and its successors, assigns, subsidiaries, parents, partners, affiliates or related companies in relation to any sale of any home to any consumer in the United States and (d.) distribution of any documents to consumers which assert a right to binding arbitration.

30. Plaintiff requests that this Court set this matter for hearing on the request for a temporary restraining order at the earliest possible time and, after hearing, issue an immediate temporary restraining order and subsequently a preliminary injunction as requested herein.

H. PERMANENT INJUNCTION

31. KB Home through its various corporate and other business forms have, as alleged hereinabove, acted and refused to act in a manner generally applicable to the Plaintiff's Class, thereby making appropriate final injunctive relief in the manner of a permanent injunction with respect to the class as a whole pursuant to Federal Rule of Civil Procedure 23(b)(2). Plaintiff requests entry of such a Permanent Injunction, enjoining KB Home and its successors, assigns, subsidiaries, parents, partners, affiliates or related companies from using, requiring, threatening or taking action to enforce any agreement,

warranty or purchase/sale contract to the extent the same purports to authorize KB Home to compel binding arbitration of any consumer dispute or complaint.

32. Plaintiff's Class will suffer irreparable harm, damage, and injury unless the acts and conduct of KB Home, hereinabove complained of, are permanently enjoined, because, not only will each class member be misled as to their legal rights and remedies but will also be subject to KB Home's further threat of binding arbitration of any consumer dispute or complaint. The same is true of other unsuspecting KB Home buyers in the future if use, requirement and threat of enforcement of these illegal contract terms are not stopped. Absent the issuance of a Permanent Injunction by this Court, KB Home will continue to use these illegal contract provisions to mislead, threaten and coerce its consumer customers into abandoning their rights relative to their consumer disputes with KB Home or its successors, assigns, subsidiaries, parents, partners, affiliates or related companies over the construction and fraudulent building and sales practices of KB Home; home purchasers, and new home buyers who are not class members presently, will continue to be victimized by KB Home's 'Binding Arbitration Scheme'.

I. ATTORNEYS FEES

33. The Plaintiff, individually and on behalf of the Nationwide Class of all persons similarly situated in the United States hereby seek recovery of their and the proposed Plaintiff Class' members attorney's fees pursuant to FED. R. CIV. P. 23.

J. PRAYER

WHEREFORE, PREMISES CONSIDERED, Timothy Pruitt, on behalf of himself and all other persons similarly situated in the United States, pray for the following relief:

- a. That the Court certify this case pursuant to Fed. R. Civ. P. 23(b)(2) as a Nationwide Class Action, appointing Timothy Pruitt as plaintiff class representative and appointing Alice Oliver-Parrott, David H. Burrow,

Robert L. Collins and Maria Teresa Arguindegui as Plaintiff's Class Counsel, and that the case then be styled "The KB HOME BINDING ARBITRATION Litigation";

- b. That the Court issue a Temporary Restraining Order and subsequently a Temporary and Permanent Injunction, enjoining the KB Home from continuing the policies and practices that constitute the KB Home Binding Arbitration Scheme complained of in this petition;
- c. That the Court declare all binding arbitration provisions contained in any document, contract, warranty or agreement of KB Home or any of its representatives, successors, assigns, subsidiaries, parents, partners, affiliates or related companies illegal, void and unenforceable;
- d. That the Court award the Plaintiff and Plaintiff's Class all costs of suit;
- e. That the Court award all class members and counsel their reasonable attorney fees; and for
- f. Such other relief, at law or equity as Plaintiff and Plaintiff's Class may show themselves justly entitled.

Respectfully Submitted,

BURROW & PARROTT, L.L.P.

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ATTORNEYS FOR PLAINTIFF

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KB HOME - LAREDO, L.P.)

VERIFICATION

STATE OF TEXAS §
COUNTY OF _____ §

On this day, Alice Oliver-Parrott appeared before me, the undersigned notary public. After I administered an oath to her, upon her oath, she said that she read Plaintiff's Original Complaint and that the general facts stated in it are within her personal knowledge and are true and correct, and that upon information and belief, all facts are true and correct. Additionally, all exhibits are true and correct copies of the originals.

Alice Oliver-Parrott

SWORN TO and SUBSCRIBED before me by Alice Oliver-Parrott on _____, 2003.

Notary Public in and for
the State of Texas