

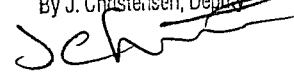
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

JUN 18 2008

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By J. Christensen, Deputy



9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF PLACER

11 DOUGLAS A. PAUTSCH, JR.

12 Plaintiff,

13 v.

14 CENTEX CORPORATION, a foreign
15 corporation; CENTEX HOMES, a general
16 partnership; and DOES 1 through 10, inclusive,

17 Defendants.

Case No. **SCV 23080**

COMPLAINT FOR DAMAGES

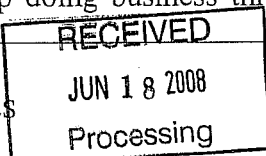
1. Breach of Contract
2. Failure to Pay All Wages Earned
3. Unfair Business Practices

DEMAND FOR JURY TRIAL

18 COMES NOW, Plaintiff Douglas A. Pautsch, Jr., and alleges and complains
19 against Defendants Centex Corporation, Centex Homes, and DOES 1 through 10, and each of
20 them, as follows:

21 **FACTS COMMON TO ALL CAUSES OF ACTION**

- 22 1. Plaintiff Douglas A. Pautsch, Jr. ("Plaintiff") is an individual who resides
23 and is employed in Placer County, California.
- 24 2. Defendant Centex Corporation. ("Centex Corporation") is, and at all times
25 relevant was, a corporation doing business throughout the State of California, including Placer
26 County. Centex Corporation is an employer as defined by the California Labor Code.
- 27 3. Defendant Centex Homes ("Centex Homes") is, and at all times relevant
28 was, a general partnership doing business throughout the State of California, including Placer



1 County. Centex Homes is an employer as defined by the California Labor Code. Plaintiff is
2 informed and believes and thereon alleges that Centex Homes is affiliated with Centex
3 Corporation.

4 4. Plaintiff is ignorant of the true names and capacities of defendants sued
5 herein as DOES 1 through 10, inclusive, and therefore sues said defendants by such fictitious
6 names. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
7 defendants is legally responsible in some manner for Plaintiff's injuries and damages. Plaintiff
8 will amend this Complaint to allege the true names of said defendants when they are ascertained.

9 5. Plaintiff is informed and believes, and thereon alleges, that at all times
10 mentioned herein, he was employed by Centex Corporation and Centex Homes as joint employers
11 and that each such Defendant and their employees were the agents, servants and/or employees of
12 the other Defendant and acted pursuant to a common plan and/or within the scope of said agency
13 or employment, and that each Defendant authorized and/or ratified the other Defendant's actions.
14 Defendants Centex Corporation and Centex Homes are hereinafter collectively referred to as
15 "Centex".

16 6. In approximately January 1998, Centex hired Plaintiff to be a Division
17 Controller for the Sacramento Division. Throughout his employment, Plaintiff received regular
18 raises and promotions. On April 1, 2006, Plaintiff was promoted to the position of Division
19 President for Centex' Sacramento Division. In June 2007, Plaintiff was promoted to the position
20 of Division President for the Sacramento and Reno Divisions. In April 2008, Plaintiff was again
21 promoted, this time to the position of Division President of the Sacramento, Reno and Bay Area
22 Divisions.

23 7. During a Western Region Division President's meeting in the fall of 2006,
24 Joseph Bosch, Senior Vice President of Human Resources of Centex, and Penn King, Director of
25 Executive Compensation of Centex, presented a completely new bonus plan to the Division
26 Presidents. In the past, Division Presidents were paid a bonus essentially based on a percentage
27 of Division earnings based on certain metrics. It was the same bonus plan for every Division
28 President. Under the new bonus plan, each Division President would essentially be provided

1 targets that were Division specific. Bosch and King stated that there were essentially four (4)
2 areas that were going to be measured and each of these would be independent of each other. In
3 addition, each Division President would be given a target bonus based on these metrics. Bosch
4 and King explained that the targets were going to be much lower than the bonuses many of the
5 Division Presidents had received in the past, but the new metrics would not be tied directly to
6 earnings. In other words, even if a Division lost money, the Division President could still earn a
7 bonus based on achieving the Division specific metrics, three of which were not tied directly to
8 earnings. During the summer of 2007, there were various other meetings that discussed this new
9 approach to the bonus plan and it was made clear at these meetings that each of the metrics were
10 independent of each other.

11 8. During the summer of 2007, Plaintiff was provided a written bonus plan
12 (the "Bonus Plan") for the 2008 fiscal year (April 1, 2007 to March 31, 2008). The target bonus
13 amount for Plaintiff was originally \$300,000, but it was increased to \$500,000 in September 2007
14 after Plaintiff assumed the responsibility for the Reno Region. This Bonus Plan was consistent
15 with the representations made by Joe Bosch and Penn King concerning the then-upcoming bonus
16 plan. The Bonus Plan set forth Plaintiff's target bonus and the four metrics that would be used to
17 calculate the actual bonus earned. Each of those metrics was independent of one another. This
18 bonus was not discretionary. Plaintiff was owed a bonus if he met any one of the four metrics set
19 forth in the Bonus Plan. The bonus owed was readily calculable based on the formulas set forth
20 in the Bonus Plan. Plaintiff met a number of these metrics and was owed a bonus in the amount
21 of \$455,000 pursuant to the Bonus Plan.

22 9. Centex, however, refused to pay the entire bonus owed to Plaintiff pursuant
23 to the Bonus Plan. Centex Corporation Chairman and Chief Executive Officer Tim Eller falsely
24 claimed that the bonus was discretionary and stated Plaintiff's bonus was being reduced based on
25 the Company's financial losses. In breach of the Bonus Plan, Centex paid only \$100,000 of the
26 total amount owed to Plaintiff under the Bonus Plan. As a result, Centex currently owes Plaintiff
27 \$355,000 pursuant to the Bonus Plan, which was due on or about June 6, 2008.

28

1 **FIRST CAUSE OF ACTION**
2 **Breach of Written Contract**
3 **(Against Defendants Centex Corporation, Centex Homes and Does 1 through 10)**

4 10. Plaintiff incorporates herein by reference the allegations contained in
5 Paragraphs 1 through 9 as though fully set forth herein.

6 11. Centex and Does 1 through 10 represented and promised to Plaintiff in
7 writing and orally that Defendants would pay Plaintiff a bonus based on four metrics that would
8 be used to calculate the actual bonus earned, with each of those metrics independent of one
9 another. Centex' agreement to pay Plaintiff a bonus was set forth in writing in the Bonus Plan.
10 The Bonus Plan constituted a binding and enforceable contract between the parties.

11 12. At all relevant times, Plaintiff fully and competently performed all of his
12 obligations as an employee of Centex, and met the conditions set forth in the Bonus Plan to earn a
13 bonus in the amount of \$455,000.

14 13. Defendants breached this contract by wrongfully refusing to pay Plaintiff
15 \$355,000 owing and due Plaintiff pursuant to the Bonus Plan.

16 **SECOND CAUSE OF ACTION**
17 **Failure to Pay All Wages**
18 **(Against Defendants Centex Corporation, Centex Homes and Does 1 through 10)**

19 14. Plaintiff incorporates herein by reference the allegations contained in
20 Paragraphs 1 through 9 as though fully set forth herein.

21 15. Labor Code section 204 requires Defendants to pay Plaintiff all of his
22 wages (including bonuses) when they become owing and due. Labor Code sections 221 and 400
23 prohibit Defendants from taking from Plaintiff any of his earned wages and prohibit Defendants
24 from secretly paying Plaintiff a lesser amount of wages than what is owing and due.

25 16. Defendants failed and refused to pay Plaintiff all of his wages (including
26 bonuses) when they became owing and due in violation of the Labor Code.

27 17. As a direct result of Defendants' conduct as alleged herein, Plaintiff is
28 entitled to an award for all of his unpaid wages, plus interest thereon.

18 18. As a further proximate result of Defendants' failure pay Plaintiff all of his
19 earned wages, Plaintiff has been forced to retain counsel to enforce his rights, and is entitled to

1 recover pursuant to Labor Code section 218.5 his costs and attorneys' fees he has incurred and
2 will incur in connection with this legal action, in an amount to be determined after trial.

3 **THIRD CAUSE OF ACTION**
4 **Unfair Business Practices**
5 **(Against Defendants Centex Corporation, Centex Homes and Does 1 through 10)**

6 19. PLAINTIFF incorporates herein by reference the allegations contained in
7 Paragraphs 1 through 18 as though fully set forth herein.

8 20. California Business and Professions Code sections 17200 et seq. prohibits
9 unfair competition in the form of any unlawful, unfair, deceptive or fraudulent business practices.

10 21. Beginning at an exact date unknown to Plaintiff, Defendants have
11 committed unlawful acts as defined by the California Business and Professions Code sections
12 17200 et seq. Defendants have engaged in unlawful and unfair business practices including, but
13 not limited to, the following: breaching their bonus agreements with their employees and failing
14 to pay employees all earned wages when they become owing and due, including bonuses.

15 22. Due to these unfair, unlawful and/or deceitful business practices,
16 Defendants have gained a competitive advantage over other comparable businesses doing
17 business in the State of California.

18 23. The acts alleged herein constitute continuing and ongoing unlawful
19 activities prohibited by the Business and Professions Code, justifying the issuance of an
20 injunction. Plaintiff requests the court to issue an injunction prohibiting Defendants in engaging
21 in the unfair, unlawful and deceptive acts alleged herein.

22 24. As a direct result of Defendants' unlawful conduct as herein alleged,
23 Defendants have been unjustly enriched.

24 25. Pursuant to the Business and Professions Code, Plaintiff, on behalf of
25 himself and all other current and former employees of Defendants, requests restitution and/or
26 disgorgement of all sums wrongfully retained by Defendants.

27 26. As a further proximate result of Defendants' unlawful conduct, Plaintiff
28 has been forced to retain counsel to enforce his rights and the rights of others, and is entitled to

1 recover pursuant to the Business and Professions Code his costs and attorneys' fees he has
2 incurred and will incur in connection with this legal action, in an amount to be determined after
3 trial.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff Douglas A. Pautsch, Jr. prays for judgment against
6 Defendants, and each of them, as follows:

7 1. For a money judgment representing compensatory damages for all
8 consequential and incidental financial losses due to Defendants' unlawful actions, including but
9 not limited to lost wages and certain other expenses and losses, according to proof at trial.

10 2. For all available relief under the Business and Professions Code, including
11 but not limited to restitution, disgorgement of profits, and a preliminary and permanent injunction
12 ordering Defendants to cease the unlawful and unfair business practices by Defendants against
13 Plaintiff and other current and former employees.

14 3. For costs of suit incurred herein.

15 4. For attorneys' fees pursuant to Labor Code section 218.5 and the Business
16 and Professions Code.

17 5. For prejudgment and post judgment interest.

18 6. For all penalties recoverable under the Labor Code.

19 7. For all other relief that is just and proper.

20 Date: June 17, 2008

BASHAM PARKER LLP

21
22 By: 

GARY R. BASHAM

Attorneys for Plaintiff
DOUGLAS A. PAUTSCH, JR.

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DEMAND FOR JURY TRIAL

Plaintiff Douglas A. Pautsch, Jr., hereby demands a trial by jury as provided by California Code of Civil Procedure section 631.

Date: June 17 2008

BASHAM PARKER LLP

By: 

GARY R. BASHAM

Attorneys for Plaintiff
DOUGLAS A. PAUTSCH, JR.