

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No. 08-60111-CIV-GRAHAM/TORRES

Robert D. Dance, et al. Individually and on)
Behalf of All other Similarly Situated,)
)
Plaintiffs,)
)
vs.)
)
LEVITT CORPORATION (*d/b/a*)
WOODBRIIDGE HOLDING)
CORPORATION), ALAN B. LEVAN and)
GEORGE P. SCANLON,)
)
Defendants.)
)
)
_____)

**AMENDED COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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SUMMARY OF THE ACTION

1. Lead Plaintiff, Robotti & Company, LLC and Robotti & Company Advisors, LLC, brings this securities fraud action as a class action on behalf of all other persons or entities who purchased or acquired the securities of Levitt Corporation¹ (“Levitt” or “Company”) during the period January 31, 2007 through and including August 14, 2007, inclusive (the “Class Period”), against Levitt and certain of its officers and/or directors for violations of the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Lead Plaintiff has alleged the following based upon the investigation of Lead Plaintiff’s counsel, which included a review of United States Securities and Exchange Commission (“SEC”) filings by Levitt, as well as regulatory filings and reports, securities analysts’ reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and Lead Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

3. Levitt is a Fort Lauderdale, Florida based homebuilder and real estate company that builds and sells single-family attached and detached homes in the United States, primarily in the Southeast (Florida, South Carolina, Georgia and Tennessee), with a high concentration of inventory in the State of Florida. The standard base price of Levitt homes varies by geography between \$110,000 and \$650,000. Levitt is the parent company of Levitt and Sons (“LAS” or “Levitt and Sons”), Bowden Homes and Core Communities.

4. Levitt and Sons, America’s first builder of planned suburban communities, is best known for creating New York’s Levittown, Long Island and has built approximately 200,000

¹ On or about May 22, 2007, Levitt Corporation changed its name to Woodbridge Holdings Corporation. As of May 27, 2007, the Company’s stock trades on the New York Stock Exchange under the symbol WDG (formerly LEV).

homes over the last 77 years. Levitt and Sons developed single and multi-family home communities for active adults and families in Florida, Georgia, South Carolina, and Tennessee.

5. Throughout the Class Period, Defendants misrepresented Levitt's financial health through false financial reports, by falsifying the rapidly declining value of its subsidiary Levitt and Sons.

6. On January 31, 2007, Alan Levan ("Levan"), Chief Executive Officer and Chairman of the Board at Levitt, announced a merger agreement ("Merger") between Building Foremost Companies Financial Corporation ("BFC") and Levitt. Pursuant to the terms of the Merger, both BFC and Levitt were entitled to terminate the Merger if the Merger was not consummated by July 31, 2007; provided, however, that BFC was entitled to extend this termination date to a date not later than October 1, 2007 on certain conditions by providing written notice of such extension to Levitt by July 15, 2007. On July 11, 2007, BFC provided written notice to Levitt of its election to extend the above-mentioned termination date to October 1, 2007.

7. Defendants knew the statements and representations they released into the market during the class period were false and misleading. According to several confidential witnesses, although senior management requested updated financial statements regarding each development project, financials were released to the public without receiving or reviewing those updated financial reports.

8. Throughout the Class Period, defendants pursued a course of deceptive conduct in which they blame the decline in the Company's business on market factors, falsely representing that their business performance was declining due to market factors largely outside of their control. While the market factors affected all homebuilders during the Class Period, Levitt's

business was faring worse than most of its competitors due to poor management decisions to purchase an increasing amount of land at times when the land market had reached peak prices and in areas where the peaks were highest, namely Florida. As the housing bubble began to deflate, defendants were aware of the position in which these misguided business decisions left the Company, and in order to conceal the irreparable harm done, defendants blamed the slow business on market factors that all homebuilders were facing, implying they were no worse off than others. The investing public only learned that Levitt was faring much worse than the competition toward the end of the Class Period.

9. But for defendants' deceptive course of conduct, the market would have learned of the true financial health of the Company and immediately adjusted the trading price of the Company's publicly traded securities accordingly. However, defendants' false and misleading statements regarding the Company's financial health allowed for the gradual decline in Levitt's securities during the Class Period.

10. The Company-specific adverse information that was withheld from the market throughout the Class Period allowed the Company's publicly-traded securities to trade at artificially inflated levels.

11. To avoid a sudden collapse in stock price, defendants pursued a course of deception in which they attempted to slowly ease the bad news into the market. Defendants' were not only intentionally deceiving the investing public as to the Company's health, but also their customers who purchased homes in uncompleted communities that defendants knew were likely to drop in value and eventually be abandoned and sold off to the highest bidder. These same customers were enticed to give Levitt significant unsecured deposits that Levitt used to support its working capital needs. As a result of defendants' deception, many of these customers

are poised to lose their life savings in the Levitt and Sons' bankruptcy. In addition, defendants were deceiving contractors about their ability to pay for work completed on Levitt projects. According to a Confidential Witness ("CW") 4 several subcontractors were notified that they would not be paid for various projects near completion of their work. As a result, Levitt and Sons began negotiating with these subcontractors to see if they would accept 30% of what they were owed. As revelations of the true value of the Company were leaked to the market over the course of the Class Period, defendants' fraudulent concealment of the poor financial status of the Company became known and proximately caused enormous damages to the investors who purchased the inflated Levitt securities during the Class Period.

12. During the Class Period, senior executive officers and/or directors of Levitt specifically, Alan Levan and Executive Vice President George P. Scanlon ("Scanlon"), were privy to confidential and proprietary information concerning Levitt, its operations, finances, financial condition and present and future business prospects. Defendants also had access to material adverse non-public information concerning Levitt, as discussed in detail below. Because of their positions with Levitt, the defendants had access to non-public information about its business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and/or board of directors meetings and committees thereof, and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

13. Defendants are liable as direct participants in the wrongs complained of herein. In addition, the defendants, by reason of their status as senior executive officers and/or directors, were “controlling persons” within the meaning of Section 20(a) of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the defendants were able to and did, directly or indirectly, control the conduct of Levitt's business.

14. Defendants, because of their positions with the Company, controlled and/or possessed the authority to control the contents of its reports, press releases and presentations to securities analysts and through them, to the investing public. Defendants were provided with copies of the Company's reports and press releases, alleged herein to be misleading, prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, defendants had the opportunity to commit the fraudulent acts alleged herein.

15. As senior executive officers and/or directors and as controlling persons of a publicly traded company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the New York Stock Exchange (“NYSE”) and governed by the federal securities laws, defendants had a duty to promptly disseminate accurate and truthful information with respect to Levitt's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of Levitt's common stock would be based upon truthful and accurate information. The defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

16. Defendants are liable as participants in a fraudulent scheme and course of conduct which operated as a fraud or deceit on purchasers of Levitt's common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Levitt's business, operations, management and the intrinsic value of Levitt's securities; and (ii) caused Plaintiff and members of the Class (defined below) to purchase Levitt's common stock at artificially inflated prices.

JURISDICTION AND VENUE

17. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC [17C.F.R. §240.10b-5].

18. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 and Section 27 of the Exchange Act.

19. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391 (b). Levitt maintains its executive offices and principle place of business in Fort Lauderdale, Florida. Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District.

20. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

I. PLAINTIFFS

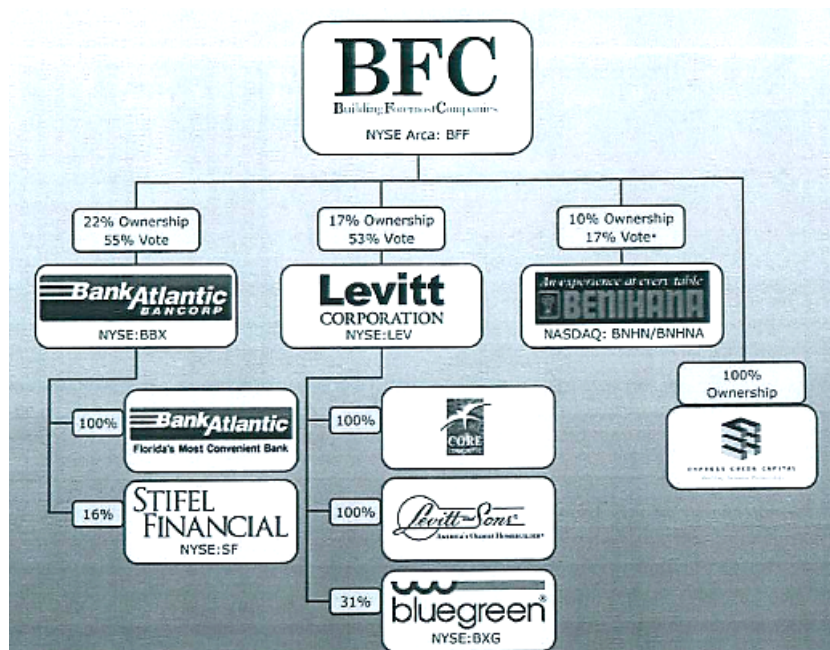
21. On July 8, 2008, the Honorable Donald L. Graham appointed Robotti & Company, LLC and Robotti & Company Advisors, LLC as Lead Plaintiff. Lead Plaintiff Robotti & Company, LLC and Robotti & Company Advisors, LLC acquired 432,650 shares of Levitt stock, on behalf of their advisory clients and discretionary accounts, at artificially inflated prices during the Class Period and have been damaged thereby.

II. DEFENDANTS

A. Levitt

22. BFC Financial Corporation is a diversified holding company based in Fort Lauderdale, Florida. BFC has a 17% ownership and a 53% voting interest in Levitt. Levitt is the parent company of Levitt and Sons, Bowden Homes, and Core Communities. BFC also has a 22% ownership and a 55% voting interest in BankAtlantic Corporation (“BankAtlantic”). BankAtlantic provides retail and commercial banking services in Florida. See figure 1.

Figure 1



23. Defendant Levitt together with its subsidiaries, operates as a homebuilding and real estate development company in the Southeastern United States. As previously noted, on May 22, 2008 Levitt changed its name to Woodbridge Holdings Corp. and on May 27, 2008 its New York Stock Exchange symbol changed from “LEV” to “WDG”.

B. Individual Defendants

24. Defendant Alan B. Levan is and, at all relevant times, was the Chairman and Chief Executive Officer (“CEO”) of Levitt. Defendant Levan is also the Chairman and CEO of BankAtlantic Bancorp (“BankAtlantic”) and the Chairman and CEO of BFC. During the Class Period, Defendant Levan signed the Company’s Forms 10-K and 10-Q, was quoted in Company press releases, and participated in conference calls with securities and market analysts. Defendant Levan is responsible for the materially false and misleading statements complained of herein. Defendant Levan also certified Levitt’s Forms 10-K and 10-Q during the Class Period pursuant to Sections 302 and 906 of the Sarbanes-Oxley. As an executive officer of the Company, Defendant Levan was responsible for the day-to-day operations of the Company.

25. Defendant George P. Scanlon was at all relevant times, Chief Financial Officer (“CFO”) and Executive Vice President of Levitt. During the Class Period up to his resignation in January 2008, Defendant Scanlon signed the Company’s SEC filings, including, but not limited to, Levitt Forms 10-K, 10-Q, and 8-K, and participated in conference calls with securities and market analysts. Defendant Scanlon is responsible for the materially false and misleading statements complained of herein. As a senior executive officer of the Company, Scanlon was responsible for day-to-day operations of the Company and his behavior is central to Levitt’s misconduct.

III. CONFIDENTIAL WITNESSES

26. CW 1 was employed at Levitt and Sons for 15 years until June 2007. CW1's responsibilities at Levitt and sons up to January 2006 included preparing and updating *pro formas*, and using those *pro formas* as the main tool in analyzing asset impairments. CW 1 was re-hired as a consultant in mid-July 2007 for the express purpose of updating the *pro formas* for Levitt and Sons development projects during the Class Period.

27. CW 2 was employed at Levitt and Sons from May 2006 until September 2007. CW 2, as a member of the marketing department, was responsible for determining the pricing of products and homes built by Levitt and Sons.

28. CW 3 was employed at Levitt and Sons as a financial analyst beginning in the first quarter of 2006. CW 3 was responsible for consolidating *pro formas* and building budget templates, as well as compiling monthly presentations that were taken to banks to obtain cash or loans.

29. CW 4 was employed at Levitt and Sons in construction services for Southeast Florida during the Class Period. During most of CW 4's employment, CW 4 reported to the Senior Vice President ("SVP") of Construction Services. The SVP of Construction Services reported to Levitt and Sons' Chief Operating Officer. CW 4 was responsible for overseeing all aspects of the design, architecture and purchasing for the Southeastern Florida region. CW 4 was also responsible for creating and maintaining the budgets for the region, which included the cost of design and the cost of materials.

30. CW 5 was a sales and marketing director for Levitt and Sons in Florida and South Carolina. CW 5 reported to Regional President of the Coastal region, as well as Vice President of Sales in the Boca Raton, Florida corporate office. The Regional President and Vice President

of Sales reported to President of Levitt and Sons, Elliot Weiner, who was replaced by Seth Wise in mid-2006.

31. CW 6 was employed by Levitt and Sons as a regional controller in Jacksonville, Florida, from June 2006 to February 2008. CW 6 reported to Chief Accounting Officer of Levitt, Jeanne Prayther, who reported to defendant George Scanlon. CW 6 processed and input invoices for the region and performed research to verify if work had been completed on a certain project or if subcontractors inquired about payment from Levitt and Sons. CW 6 was responsible in providing reports to managers in sales and production in the region.

32. CW 7, as a regional VP of customer care at Levitt and Sons, was responsible for customer service in Central Florida between August 2005 and September 2006. CW 7 traveled to development sites to oversee customer service managers and customer service associates within the region. CW 7 was responsible for dealing with customers who threatened litigation or who had already filed actions. CW 7 also dealt with damage control surrounding customers who had gone to the press to report problems with construction at Levitt and Sons. CW 7 reported to Division President Robert Hudson who reported to the President of Levitt and Sons, Elliot Weiner.

BACKGROUND

33. Defendant Levitt was founded in 1982. Together with its subsidiaries, the Company operates as a homebuilding and real estate development company in the Southeastern United States. Levitt is the parent company of wholly-owned subsidiaries, Levitt and Sons, LLC and Core Communities. Founded in 1929, LAS is based in Fort Lauderdale, Florida. Levitt and Sons is best known for developing and building New York's Levittown, Long Island and has built approximately 200,000 homes over the last 77 years.

34. Levitt Corporation acquired Levitt and Sons in 1999. LAS is a developer of single home and town home communities for active adults and families in Florida, Georgia, South Carolina and Tennessee. LAS operates in two reportable segments, Primary Homebuilding and Tennessee Homebuilding. On November 9, 2007, LAS and substantially all of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Florida.

35. Core Communities develops master-planned communities in Florida and South Carolina.

36. The vast majority of Levitt's real estate inventory is located in Florida.

DEFENDANTS' MISREPRESENTATIONS

IV. MISREPRESENTATION OF THE TRUE FINANCIAL CONDITION OF LEVITT CORPORATION

A. Overview

37. The Company's Levitt and Sons subsidiary was in much worse financial condition than publicly represented. Levitt and Sons was saddled with excessive amounts of unneeded and overpriced land which would not be feasible to develop for some time. According to CW 5 Levitt and Sons had been reckless in the amount of land purchased for future development. Most of the land that was purchased for the Coastal Region was never developed. Furthermore, Levitt and Sons was struggling to complete projects it had already begun and in many instances was failing to complete construction of homes that it had already sold as it lacked the financial resources to follow through on its contracts. As a result, homebuyers lost deposits for the homes built in those developments. Additionally, land had been purchased to build over 400 homes that never made it past the land stage.

38. As a result of the foregoing, the Company was materially overstating its financial results because it was failing to timely record an impairment in the value of its homebuilding inventory at Levitt and Sons. Although defendants acknowledged the difficult housing market, their public statements failed to advise investors of the true financial condition of the Company.

39. GAAP, as set forth in Financial Accounting Standards Board (“FASB”) Statement of Concepts (“Concepts”) No. 5, requires that an entity record a loss when it becomes apparent that an asset has been impaired. *See* Concepts No. 5, ¶87. According to GAAP, as set forth in Statement of Financial Accounting Standard “SFAS” No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, paragraph 7, “impairment is the condition that exists when the carrying amount of a long-lived asset (asset group) exceeds its fair value.”

40. Under SFAS No. 144, ¶8 an entity shall test for recoverability of long-lived assets *whenever* events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

When to Test a Long-Lived Asset for Recoverability

A long-lived asset (asset group) shall be tested for recoverability whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. The following are examples of such events or changes in circumstances:

- a. ***A significant decrease in the market price of a long-lived asset (asset group)***
- b. A significant adverse change in the extent or manner in which a long-lived asset (asset group) is being used or in its physical condition
- c. A significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset (asset group), including an adverse action or assessment by a regulator.
- d. ***An accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset (asset group)***
- e. ***A current-period operating cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group).***

- f. *A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.*

41. FAS 144 provides guidance on how companies must recognize impairments of the value of long-lived assets that they report in their financial statements. Companies initially report the fair market value of their assets on their balance sheets. However, a change in circumstances, such as those listed above, may affect the value of the reported asset. Companies must then use the FAS 144 framework to recognize a decline in long-term asset value on their balance sheets.

42. When changed circumstances affect the value of an asset, FAS requires a company to test whether it needs to account for an impairment in value. The test requires a company to determine whether the current value reported on the balance sheet exceeds the total amount of undiscounted future cash flows expected to result from the use and eventual disposition of the asset. If the book value exceeds the undiscounted future value, then an impairment must be recognized.

43. The United States housing market entered a downturn in 2005. “House Price Appreciation Slows From Record-Setting Pace...” December 1, 2005, Office of Federal Housing Enterprise Oversight. A downturn in the housing market is a result of slowing demand due to over supply, a weakening economy, tighter credit conditions, or other economic factors. By Levitt’s own admission “the real estate industry... is cyclical in nature.” 2Q 2007 at 23.

44. The recent downturn beginning 2005 represented the change in circumstances that would have triggered FAS 144 and required Levitt to begin testing for impairment.

B. The Misrepresentations and Omissions

1. The January 31, 2007 Press Releases

45. The Class Period begins on January 31, 2007. On that date, Levitt issued a press release announcing that it agreed to merge with BFC. As part of the agreement, BFC agreed to pay 2.27 shares of BFC stock for each share of Levitt stock. Based on BFC stock's closing price on the previous trading day, the proposed transaction valued Levitt stock at \$ 14.41 per share – a premium of 32 percent over the closing price of \$ 10.88 per share on the previous trading day. Defendant Levan, commenting on the merger, stated, in pertinent part, as follows:

This merger is a win-win situation for both Levitt and BFC. This tax-free transaction is intended to provide Levitt shareholders a significant market premium, while preserving their opportunity to participate in any future home building recovery. This transaction also provides Levitt additional strength and resources during a very challenging time. BFC, in turn, increases its investment in a company with a tremendous past and a bright long term future when the housing markets return to favor. It is a key addition to our portfolio of growth companies.

46. Also, on January 31, 2007, Levitt issued a press release announcing its preliminary financial results for the fourth quarter and year-end 2006, the period ended December 31, 2006. For the quarter, the Company reported revenues at its Homebuilding Division of \$143.6 million. With regard to the Company's financial results, the press release continued, in pertinent part, as follows:

In Levitt's Homebuilding Division, revenues from home sales for the fourth quarter were \$143.6 million and there were 426 homes delivered in the period with a margin of 19.6% (margin percentage defined as sales of real estate minus cost of sales of real estate divided by sales of real estate). Backlog at December 31, 2006 was 1,248 units with a sales value of \$438.2 million. New home orders totaled 204 in the quarter, but 122 cancellations resulted in net home orders of 82. Separately, the Company has entered into sales contracts to dispose of certain properties and is expected to realize a pre-tax loss of \$9.0 million upon disposition, and will write-off \$ 1.4 million in pre-acquisition costs for properties which will not be acquired. These charges will be included in the final fourth quarter results. In addition, the Company is currently evaluating its homebuilding projects to determine the need for any additional impairment reserve. Since the work is not yet completed, the Company is unable to provide an estimate of any additional required reserve at this time.

47. **The January 31, 2007 press releases** announcing the merger and preliminary financial statements **are false** because they fail to disclose the rapidly deteriorating financial condition of Levitt. Specifically, Levitt's LAS subsidiary had rapidly declining cash flows, impaired land inventory, and was in violation or in danger of violating key covenants with its lenders. Also Levan's statement regarding the unavailability of impairment numbers for the quarter is misleading since he admits in the conference call, discussed below, that Levitt is constantly reviewing for impairment.

48. The real estate market's downturn had fully matured by mid 2006, and certainly by early 2007, especially in Florida. Buyers of homes began waiting for prices to fall, and Levitt was experiencing a rising cancellation rate, longer sales cycle, declining backlog and declining demand for its homes. CWs described the impact of the Florida real estate market downturn on Levitt and Sons' business:

(a) CW 5 stated that Levitt and Sons was having difficulty achieving its sales forecasts while he was at the company, especially in the regions with developments in Florida. He explained that the Florida real estate market was in crisis, while the developments in Georgia and South Carolina were not having as much difficulty meeting forecasts. In the Coastal region, as a new sales region with two developments, the region was typically expected to sell twenty homes each month and expected to achieve ten to twelve closings each month. When quantifying the amount by which the actual sales varied from the forecasts, he said that for the first six months of 2006, his region was expected to close approximately 50 homes but only ten homes actually closed.

(b) Due to the considerable difference between the actual sales and the forecasts in 2006, CW 5 said that the company began closing homes that were not actually

finished. CW 5 explained that the sales forecasts included sales and closings. He described a sale as when a purchaser signed a contract and a deposit had been received for the home. He recalled that a closing was defined as completed construction and the homebuyer had agreed to move into the home. CW 5 further elaborated that sales forecasts were tracked in an Excel spreadsheet. The spreadsheet contained the forecast for all of the regions, such that CW could see forecasts for the other regions.

(c) CW 4 stated that he definitely felt and saw the financial struggle of Levitt and Sons beginning in December 2006. CW 4 stated that there were only several home sales or as few as one home sale in Southeastern Florida for the last quarter of 2006. He said that there were so few sales it was a noticeable decline. He said the decline was a sign that people were not buying homes and it did not seem that the company could expect much future cash flow from the selling of homes.

49. Levitt has been a homebuilding and real estate development company with activities throughout the Southeastern United States since 1982. Levitt has survived several housing slowdowns over the years. As such, Levitt management had no reason to believe this downturn would be temporary. This is especially true given the length and degree of the recent run up in home prices and the constant barrage of indicators citing an extended slump in the housing sector.

50. The downturn has been greater in markets that had previously experienced exceptional growth. Florida is one of those markets. On average Florida house prices have fallen by 25-40%. Levitt's exposure to Florida is significant since "the majority of [its] inventory [90% of its projects] is located in the State of Florida." 2Q 2007 at 23. By Levitt's own admission, "Florida will lag the overall market recovery..." (2006 10-K at 45). "What we

know about Florida is it is always longer and uglier than you would hope on the downside, and it's always more robust on the upside.” (January 31, 2007 conference call).

2. The January 31, 2007 Conference Call

51. Additionally, on January 31, 2007, Levitt and BFC held a conference call to discuss the merger. In describing the merger Levan states: “The transaction is slightly below book value, which allows for some protection to BFC, in the event there are write-downs or impairments, as many homebuilders are reporting today, with regard to large areas of land mass in this current recession.”

52. During the same January 31, 2007 conference call, Levan responded to questions from several analysts asking why the deal was good for BFC shareholders:

The likelihood of impairments at the Levitt side over the next few quarters is probably high, only from the standpoint that we have seen other homebuilders who have taken huge impairment hits. It is incumbent upon Levitt to make sure that the valuation of its assets on its books are appropriate.

The way the transaction is designed, it creates about a \$90 million cushion between the book value and the price that BFC is paying for it. So, clearly, significantly higher than the market value as of yesterday; \$90 million less than book value. If BFC has missed the mark here and is overpaying for that number, we think it comes out in the wash.

In response to a similar question from another analyst Levan assures investors:

Again, I think that there is approximately \$90 million of negative goodwill that is built into this transaction. So that gives BFC \$90 million of cushion of impairments, operating losses, opportunity loss, internal rate of returns until the market comes back.

In response to a question from a shareholder, Levan enthusiastically trumpets the virtues and benefits of the merger:

Levitt can continue to pursue its strategic plan and build shareholder value at the same time. So it is really a win-win for everybody. It's a win for Levitt. It's a win for BFC. It's a win for shareholders of both companies. It just seems like a transaction that makes a whole lot of sense.

In response to an analyst's question regarding Levitt's large debt, Levan states:

That we are doing valuations constantly of our land of our real estate [sic]. Where there are impairments, then you need to make sure that the banks stay within their ratios of appropriate lending guidelines.

In response to an analyst's question about land values, Levan states:

I am not sure that we are prepared on this call to give you that detail. We disclosed a little bit of information on Levitt's fourth quarter, but not very much because we are still working on those numbers.

53. **The January 31, 2007 Conference Call statements are false.** The statement "It is incumbent upon Levitt to make sure that the valuation of its assets on its books are appropriate" is false because Levitt had not been complying with GAAP in testing for impairment. This statement is false as demonstrated by the information provided by the CWs set forth below in ¶¶65(a)-(h).

54. The statements referencing the "\$90 million cushion" are false for two reasons. First, Levan was assuring investors that even if there were future impairments and/or losses of approximately \$90 million, he expected BFC and Levitt to go forward with the merger. Following this statement, Levitt reported impairment of over \$30 million for Q4 2006, \$282,000 for Q1 2007, and over \$63 million for Q2 2007, for a total of over \$93 million. Shortly following the release of the Q2 2007 financial results, BFC terminated the Merger Agreement, even though the impairments/loses were in line with Levan's "\$90 million cushion" assurances. Furthermore, in his August 14, 2007 Letter as BFC chairman, to the Levitt Board and Special Committee, what Levan had earlier assured was a "cushion" on January 31, 2007, he had called "adverse changes" on August 14, 2007. Therefore, Levan falsely assured investors of the merger. Second, the statement is false because Levitt's land inventories were already significantly impaired, but not disclosed because Levitt was not properly accounting for, or reporting

impairment of its inventories. In reality, a significant portion of the “\$90 million cushion” had already been consumed. Therefore, the merger was already in jeopardy of not being consummated.

55. The “win-win” statement is false because the transaction was not good for everyone. Levan misrepresents the true value of Levitt and its deepening problems with impaired land inventories, declining cash flow, and lender covenant violations. The statement regarding the “valuations constantly of our land” is false because Levitt did not have the information necessary to conduct these valuations, because the *pro forma* statements were not complete or updated, as demonstrated by the information provided by the CWs set forth above on ¶¶65(a)-(h).

56. The statement “I am not sure that we are prepared on this call to give you that detail [impairment results]” is false because Levan knew of the impairment, and the cooling effect it would have on the merger, and intentionally concealed the information from the market.

3. The March 7, 2007 Press Release

57. On March 7, 2007, Levitt issued a press release announcing its financial results for the fourth quarter and year-end of 2006, the period ended December 31, 2006. For the fourth quarter, the Company reported a net loss of \$10.7 million, or a diluted loss per share of \$0.54, and total revenues of \$181.4 million. Defendant Levan, commenting on the results, stated, in pertinent part, as follows:

In the event of prolonged weak demand, additional capital will be necessary to strengthen the Company's balance sheet, and various alternative strategies are being explored to ensure the Company maintains sufficient liquidity in this uncertain market. This need contributed to the Board's decision to accept a merger offer from BFC Financial Corporation (NYSE Area: BFF) in January. We remain optimistic about the long term opportunities available in the homebuilding market, and Florida in particular, but must remain vigilant in preserving resources in the event of an extended downturn and having the financial strength to exploit the opportunities when the market returns to normalized growth.

58. **The March 7, 2007 press release is false** because it is incomplete and fails to disclose material facts relating to LAS' severe financial distress. For example, LAS was experiencing negative cash flow, declining land values, and increasing speculative inventory, all of which had contributed to the violation of bank covenants, resulting in an extreme risk of accelerated debt payments and creating an emergency for additional capital.

4. The May 9, 2007 Press Release

59. On May 9, 2007, Levitt issued a press release announcing its financial results for the first quarter of 2007, the period ended March 31, 2007. For the quarter, the Company reported net income of \$1.3 million, or \$0.06 per diluted share, and total revenues of \$144.2 million. Defendant Levan, commenting on the results, stated, in pertinent part, as follows:

The weakness in the homebuilding industry continued during the first quarter of 2007, particularly in Florida, and during the period we took a number of steps in response to these market conditions. We adopted a more aggressive pricing practice in most of our Florida communities, reducing the prices of our homes with the goal of improving conversion rates. We continued to invest in our sales and marketing initiatives in an attempt to increase traffic and conversions, and we are pleased that the early results from these efforts have been positive. Additionally, we initiated and pursued expense management initiatives with a focus on reducing operating costs without affecting our product, customer service standards or core operating platform. We analyzed our overhead structure, and in February 2007 we reduced our headcount by 89 employees or approximately 16% of our homebuilding workforce. In the event the current adverse market continues for a longer period or further deepens, we have explored various alternative strategies and taken steps to strengthen the company's balance sheet and maintain our liquidity. This process resulted in the Board's decision to accept a merger offer from BFC Financial Corporation in January 2007. As an alternative strategy, in the event shareholders do not approve the merger, the Company will seek to raise additional capital through an equity rights offering to its existing shareholders.

60. **The May 9, 2007 press release is false.** The statement "We continued to invest in our sales and marketing initiatives in an attempt to increase traffic and conversions, and we are pleased that the early results from these efforts have been positive" is false because the

results were far from positive. Levitt eked out a small profit in Q1 because it failed to record the impairment of its land inventories. For Q1 Levitt impaired only \$282,000, relating to bulk home sales that had yet to take place, as well as a land sale. Also, the statement “we initiated and pursued expense management initiatives with a focus on reducing operating costs without affecting our product, customer service standards or core operating platform” is false because it fails to disclose that Levitt only achieved the cost savings through use of inferior materials and by squeezing contractors, who naturally cut corners in order to eke out their own profits. According to CW 7 many of the defects were the result of poor choice of materials or poor use of good materials; overall, he stated the problems were the result of “shoddy work.” He also stated that Levitt was aware of the types of materials being purchased and used to build the home. Specifically, he stated that Wiener and Wise were aware of poor use of materials. CW 7 explained that when he first started working for the company, he worked directly for Wiener handling litigation and bad press that were a direct result of poor choice of materials. For example, he said that company was oftentimes using a material called particle OSB for outside of structures when it was intended for use inside of structures. Additionally, CW 4 stated that in July 2007, LAS executives notified subcontractors to which the company owed money that LAS would not be paying.

61. Also, other homebuilders recorded significant impairments during Q1 2007. Specifically the ones to which Levitt makes reference in its bankruptcy filing as experiencing similar difficulty, Pulte Homes and Lennar, recorded \$62.4 million and \$48.3 million in Q1 2007 land inventory impairments, respectively.

5. The Q1 2007 10-Q Financial Statement

62. Also on May 9, 2007 Levitt issued its 10-Q for the first quarter ended March 31, 2007. Under “Inventory of Real Estate” the Company states:

The company monitors projected future cash flows of inventory on a quarterly basis to determine if additional impairment charges are needed. In the three months ended March 31st, 2007 impairment charges amounted to approximately \$282,000 due to estimated price reduction on some bulk home sales that are expected to occur in the second quarter of 2007 as well as to adjust the reserve for a land sale that occurred in April 2007 reflecting the final terms of the contract.

63. **The financial results for Q1 2007** are false because Levitt failed to properly account for its impaired land and homebuilding inventories.

64. For Q1 2007 Levitt recorded an impairment of only \$282,000, related to bulk home sales and a land sale. Yet, by Q2 2007, impairment swelled to \$63 million.

65. Levitt stated to investors that it was testing inventories for impairment on a quarterly basis. This statement is false as demonstrated by the information provided by the Confidential Witnesses:

(a) CW 2 stated that CEO and Defendant **Alan Levan** had been asking for, but not receiving, *pro formas* for the development projects at Levitt and Sons for approximately the entire 16 months of CW 2's tenure at the company. CW 2 said that Levan requested that Seth Wise, President of Levitt and/or a subsidiary of Levitt, provide the *pro formas* and after waiting several months without receiving the *pro formas*, Levan hired a forensic accounting firm to compile the *pro formas*.

(b) CW 2 described a *pro forma* as a financial statement for each development project that would include the purchase price for the land, the cost to develop the land, the cost of improvements, the anticipated selling price for the homes and the expected profit.

(c) CW 1 described *pro formas* as the main tool he used as CFO for Levitt and Sons to determine asset impairments. When he was CFO (prior to January 2006), he said that he prepared and updated *pro formas* at least semi-annually, but if there was evidence of an issue with a project he would prepare an updated *pro forma* before a six-month period had

passed. For instance, he said that if actual sales differed greatly than the forecasted sales, it was evidence of a change in the market, which necessitated re-evaluating the *pro formas* sooner. For example, he said that if there was a small change, like 20 homes were forecasted to sell in a month and 18 were actually sold, then an updated *pro forma* was probably not needed. In contrast, if only 4 houses sold, then there was evidence of a change and the *pro forma* should be revisited.

(d) As further evidence that Levitt and Sons' *pro formas* needed to be but had not been updated, CW 2 cited to the Brooksville development in Florida (between Tampa and Orlando) as an example of the changing market. Levitt and Sons purchased 930 lots for development at Brooksville and had only sold twenty even after reducing the price of the homes twice.

(e) CW 3 stated that he tried to begin restructuring the *pro formas* however, he said that there were so many formulaic links he determined it would take approximately six months to rebuild. At that time, CW 3 had other job responsibilities and said he would rebuild the *pro formas* if he could only focus on that for six months. However, CW 3 was not given that time, so the *pro formas* were not reconstructed while he was employed at LAS.

(f) CW 2 characterized the lack of updated *pro formas* as a very large problem at the company.

(g) In the second week of July 2007, Levitt Corporation brought back CW 1 as a consultant for the express purpose of updating the *pro formas* for the Levitt and Sons development projects. CW 1 ended this consulting arrangement in early November 2007. CW 1 stated that when he returned as a consultant, it had been more than six months since the *pro*

formas were last updated. From the best of his recollection, CW 1 believed that the *pro formas* were last updated either in September 2006, or at the latest, December 2006.

(h) While working as a consultant between mid-July and early November 2007, CW 1 used the updated *pro formas* to estimate the asset impairment for each of the Levitt and Sons projects (as he had done earlier as Levitt’s CFO).

66. A comparison of the 10-Q “Inventory of Real Estate” sections for Q1 and Q2 also supports falsity. Q1 lacks any analysis of the impairment testing Levitt claims to be doing, and coincidentally did not record any impairment to land inventory. In contrast, Q2 contains an analysis and a resulting \$63 million impairment. This contrast, in corroboration with the CW statements, suggests that Levitt did not test for impairment during Q1 2007.

Q1 2007

Inventory of Real Estate

Inventory of real estate is summarized as follows (in thousands):

	March 31, 2007	December 31, 2006
Land and land development costs	\$ 586,305	566,459
Construction costs	166,464	172,682
Capitalized interest	55,883	47,752
Other costs	35,946	35,147
	\$ 844,598	822,040

Reflected in the above inventory balance are approximately \$32.5 million and \$33.3 million of impairment reserves at March 31, 2007 and December 31, 2006, respectively. Due to the downturn in the homebuilding market, the Company monitors projected future cash flows of inventory on a quarterly basis to determine if additional impairment charges are needed. In the three months ended March 31, 2007 impairment charges amounted to approximately \$282,000 due to estimated price reductions on some bulk homes sales that are expected to occur in the second quarter of 2007 as well as to adjust the reserve for a land sale that occurred in April 2007 reflecting the final terms of the contract.

Q2 2007

Inventory of Real Estate

Inventory of real estate is summarized as follows (in thousands):

	June 30, 2007	December 31, 2006
Land and land development costs	\$ 526,958	566,459
Construction costs	149,104	172,682
Capitalized interest	63,432	47,752
Other costs	36,717	35,147
	\$ 774,211	822,040

The above inventory balances have been reduced by approximately \$94.7 million and \$33.3 million of impairment reserves at June 30, 2007 and December 31, 2006, respectively. Due to the downturn in the homebuilding market, the Company monitors projected future cash flows from inventory on a quarterly basis to determine if the impairment reserves are adequate.

At June 30, 2007, the Company reviewed the real estate inventory for impairment on a project-by-project basis in accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets ("SFAS No. 144"). In accordance with the Company's standard practices, and due to significant price reduction and sales incentives offered in the second quarter of 2007 and continued deterioration in the homebuilding market, the Company assessed all projects, which included homebuilding projects and land held for development and sale, to identify underperforming projects and land investments with carrying amounts that may not be recoverable through future cash flows. The Company measures the recoverability of assets by comparing the carrying amount of an asset to its estimated future undiscounted cash flows.

Each project was assessed individually and as a result, the assumptions used to derive future cash flows varied by project. For land held for sale that is being remarketed, contract proposals from third parties or market assessments were used. For Homebuilding projects, a variety of assumptions were used. These key assumptions are dependent on project-specific conditions and are inherently uncertain. The factors that may influence the assumptions included:

- Historical project performance, including traffic trends and conversions rates, sales, selling prices including incentive and discount programs, and cancellation trends,
- Competitors' presence and their competitive actions
- Project specific attributes such as location desirability, market segment (active adult vs. family) and product type (single family detached vs. town home), and

- Current local market economic and demographic conditions, including interest rates, in-migration trends and job growth, and related trends and forecasts.

The Company modified cash flow assumptions used at year end and at March 31, 2007 based on local market conditions and project-specific factors that changed during the three months ended June 30, 2007. Assumptions were updated to reflect current market trends, current pricing strategies including any sales incentives or discounts, and recent sales, delivery and cancellation trends. After considering these factors, the Company projected future cash flows for the balance of the project until the project is expected to be sold out. If the resulting carrying amount of the project exceeded the estimated undiscounted cash flows from the project, an impairment charge was recognized to reduce the carrying value of the project to fair value. Fair value is determined by applying a risk based discount rate (currently 15%) to the future estimated cash flows for each project.

At June 30, 2007 Levitt had 13 projects in the Tennessee Homebuilding segment with inventory available for sale. The projects in Tennessee are generally smaller and of a shorter duration than projects in other markets. These projects are expected to sell out through 2008. Levitt used certain assumptions in the impairment evaluation for the Tennessee projects at June 30, 2007 regarding projected sales prices, unit sales and margin percentage which resulted in projected negative margins at six projects ranging between (5.3%) and (67.2%). In addition, if there were projected losses in backlog on certain contracts entered into in the second quarter of 2007, the Company fully reserved for the projected loss on those contracts.

The Company's homebuilding projects in the Primary Homebuilding segment are generally larger than projects in the Tennessee Homebuilding segment and many are in the early stages of development. Accordingly, the projection for many projects will extend for four to seven years into the future, inherently increasing the uncertainty involved in the projection. Specific assumptions for the projected unit sales and margin percentage on delivered units for homebuilding projects excluding Tennessee include:

- Estimated average future sales prices were based on current sales prices with significant discounts and incentives continuing through 2009 followed by average sales price increases ranging from nominal to 4% in 2010 and beyond. Discounting activity is assumed to gradually diminish beginning in the second half of 2009;
- Estimated future construction and land development costs were kept relatively consistent throughout the entire project;
- Estimates of average (unweighted) gross margin percentages ranging between 8% and 11% in the early years and 14% and higher in 2011 and beyond;

- Estimated future sale rates were projected to decline in 2007 and 2008, with more than 50% of projects projected to average less than 80 units per year. Sales rates were projected to improve in 2009, with only 25% of projects selling less than 80 units per year, and then stabilizing beginning in 2010.

As a result of the above analysis, the Company recorded impairment charges in the three and six months ended June 30, 2007 for eight projects in the Primary Homebuilding segment and for ten projects in the Tennessee Homebuilding segment. During the three months ended June 30, 2007 and 2006 impairment charges which are included in cost of sales of real estate amounted to approximately \$63 million and \$4.7 million, respectively.

At June 30, 2007, total homebuilding inventory was \$586.9 million, of which \$183.6 million, or 31.3%, had recorded impairments. At the time these impairments were taken, inventory on those projects was recorded at estimated fair value which was below cost. The balance of the projects are recorded at cost. At December 31, 2006 total homebuilding inventory was \$664.6 million, of which \$113.6 million, or 17%, had recorded impairments. The balance was recorded at cost.

67. In its 10-Q for Q1 2007, Levitt reported “continued” and “further” deterioration in the homebuilding market, as well as “ongoing buyer concerns about the direction of the market” has led to “continued downward pricing pressure for residential homes and land.” Given the ongoing and continuing trend of the downturn, and the complete lack of any positive news or opposing trends in the housing market, especially in Florida, the impairment analysis for Q1 was false and misleading.

6. The July 30, 2007 Statement

68. On July 30, 2007, one day before the original merger termination date, and 15 days, following BFC’s option to extend the termination date to October 1, 2007, a spokeswoman for both Levitt and BFC, faulting the SEC for delaying the merger stated “That's pretty much what's going on-the back and forth with the SEC...Until they get that final approval they won't be able to put out a preliminary proxy. **But there's nothing else holding (the deal) up, other than the proxy.**”

69. **The July 30, 2007 Statement is false** because SEC approval was not the only issue holding up the merger. The original termination date of the merger was July 31, 2007. Under the merger agreement, BFC had the option to extend the termination date. On July 14, 2007, BFC wrote a letter to Levitt exercising its option to extend the termination date until October 1, 2007. BFC was concerned about the material adverse changes to Levitt's financial position, and the merger was unlikely. On August 14, 2007 BFC wrote a letter to Levitt announcing its decision to terminate the Merger. The letter states that BFC's decision was based on "the adverse changes which have occurred at Levitt since January." There is no mention of delay by the SEC as a contributing factor. The statement on July 30th is also false because it failed to state true reasons for the delay such as the prior financial conditions of LAS. Therefore the July 30th statement falsely assured investors about the Merger, and continued to maintain Levitt's inflated stock price.

7. The August 9, 2007 Press Release

70. On August 9, 2007, after the markets closed, Levitt issued a press release announcing its financial results for the second quarter of 2007, the period ended June 30, 2007. For the quarter, the Company reported a net loss of \$58.1 million, or \$2.93 per diluted share, and total revenues of \$127.8 million. Defendant Levan, commenting on the results, stated, in pertinent part, as follows:

The housing market continued to weaken throughout the second quarter. New and existing home inventories have continued to increase nationally as a consequence of decreased consumer demand and reduced credit availability, leading to downward pressure on new order pricing throughout our markets. We believe that market conditions will continue to be challenging for the foreseeable future, and our quarter-end impairment evaluations reflect our current outlook for the market. Future impairments may also be necessary if the market does not strengthen.

As previously announced, on January 30, 2007 we entered into a merger agreement with BFC Financial Corporation ("BFC") which if consummated

would result in Levitt becoming a wholly-owned subsidiary of BFC. In 2007, Levitt has incurred net losses of \$57.1 million including pretax impairment charges associated with its homebuilding inventory of \$63.3 million. Levitt and Sons, our homebuilding subsidiary, has experienced material negative cash flow, which to date has been advanced by Levitt Corporation. Under the terms of Levitt and Sons' project financing, in addition to scheduled principal payments, cash payments are required at any time if a reappraisal of property reflects a valuation resulting in a loan to value ratio below required amounts. The merger agreement contains numerous conditions to the transaction and grants each party the right to terminate upon certain events. Such conditions include, among other things, receipt of various shareholder approvals, the absence of any material adverse change, the representations and warranties of each party being true and correct at the time of the merger, the operation of the businesses in the ordinary course and the previously delivered opinions of the financial advisors not being withdrawn. BFC has advised Levitt that it is reviewing the transaction to determine if it is willing to proceed with the transaction based on the current circumstances and events. In light of the above, and given our recent financial results, the current state of the real estate market and its capital requirements, Levitt is also reviewing how best to proceed. As previously announced, Levitt has indicated that in the event the merger did not go forward, it would pursue a rights offering to its shareholders in order to generate capital.

71. The August 9, 2007 statement is false because it fails to disclose material information. By this time, Levitt and Sons was in violation of financial covenants on its large debt load with several lenders and the debt payments were in danger of being accelerated.

72. Then, on August 15, 2007, the Company issued a press release announcing that the merger agreement with BFC Financial Corporation had been terminated.

Levitt Corporation (NYSE:LEV) (“Levitt”) announced today that it has received a notice from BFC Financial Corporation (NYSE Arca: BFF) (“BFC”) terminating the merger agreement between BFC and Levitt which was entered into in January 2007.

73. No further explanation was provided. The Company further announced that it would proceed with its previously announced rights offering.

C. Scierter

74. The Individual Defendants acted with scierter during the Class Period in that they (a) knew or were severely reckless in not knowing that the public documents and statements the

Company issued or disseminated were materially false and misleading; (b) knew or severely and recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and (c) knowingly or with severe recklessness substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws.

75. The Individual Defendants, by virtue of their receipt of information reflecting the improper and fraudulent behavior described herein and/or their failure to review information they had a duty to monitor, their actual issuance of and control over Levitt's materially false and misleading statements, and their association with the Company which made them privy to confidential proprietary information concerning the Company, were active, culpable, and primary participants in the fraudulent scheme alleged herein. The Individual Defendants knew or recklessly disregarded the materially false and misleading nature of the information they caused to be disseminated to the investing public.

76. The Individual Defendants also knew or recklessly disregarded that the misleading statements and omissions contained in Levitt's public statements during the Class Period would adversely affect the integrity of the market for the Company's securities and would cause the price of the Company's securities to be artificially inflated. In addition to the foregoing and other acts alleged herein, the following facts provide compelling evidence that the Individual Defendants acted with actual knowledge, or, at the very least, with severe recklessness.

77. Defendants knew or severely and recklessly disregarded that:

(a) generally accepted accounting principles require assessment of an asset's recoverability when impairment indicators exist;

(b) indicators of the impairment of Levitt's real estate inventory existed in 2006 and in the first quarter of 2007;

(c) assessment of the recoverability of Levitt's real estate inventory required complete and up to date *pro formas*;

(d) Levitt did not prepare up to date *pro formas* for its real estate inventory from September or December 2006 through mid-July 2007; and

(e) Levitt did not assess the recoverability of its real estate inventory from September or December 2006 through mid-July 2007.

1. Generally Accepted Accounting Principles Require Assessment of Recoverability When Impairment Indicators Exist

78. Under SFAS No. 144, ¶8 an entity shall test for recoverability of long-lived assets *whenever* events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. As set forth above in ¶40, the following are examples of such events or changes in circumstances:

- a. *A significant decrease in the market price of a long-lived asset (asset group)*
- d. *An accumulation of costs significantly in excess of the amount originally expected for the acquisition or construction of a long-lived asset (asset group)*
- e. *A current-period operating cash flow loss combined with a history of operating or cash flow losses or a projection or forecast that demonstrates continuing losses associated with the use of a long-lived asset (asset group).*
- f. *A current expectation that, more likely than not, a long-lived asset (asset group) will be sold or otherwise disposed of significantly before the end of its previously estimated useful life.*

2. Defendants Knew That Indicators Of The Impairment Of Levitt's Real Estate Inventory Existed In 2006 And In The First Quarter Of 2007

79. On November 8, 2006 during a conference call with analysts and investors, Levan admitted that several events or changes in circumstances existed which mandated that Levitt test its real estate inventory for recoverability:

The question is how long will this downturn, referred by some as a recession, last? We have seen forecasts from anywhere from 12 months to as long as four years. I don't think anybody is anticipating that it is going to turn around anytime in the next six to nine months. So, in any case, we're looking at a minimum 12-month horizon, and certainly longer than that...

And here, in Florida, it appears that the major brunt of these issues are affecting Florida. Unfortunately, Florida is where most of Levitt's inventory and operations are located...

Demand has slowed considerably. There are declining new orders...

It is costing us more to conduct our business. It costs more to generate the traffic to bring them into our sales center. We're spending more on advertising, outside brokers. It is costing us more in just the various ways that we generate marketing traffic into our business.

80. On the January 31, 2007 conference call, Levan admitted that current events and circumstances obligated Levitt to test its real estate inventory for recoverability:

The likelihood of impairments at the Levitt side over the next few quarters is probably high, only from the standpoint that we have seen other homebuilders who have taken huge impairment hits. It is incumbent upon Levitt to make sure that the valuation of its assets on its books are appropriate...

* * *

What we know about Florida is it is always longer and uglier than you would hope on the downside, and it's always more robust on the upside.

81. As of December 31 2006, the Homebuilding division was "experiencing a downward trend in the number of net orders." (2006 10-K at 69).

82. On March 1, 2007, in Levitt's 2006 10-K (signed by defendants Levan and Scanlon) defendants acknowledge the existence of additional circumstances mandating Levitt test its real estate inventory for impairment:

We significantly increased our land inventory during 2006, with our inventory of real estate increasing from \$611.3 million at December 31, 2005 to \$822.0 million at December 31, 2006. This substantial increase in our land holdings and concentration in Florida subjects us to a greater risk from declines in real estate values in our markets. Further, these newly acquired properties were purchased at a time when competition for land was very high, and accordingly these properties

may be more susceptible to impairment write downs in the current real estate environment...

The majority of our Homebuilding inventory was purchased during the peak of the historic high demand in the homebuilding market cycle and remains vulnerable to future impairments should market conditions not improve...

The slowdown in the housing market had led to increased sales incentives, increased pressure on margins, higher cancellation rates, increased advertising expenditures and broker commissions, and increased inventories. As a result, we expect our gross margin on home sales to be negatively impacted until market conditions, particularly in Florida, stabilize...

Demand for residential property in Florida, where the majority of our inventory is located, has declined.

83. All of these statements about the existence of significant events and facts that triggered FAS 144 and required Levitt to begin testing for impairment. These statements also demonstrate that Levan knew or was severely reckless in disregarding that Levitt's land and homebuilding inventories were impaired.

84. Defendants Levan and Scanlon were acutely aware of the downturn in the marketplace and the need to impair land inventory and speculative inventory (completed, but unsold homes) that they had acquired and/or built during the peak of the market.

85. According to CW 4, prices were increasing for copper, concrete, steel, aluminum, and gas – prices that LAS was paying for essentially “everything” it required for construction.

86. According to CWs 4 and 6 defendants had direct access to all of Levitt and Sons financial information, via the corporate J.D. Edwards software system, including reports tracking sales, construction starts, closings and costs.²

² The JD Edwards system is a software program used by most homebuilders to generate reports about operations, and financial and transactional data. Levitt introduced the system to its operation sometime in October 2006.

3. Defendants Knew That Assessment Of The Recoverability Of Levitt's Real Estate Inventory Required Complete And Up To Date *Pro Formas*

87. CW 2 described a *pro forma* as a financial statement for each development project that would include the purchase price for the land, the cost to develop the land, the cost of improvements, the anticipated selling price for the homes and the expected profit.

88. CW 1 described *pro formas* as the main tool he used as CFO for Levitt and Sons to determine asset impairments. When he was CFO (prior to January 2006), he said that he prepared and updated *pro formas* at least semi-annually, but if there was evidence of an issue with a project he would prepare an updated *pro forma* before a six-month period had passed. For instance, he said that if actual sales differed greatly than the forecasted sales, it was evidence of a change in the market, which necessitated re-evaluating the *pro formas* sooner. For example, he said that if there was a small change, like 20 homes were forecasted to sell in a month and 18 were actually sold, then an updated *pro forma* was probably not needed. In contrast, if only 4 houses sold, then there was evidence of a change and the *pro forma* should be revisited.

4. Defendants Knew That Levitt Did Not Prepare Up To Date *Pro Formas* From September or December 2006 Through mid- July 2007

89. CW 2 stated that CEO and Defendant **Alan Levan** had been asking for, but not receiving, *pro formas* for the development projects at Levitt and Sons for approximately her entire 16 month tenure at the company. CW 2 said that Levan requested that Wise provide the *pro formas* and after waiting several months without receiving the *pro formas*, Levan hired a forensic accounting firm to compile the *pro formas*.

90. According to CWs 1 and 2, Levitt's *pro forma* reports for the individual LAS developments were out-of-date. These *pro formas* included information about the purchase price for the land, the cost to develop the land, the cost of improvements, the anticipated selling price

for the homes, and the expected profit. The *pro formas*, which are essential at LAS to accurately conduct impairment tests, had not been updated as of mid-July 2007 since at least September or December of 2006.

91. As further evidence that Levitt and Sons *pro formas* needed to be but had not been updated, CW 2 cited to the Brooksville development in Florida (between Tampa and Orlando) as an example of the changing market. Levitt and Sons purchased 930 lots for development at Brooksville and had only sold twenty even after reducing the price of the homes twice.

92. CW 2 characterized the lack of updated *pro formas* as a very large problem at the company.

93. Because Levitt's disclosure and financial accounting system and personnel had not generated or updated *pro formas* since at least September or December of 2006, Levitt had to hire a forensic accounting firm between June and July of 2007 to update the *pro forma* statements at Levan's insistence. After the forensic accounting firm proved ineffective, in the second week of July 2007 Levitt re-hired CW 1 a former CFO of LAS, as a consultant to update the *pro formas* for the Levitt and Sons development projects. CW 1 ended this consulting arrangement in early November 2007. The forensic accounting firm was fired shortly thereafter.

94. CW 2 confirmed that Scanlon should have been aware of the need for *pro formas* and Levan's repeated unanswered requests for updated *pro formas*.

5. Defendants Knew That Levitt Did Not Assess The Recoverability Of Its Real Estate Inventory From September Or December Of 2006 Through Mid-July 2007

95. While working as a consultant between mid-July and early November 2007, CW 1 used the updated *pro formas* to estimate the asset impairment for each of the Levitt and Sons projects (as he had done earlier as Levitt's CFO).

96. CW 1 stated that when he returned as a consultant, it had been more than six months since the *pro formas* were last updated. From the best of his recollection, CW 1 believed that the *pro formas* were last updated either in September 2006, or at the latest, December 2006. It was only after mid-July 2007 that *pro formas* for each of Levitt's developments were updated, and thereafter that impairment analyses were performed to determine the recoverability of Levitt's real estate inventory, leading to impairment charges of over \$226 million.

97. Levitt recorded an impairment of \$34.3 million for 2006 (\$31.1 million in Q4), \$282,000 for Q1 2007, \$63 million for Q2 2007, and \$163.6 million for Q3 2007.

98. Further, as Defendants knew, Levitt's inventory acquisitions were highly leveraged. As of December 31, 2006, the debt to total capitalization was 64.7%. These loans were subject to covenants based on cash flow projections expected from the real estate inventories, as well as other financial indicators. An impairment would result in a violation of the minimum net worth covenants, debt-to-total capitalization covenants and/or other financial covenants. Consequently, Levitt would incur resistance and difficulty in raising necessary capital. In its Q1 2007 10-Q Levitt admits that:

At March 31, 2007 we were in compliance with all loan agreement financial covenants. The risk of additional impairments could adversely impact the subsidiary's net worth which would require additional capital... [n]egative earnings and the risk of additional impairments may cause noncompliance with financial covenants and result in defaults under our credit facilities.

99. As a direct result, if Levitt had timely recognized additional impairments in Q1 2007, Levitt would appear a less desirable target to BFC, it would become apparent that the merger would not be consummated, and Levitt's stock price, artificially inflated by the certainty of the merger, would sharply decline.

6. Violations of Levitt's Ethics Policy

100. The Individual Defendants had specific duties under Levitt's ethics policy. Levitt's 2006 and 2007 Forms 10-K included copies of the company's Code of Business Conduct and Ethics that were filed with the report. The ethics policy emphasized the "highest standards of personal and professional integrity in all aspects of their [company representatives] activities" with regard to legal and ethical standards. Specifically, the policy provided that:

1. Compliance with Laws, Rules and Regulations

Compliance with the laws, rules and regulations applicable to the Company [Levitt] is the foundation on which the Company's ethical standards are built. The Company's directors, officers and employees are expected to adhere to all such laws, rules and regulations, including insider trading laws.

2. Disclosure Obligations

- (a) All officers and employees who are involved in the Company's securities and regulatory disclosure processes must maintain familiarity with the disclosure requirements applicable to the Company under applicable federal and state laws, rules and regulations.
- (b) All directors, officers and employees must cooperate fully with the people responsible for preparing reports filed by the Company with the Securities and Exchange Commission ("SEC") and regulatory authorities and all other materials that are made available to the public to make sure those people are aware in a timely manner of all information that might have to be disclosed in those reports or other materials or that might affect the way in which information is disclosed in such reports or materials.
- (c) All directors, officers and employees shall strive to provide full, accurate, timely and understandable disclosure in the reports filed by the Company with the SEC.

3. Conflicts of Interest

- (a) Directors, officers and employees should avoid conflicts of interest or the appearance of conflicts of interest with the Company...

(paragraphs 4-7 omitted, due to non-relevance)

8. Protection and Proper Use of Company Assets

- (a) Directors, officers and employees will in all practicable ways protect the Company's assets and ensure their efficient use.
- (b) Directors, officers and employees will use the Company's assets only for the Company's legitimate business purposes.

9. Change in or Waiver of this Code

- (a) Any waiver of any provision of this Code must be approved by the Audit Committee, or if any of its members will be personally affected by the waiver, by a committee consisting entirely of independent directors (within the meaning of the New York Stock Exchange listing standards) who will not personally be affected by the waiver.
- (b) No waiver of any provision of this Code with regard to a director or executive officer will be effective until that waiver has been reported to the individual responsible for the preparation and filing with the SEC of the Company's reports on Form 8-K (or any successor to that form) or for disclosure on the Company's website in sufficient detail to enable that individual to prepare the appropriate disclosure with respect to the waiver.
- (c) Any change in or waiver of provisions of this Code will be promptly reported in filings with the SEC on Form 8-K or disclosed on the Company's website to the full extent required by the SEC's rules and by any applicable rules of any securities exchange or securities quotation system on which the Company's securities are listed or quoted.

10. Compliance

- (a) In accepting a position with the Company, each officer, director and employee becomes accountable for adhering to this code...

101. The Individual Defendants violated the Company's ethics policy throughout the Class Period by failing to comply with "applicable law, rules and regulations" e.g. by repeatedly violating GAAP accounting regulations by failing to accurately account for its impaired land and homebuilding inventories. This violation of the ethics policy is demonstrated by the information provided by the CWs set forth above at ¶¶65(a)-(h).

102. The Individual Defendants, all of whom were directors and/or officers during the Class Period, also violated the ethics policy by failing to “provide full, accurate, timely and understandable disclosure in the reports filed by the Company with the SEC.” As discussed in greater detail above, these defendants violated the ethics policy by knowingly failing to disclose accurate, material information to the public with regard to the rapidly deteriorating financial condition of Levitt, specifically LAS’ rapidly declining cash flow and impaired land inventory.

D. Impact

103. In response to the Company's announcements regarding its merger with BFC on January 31, 2007, the price of Levitt common stock rose \$3.28 per share, or 30%, to close at \$14.14 per share, on heavy trading volume.

104. Following the partial disclosures in Levitt’s August 9, 2007 press release, on the next trading day, shares of the Company's stock fell \$0.62 per share, or over 12%, to close at \$4.41 per share. Over the next two trading days, shares of the Company's stock fell an additional \$0.66 per share, or over 15%.

105. Following the partial disclosures in Levitt’s August 15, 2007 press release announcing the termination of the merger agreement, shares of the Company's stock fell \$0.79 per share, or over 21%, to close at \$2.96 per share.

V. MISREPRESENTATION OF THE RECOVERABILITY OF LEVITT CORPORATION’S LOANS TO LEVITT AND SONS

A. Overview

106. Prior to September 30, 2007, as stated in Levitt’s 2007 Q3 10-Q, Levitt Corporation loaned Levitt and Sons approximately \$84.3 million for the cash flow needs of its subsidiary. In its Q307 10-Q, the Company revealed that its loans and advances to Levitt and

Sons would not be recovered as the subsidiary lacked the financial resources to pay now and in the foreseeable future.

At September 30, 2007, Levitt Corporation had a negative investment in Levitt and Sons of \$88.2 million, after recording the impairment charges..., and there are outstanding advances due from Levitt and Sons of \$84.3 million at Levitt Corporation resulting in a negative investment of \$3.9 million.

107. Levitt knew or was severely reckless in disregarding this material fact well before the third quarter of 2007 and concealed it from the market, thereby artificially inflating Levitt's stock price.

B. The Omission

108. Following Levitt's partial disclosures in August 2007, Levitt revealed in a press release issued on October 11, 2007, after the markets closed, that it "expects to take pretax charges of approximately \$160-170 million associated with impairment charges on homebuilding inventory at its wholly owned subsidiary Levitt and Sons, and the write-off of its investment and loans made to Levitt and Sons." The Company stated that its decision to take a charge was based on the "continued deterioration of the homebuilding market and the belief that, based on market conditions for the foreseeable future, Levitt Corporation's investment and the loans made to LAS will likely not be recoverable through future cash flows."

109. Defendants intentionally concealed the unrecoverability of its loan to Levitt and Sons during the class period from its Q1 2007 and Q2 2007 financial results.

110. On November 9, 2007, Levitt announced that Levitt and Sons filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code.

C. Falsity and Scienter

111. Levitt first reported that its loans to Levitt and Sons were in jeopardy in its Q3 2007 10-Q. When it finally disclosed this information, the company reported that LAS was so

dependent on Levitt to meet its current cash needs that Levitt had advanced the subsidiary over \$75 million dollars. Prior to that date, Levitt had long recognized a severe downward trend in the home building market, including extremely high cancellation rates, longer sales cycles, increased selling costs, and rapidly declining demand.

112. Defendants knew or recklessly disregard that Levitt's loans to LAS were unrecoverable and concealed this from the market during the Class Period.

113. According to CW 4, a former VP of Construction Services for the Southeast Region, LAS' Southeast region had so few home sales in Q4 2006 that it was a noticeable decline.

114. According to CW 3, a former financial analyst at LAS who worked with the *pro forma* statements for the first 6 months of 2006, houses would sit unsold for as long as nine months.

115. By January 31, 2007, there was no denying that LAS was in trouble. The following exchange took place during the January 31, 2007 conference call:

JOHN LYNCH, ANALYST, [LYNCH] RESEARCH: Operations, we haven't spent any time on that. Has there been any significant change in the backlog composition and in the product types -- attached, detached -- that are important to the company now, say versus six months ago?

ALAN B. LEVAN: Yes, let me turn it over to -- John, thank you for that question. I am going to turn it over to Seth Wise to just give you a flavor for some of the things you have to do in a market like -- some of the things we are seeing in the market and some of the things you have to do in a market like this in order to survive and prosper as you go day to day. Seth?

SETH WISE, PRESIDENT, LEVITT CORPORATION: John, one of the things that we are challenged with, and you see that in the preliminary results that we put out this morning, is the cancellation activity that we see. We have a backlog of about 1,240 units, 1,248 units. Some of that backlog is going to end up as speculative inventory for us, because the cancellation activity, in many cases we don't see until they get very close to the closing table.

So we are challenged with that, and then that asset becomes inventory. We put it back on the floor for sale at margins that are significantly below what it was in backlog at. So that is something that we continue to face through the delivery of our backlog.

ALAN B. LEVAN: Seth, the percentage of cancellation that we're currently experiencing, do we have that number?

SETH WISE: Based on the fourth quarter, it was about 60%.

ALAN B. LEVAN: 16?

SETH WISE: Six zero.

ALAN B. LEVAN: 60, right; 60%.

JOHN LYNCH: Okay. In terms of geographic mix, would you say that Florida has been hurt more than the other markets?

SETH WISE: I would say absolutely. Florida, generally has been hit worse than other markets. For us it has been worse because that has been the largest part of our sales activity and our inventory over the last number of years.

The inventory is balancing today as we bring online our Atlanta market and open new communities there, and our South Carolina opportunities. But our backlog has historically been substantially Florida; and of course that has been where most of the pain has been and continues to be.

116. Defendants knew early on, even before the class period, that LAS was on a trend toward material negative cash flow, the very issue they later cite as being a reason for the unrecoverability of the loans. By their own admission, as alleged throughout the Complaint, Defendants knew that Florida was hit hardest by the slowdown in the housing market; that it always lagged behind the rest of the market in recovering from a downturn; and was trending toward greater negative territory.

117. Defendant's concealed the unrecoverability of the loan in hope that the merger would be consummated and they could then use BFC assets to help LAS survive the downturn. However, as shown above, the very idea of a merger was a misrepresentation, since had the true

financial position of Levitt been disclosed to the market, merger would not have been discussed, it's value would not have inflated the stock price, and shareholders would not have lost money upon the truth being disclosed to the market.

D. Impact

118. Following the October 11, 2007 press release, on the next trading day, shares of the Company's stock fell \$0.21 per share, or almost 8%, to close at \$2.48 per share.

EFFICIENT MARKET

119. The market for Levitt common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Levitt's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Levitt's common stock relying upon the integrity of the market price of Levitt's common stock and market information relating to Levitt, and have been damaged thereby.

MATERIALITY

120. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Levitt's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and misleading. These statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

121. All of the statements alleged herein to have been false, or have been omitted by either Scanlon or Levan and would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.

ADDITIONAL SCIENTER ALLEGATIONS

122. As alleged herein, Defendants acted with scienter in that Defendants: knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued disseminated to the investing public; and knowingly and substantially participated or acquiesced the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding Levitt, their control over, and/or receipt and/or modification of Levitt's allegedly materially misleading misstatements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Levitt, participated in the fraudulent scheme alleged herein.

LOSS CAUSATION

123. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused, or were a substantial contributing cause of, the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading statements about Levitt's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Levitt and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

124. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct which artificially inflated the prices of Levitt's common stock and operated as a fraud or deceit on Class Period purchasers of Levitt's common stock by failing to disclose: (i) the true value of its homebuilding inventory at Levitt and Sons, a subsidiary at Levitt; (ii) the ability of Levitt and Sons to repay money lent to it by Levitt; and (iii) the ability of Levitt and Sons to continue as a growing concern. When Defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, the price of Levitt's common stock fell precipitously as the prior artificial inflation was released. As a result of their purchases of Levitt's common stock during the Class Period, Plaintiff and the other Class members suffered economic loss, i.e., damages, under the federal securities laws.

125. As a direct result of Defendants' disclosures on May 15, 2007, August 9, 2007, and August 15, 2007, the price of Levitt common stock fell precipitously, falling by more than a collective \$6.00 per share, or approximately 70%. These removed the inflation from the price of Levitt common stock, causing real economic loss to investors who had purchased Levitt common stock during the Class Period.

126. The 70% decline in the price of Levitt common stock after these disclosures came to light was a direct result of the nature and extent of Defendants' fraud finally being revealed to investors and the market. The timing and magnitude of the price decline in Levitt common stock negates any inference that the loss suffered by Plaintiff and the other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the Defendants' fraudulent conduct. The economic loss, i.e., damages, suffered by Plaintiff and the other Class members was a direct result of Defendants' fraudulent scheme to artificially inflate the prices of Levitt common stock and the subsequent significant decline in the

value of Levitt common stock when Defendants' prior misrepresentations and other fraudulent conduct were revealed.

**APPLICABILITY OF PRESUMPTION OF RELIANCE:
FRAUD ON THE MARKET DOCTRINE**

127. At all relevant times, the market for Levitt's common stock was an efficient market for the following reasons, among others:

(a) Levitt common stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) as a regulated issuer, Levitt filed periodic public reports with the SEC and the NYSE;

(c) Levitt regularly communicated with public investors via established market communication mechanisms, including regular disseminations of press releases on the national circuits of major newswire services and other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Levitt was followed by several securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

128. As a result of the foregoing, the market for Levitt common stock promptly digested current information regarding Levitt from all publicly available sources and reflected such information in the prices of the stock. Under these circumstances, all purchasers of Levitt common stock during the Class Period suffered similar injury through their purchase of Levitt common stock at artificially inflated prices and a presumption of reliance applies.

NO SAFE HARBOR

129. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements were made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Levitt who knew that those statements were false when made.

LEAD PLAINTIFF’S CLASS ACTION ALLEGATIONS

130. Lead Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all those who purchased the common stock of Levitt between January 31, 2007 and August 14, 2007, inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

131. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Levitt common stock was actively traded on the NYSE. While the exact number of Class members is unknown to Lead Plaintiff at this time and

can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Levitt or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

132. Lead Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law complained of herein.

133. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation.

134. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and operations of Levitt;

(c) whether the price of Levitt common stock was artificially inflated during the Class Period; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

135. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I
**Violation of Section 10(b) of the Exchange Act Against and Rule 10b-5
Promulgated Thereunder Against All Defendants**

136. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

137. During the Class Period, Defendants disseminated or approved the materially false and misleading statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

138. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock during the Class Period.

139. Lead Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Levitt common stock. Lead Plaintiff and the Class would not have purchased Levitt common stock at the prices they paid, or

at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

140. As a direct and proximate result of Defendants' wrongful conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their purchases of Levitt common stock during the Class Period.

COUNT II
Violation of Section 20(a) of the Exchange Act Against the Individual Defendants

141. Lead Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

142. The Individual Defendants acted as controlling persons of Levitt within the meaning of Section 20(a) of the Exchange Act as alleged herein. By reason of their positions as officers and/or directors of Levitt, and their ownership of Levitt stock, the Individual Defendants had the power and authority to cause Levitt to engage in the wrongful conduct complained of herein. By reason of such conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act.

WHEREFORE, Lead Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action, certifying Lead Plaintiff as Class representative under Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding compensatory damages in favor of Lead Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: September 3, 2008

Respectfully submitted,

BERMAN DEVALERIO PEASE TABACCO
BURT & PUCILLO

/s/ Jay W. Eng

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jay W. Eng

Jay W. Eng

Robert D. Dance v. Levitt Corp., et al.
Case No. 08-cv-60111-DLG

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