

OCT-11-2006(WED) 13:30 One Legal

(FAX)916 446 2111

P.002/012

10/11/06 WED 12:28 FAX 8288381712

BERDING & WEIL

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

OCT 11 2006

JOHN MENDES
EXECUTIVE OFFICER & CLERK

By:  Deputy

1 Tyler P. Berding, Esq., State Bar No. 60567
2 Jeffrey B. Carphina, Esq., State Bar No. 98488
3 Steven R. Weinmann, Esq., State Bar No. 190936
4 Allison L. Andersen, Esq., State Bar No. 221383
5 **BERDING & WEIL LLP**
6 3240 Stone Valley Road West
7 Alamo, California 94507
8 Telephone: 925/838-2090
9 Facsimile: 925/820-3592

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

12 Wendy Smolich, on behalf of herself and all
13 others similarly situated,

14 Plaintiff,

15 vs.

16 Meritage Homes of California, Inc., and
17 DOES 1-10, Inclusive,

18 Defendants.

No. **SCV 20090**

**COMPLAINT FOR BREACH OF
CONTRACT, NEGLIGENT
MISREPRESENTATION AND
INTENTIONAL MISREPRESENTATION**

JURY TRIAL DEMANDED

19 Comes now Plaintiff Wendy Smolich, on behalf of herself and all others similarly situated
20 (hereinafter "Plaintiff") and on information and belief, demands a jury trial in this class action
21 based on the following allegations:

GENERAL ALLEGATIONS

22 1. Plaintiff owns a home in a development located in the town of Lincoln, California,
23 known as "Foskett Ranch" (hereafter "Foskett Ranch").

24 2. At all times relevant herein, Defendant Meritage Homes of California, Inc.
25 ("Meritage") was and is a California corporation, having its principal place of business in
26 Scottsdale, Arizona and also doing business in Sacramento, California. Defendant Meritage
27 Homes was the title owner of record of Plaintiff's home at the time of sale to Plaintiff.
28

**COMPLAINT FOR BREACH OF CONTRACT,
NEGLIGENT MISREPRESENTATION AND
INTENTIONAL MISREPRESENTATION**

-1-

Berding & Weil LLP
Attorneys at Law
1000 California Street, Suite 1000
San Francisco, CA 94108

BY FAX

10828061.tif-10/11/2006 1:30:49 PM

1 3. Defendants DOES 1 through 10 inclusive were the officers, agents, employees,
2 partners and/or subsidiaries of Meritage, and were involved in the construction, and promotion of
3 Foscett Ranch, and the subsequent marketing and sale of the subject home to Plaintiff.

4 4. Plaintiff is unaware of the true names and capacities of the fictitiously named
5 Defendants, but believes that they are somehow responsible for the injuries sustained and
6 therefore sues defendants by such fictitious names. Plaintiff will move to amend the Complaint
7 to show their true names and capacities when they have been determined.

8 5. At all times herein relevant, Defendant Meritage and the Doe Defendants were the
9 agents, employees, principals, successors, partners and/or joint venturers of each other, acting
10 within the course and scope of such representation, agency, employment, partnership and/or
11 venture. In doing the things herein alleged, each of the above named defendants were acting with
12 the knowledge, consent and approval of each of the other Defendants and Defendants are
13 therefore jointly and severally liable for the injuries sustained.

14 6. Defendant Meritage purchased, constructed or caused to be constructed, inspected,
15 repaired, and promoted the real property improvements, consisting of one and two-story wood
16 frame residential buildings (the "Properties"). Defendant Meritage continued to own and operate
17 the Properties from some time after substantial completion until their respective sales to Plaintiff
18 and the other homeowners in the Foscett Ranch development.

19 7. In or about April, 2005, Defendant agreed to sell, and Plaintiff agreed to purchase,
20 the real property and improvements at 201 Dodd Place, Lincoln, California, which is and has
21 been Plaintiff's residence and that of her family since November, 2005.

22 8. The Plaintiff Class consists of all persons who purchased and still own homes
23 located within the Foscett Ranch development, which were built by Defendant Meritage Homes.

24 9. Defendant Meritage knew that Foscett Ranch abutted a lumber mill known as the
25 Sierra Pacific sawmill (the "Sawmill"), but neither Meritage nor any of the Doe defendants
26 disclosed to Plaintiff prior to her purchase of the property, or at any time, that the Sawmill ran
27 night shifts and that the noise from its operation would be continuous and disruptive to the quiet
28 enjoyment of her home.

