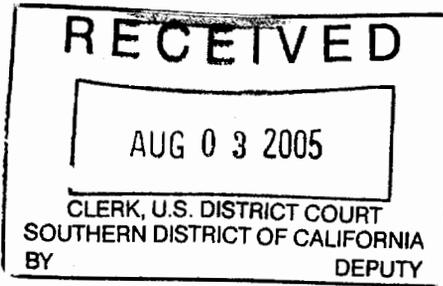


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CAROL C. LAM  
United States Attorney  
KAREN P. HEWITT  
Assistant U.S. Attorney  
Deputy Chief, Civil Division  
California State Bar No. 145309  
Office of the U.S. Attorney  
880 Front Street, Room 6293  
San Diego, CA 92101  
(619) 557-5610



Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

KB HOME (previously "Kaufman and  
Broad, Inc." and "Kaufman and Broad  
Home Corporation"),  
Defendant.

CIVIL ACTION NO. 91-0872K ~~(BTM)~~

WQH (POR)

MODIFIED CONSENT DECREE

WHEREAS, plaintiff, the United States of America (the "United States"), commenced this action on June 27, 1991 in this Court against Kaufman and Broad Home Corporation (later, KB Home), seeking relief for alleged violations of a final consent order to cease and desist issued by the Federal Trade Commission (the "Commission") on February 12, 1979 to respondent Kaufman and Broad, Inc., predecessor to Kaufman and Broad Home Corporation (the "Commission's Order"), attached hereto as Exhibit A;

WHEREAS, this Court entered a Consent Decree (the "Consent Decree") on July 2, 1991, requiring defendant Kaufman and Broad Home Corporation to pay a \$595,000 civil penalty and enjoining defendant, its successors and assigns, from violating any provision of the Commission's Order;

1           WHEREAS, pursuant to the Consent Decree, this Court retained jurisdiction for the  
2 purpose, *inter alia*, of enabling the parties to apply for further orders or directions regarding the  
3 Consent Decree;

4           WHEREAS, pursuant to the Consent Decree, defendant Kaufman and Broad Home  
5 Corporation paid the required civil penalty;

6           WHEREAS, defendant KB Home is the successor to respondent Kaufman and Broad, Inc.  
7 and defendant Kaufman and Broad Home Corporation and is therefore subject to the terms of the  
8 Commission's Order and the Consent Decree;

9           WHEREAS, Part III.B of the Commission's Order requires defendant KB Home to furnish  
10 new home purchasers with a warranty "that is substantially identical to the insurer's and the  
11 warrantor's undertaking in the Home Owners Warranty Corporation's Home Warranty Agreement  
12 (hereafter referred to as the 'HOW warranty') currently in use and attached hereto as Appendix A  
13 and incorporated by reference in this order, including the procedures for the settlement of disputes;"

14           WHEREAS, the HOW warranty attached to the Commission's Order provides for  
15 mandatory arbitration of warranty disputes with the result binding on defendant KB Home only and  
16 states that "No fee or deposit is required;"

17           WHEREAS, the Commission alleges that defendant KB Home has violated Part III.B of the  
18 Commission's Order by furnishing new home purchasers with warranties that:

- 19 (1) provided for arbitration of warranty disputes that is binding on homeowners; and  
20 (2) required homeowners to pay fees and costs to initiate and to conduct warranty dispute  
21 arbitration;

22           WHEREAS, the Commission alleges that defendant KB Home also has violated Part III.B  
23 of the Commission's Order by furnishing new home purchasers with purchase agreements that  
24 required binding arbitration of warranty disputes;

25           WHEREAS, defendant KB Home denies the Commission's allegations and states that it has  
26 been in compliance with the Commission's Order throughout the period, but is willing to amicably  
27 resolve the matter upon the terms and conditions set forth below;

28           WHEREAS, defendant KB Home states that on or before December 30, 2004, it sent to its

1 then current KB Home warranty holders and buyers in escrow letters attached hereto as Exhibits B  
2 and C, respectively, modifying and clarifying their warranties;

3 WHEREAS, Exhibit B informed current KB Home warranty holders and Exhibit C  
4 informed buyers of KB homes in escrow that:

- 5 (1) there is no fee or cost to them to initiate or conduct warranty dispute arbitration and they bear  
6 no obligation to pay the fees and expenses of the arbitrator for such arbitrations;  
7 (2) except in the case of those home owners who elected a twelve year warranty, the arbitration of  
8 warranty disputes is binding only on defendant KB Home, and  
9 (3) their warranties have been modified accordingly;

10 WHEREAS, defendant KB Home states that on or before January 20, 2005, it sent the letter  
11 attached hereto as Exhibit D to Covered Warranty Holders, as defined herein, informing them of  
12 the rights and benefits accorded them pursuant to Paragraphs 7 and 8 of this Modified Consent  
13 Decree;

14 WHEREAS, the parties have been represented by the attorneys whose names appear  
15 hereafter;

16 NOW, THEREFORE, without determining any issue of fact or law or that the  
17 Commission's allegations, other than the jurisdictional facts, are true, and without the successor  
18 defendant's admission of any wrongdoing, the parties have agreed to a settlement of the  
19 Commission's allegations and a modification of the Consent Decree, upon the terms and conditions  
20 set forth below:

- 21 1. This Court has jurisdiction over the subject matter and the parties;  
22 2. Relief may be granted against defendant KB Home under Sections 5(l) and 13(b) of  
23 the Federal Trade Commission Act, 15 U.S.C. §§ 45(l) and 53(b).  
24 3. The following definition shall apply to this decree: "Commission's Order" shall  
25 mean the Federal Trade Commission's (the "Commission's") Consent Order in Kaufman and  
26 Broad, Inc., 93 F.T.C. 235 (1979); Docket No. C-2954, as it may be modified hereafter pursuant to  
27 15 U.S.C. § 45(b) and 16 C.F.R. § § 2.51 or 3.72(b).  
28

1 **CIVIL PENALTY**

2 4. Pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l),  
3 within ten (10) days of entry of this Modified Consent Decree (hereinafter, "Payment Due Date"),  
4 defendant KB Home, its successors and assigns, shall pay a civil penalty in the amount of two  
5 million dollars (\$2,000,000), by wire transfer, in accordance with instructions received from the  
6 Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C.  
7 20530, to the United States Treasury. In the event of any default in payment caused by defendant  
8 that continues for ten (10) days beyond the Payment Due Date, the entire unpaid penalty shall  
9 immediately become due and payable, together with interest as computed pursuant to 28 U.S.C. §  
10 1961.

11 **INJUNCTION AGAINST VIOLATIONS OF THE COMMISSION'S ORDER**

12 5. Defendant KB Home, its successors and assigns, and its directors, officers, agents,  
13 representatives and employees, and all persons in active concert or participation with any one or  
14 more of them who receive actual notice of this Modified Consent Decree by personal service or  
15 otherwise, are hereby enjoined from violating, directly or indirectly, or through any corporation,  
16 subsidiary, division, or other device, any provision of the Commission's Order, attached hereto as  
17 Exhibit A.

18 **CONSUMER NOTIFICATION AND REDRESS**

19 6. Defendant KB Home, its successors and assigns, shall be bound by and must honor  
20 the warranty modifications and clarifications set forth in paragraphs 7 and 8 of this Modified  
21 Consent Decree and in the letters sent by it to KB Home warranty holders and attached hereto as  
22 Exhibits B, C and D. Defendant KB Home also must comply with the dispute resolution provisions  
23 of the warranties as so modified.

24 7. For KB Home warranty holders whose homes were delivered by defendant KB  
25 Home between January 1, 2002 and December 31, 2004 ("Covered Warranty Holders"), defendant  
26 KB Home, its successors and assigns, must extend by one (1) year the two (2) year warranty  
27 coverage for major components provided to them. Defendant KB Home must, within thirty (30)  
28 days after the entry of this Modified Consent Decree, notify all Covered Warranty Holders of this

1 warranty extension in writing by sending them the letter attached hereto as Exhibit D. Defendant  
2 KB Home must mail Exhibit D to Covered Warranty Holders by First Class Mail in an envelope  
3 that on its front clearly and conspicuously states "IMPORTANT HOME WARRANTY  
4 EXTENSION INFORMATION." The envelope containing Exhibit D must not contain any other  
5 documents.

6 8. Defendant KB Home, its successors and assigns, must reimburse certain Covered  
7 Warranty Holders for the amounts paid by them to repair items covered by the one (1) year  
8 extension of the two (2) year warranty for major components, where the repair was made or the  
9 homeowners contracted to make the repair at any time during the period beginning on the date of  
10 expiration of the Covered Warranty Holder's original two (2) year warranty and ending on January  
11 25, 2005. Defendant KB Home must reimburse Covered Warranty Holders for such repairs within  
12 thirty (30) days of receipt of adequate documentation of the repair and payment. Defendant KB  
13 Home must accept as adequate documentation receipts or other records sufficient to show that  
14 Covered Warranty Holders are eligible for reimbursement pursuant to this paragraph. Defendant  
15 KB Home must honor all claims eligible for reimbursement pursuant to this Paragraph that are  
16 submitted by Covered Warranty Holders by April 25, 2005. Except as otherwise agreed to by  
17 Defendant KB Home or as provided in the original warranty, defendant KB Home, its successors  
18 and assigns, shall have no obligation under this Modified Consent Decree to reimburse Covered  
19 Warranty Holders for covered warranty repairs contracted to be made or paid for by them either  
20 during the term of the original two (2) year warranty for major components or after January 25,  
21 2005.

22 9. Defendant KB Home, its successors and assigns, shall, within thirty (30) days after  
23 the entry of this Modified Consent Decree, reimburse all fees and costs paid by any homeowner to  
24 initiate and/or to arbitrate a warranty dispute with defendant KB Home at any time since 1996.

25 **DISTRIBUTION OF MODIFIED CONSENT DECREE**

26 10. Defendant KB Home, its successors and assigns, shall, within thirty (30) days of the  
27 entry of this Modified Consent Decree, provide this Decree and all Exhibits attached hereto to each  
28 of its current directors and officers, and to its each of its current employees, agents, and

1 representatives having managerial responsibility with respect to the subject matter of this Modified  
2 Consent Decree, and secure from each such director, officer, employee, agent, and representative a  
3 signed statement acknowledging receipt of this Modified Consent Decree. Within ten (10) days of  
4 complying with this paragraph, defendant KB Home, its successors and assigns, shall provide the  
5 Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission,  
6 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, an affidavit setting forth the fact and  
7 manner of its compliance, including the name and title of each person to whom a copy of the  
8 Modified Consent Decree has been provided. For a period of two (2) years from the entry of this  
9 Modified Consent Decree, defendant KB Home, its successors and assigns, shall provide, within  
10 three (3) days after the person assumes the position, this Modified Consent Decree and all Exhibits  
11 attached hereto to each of its future directors and officers, and to its each of its future employees,  
12 agents and representatives having managerial responsibility with respect to the subject matter of  
13 this Modified Consent Decree. Defendant may provide by electronic transmission an exact copy of  
14 the Modified Consent Decree and all Exhibits attached hereto to comply with this paragraph.

#### 15 **RECORD KEEPING AND ACCESS TO RECORDS**

16 11. For a period of two (2) years from the entry of this Modified Consent Decree,  
17 defendant KB Home, its successors and assigns, shall maintain and make available to the  
18 Commission, within thirty (30) days of the date of receipt of a written request, business records  
19 demonstrating compliance with the terms and provisions of this Modified Consent Decree,  
20 including records documenting: (a) all homeowner requests for mediation or arbitration of warranty  
21 claims; (b) all homeowner warranty claims made pursuant to the warranty extension required by  
22 Paragraph 7, including claims for reimbursement pursuant to Paragraph 8; (c) defendant KB  
23 Home's responses to warranty claims made pursuant to the warranty extension provided for by  
24 Paragraph 7; (d) defendant KB Home's responses to requests for mediation and arbitration of  
25 warranty claims; (e) the final resolution of all homeowner requests to mediate or arbitrate warranty  
26 claims, and (f) reimbursement to homeowners for the fees and costs to initiate or to conduct  
27 arbitration of warranty claims. In the event the homeowner requests for mediation or arbitration of  
28 warranty claims, and defendant KB Home responses thereto, are made by telephone or orally,

1 defendant KB Home must memorialize such requests and responses, along with the date of each  
2 such request or response and the names of each homeowner making the request and each defendant  
3 KB Home employee responding to the request.

4 **RETENTION OF JURISDICTION**

5 12. This Court shall retain jurisdiction of this matter for the purpose of enabling any of  
6 the parties to this Modified Consent Decree to apply to the Court at any time for such further orders  
7 or directives as may be necessary or appropriate for the interpretation or modification of this  
8 Decree, for the enforcement of the compliance therewith, or for the punishment of the violations  
9 thereof.

10 13. The parties, by their respective counsel, hereby consent to the terms and conditions  
11 of the Modified Consent Decree as set forth above and consent to the entry thereof. Defendant KB  
12 Home waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412.

13 JUDGMENT IS THEREFORE ENTERED in favor of plaintiff, the United States of  
14 America, and against defendant KB Home, pursuant to all the terms and conditions recited above.

15  
16 Dated: \_\_\_\_\_, 2005

\_\_\_\_\_  
17 United States District Court Judge

18 Of Counsel:

FOR THE UNITED STATES OF AMERICA:

19  
20 JAMES A. KOHM  
21 Associate Director for Enforcement

PETER D. KEISLER  
Assistant Attorney General  
Civil Division  
U.S. Department of Justice

22  
23  
24 ROBERT M. FRISBY  
25 Assistant Director for Enforcement

CAROL C. LAM  
United States Attorney  
Southern District of California

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PATRICIA F. BAK  
JAMES A. PRUNTY

Attorneys

Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
Washington, D.C. 20580

By: Karen P. Hewitt

Assistant United States Attorney  
Southern District of California

EUGENE M. THIROLF  
Director  
Office of Consumer Litigation

Elizabeth Stein

ELIZABETH STEIN  
Attorney  
Office of Consumer Litigation  
Civil Division  
U.S. Department of Justice  
Washington, D.C. 20530

FOR DEFENDANT KB HOME

Richard B. Hirst

By: RICHARD B. HIRST  
Executive Vice President and Chief Legal Officer

COLLIER SHANNON SCOTT

By: William C. MacLeod

WILLIAM C. MACLEOD  
A member of the firm  
Washington Harbour, Suite 400  
3050 K Street, N.W.  
Washington, D.C. 20007

(202) 342-8811

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA, )

CIVIL NO. 91CV0872-K

4 Plaintiff, )

CERTIFICATE OF SERVICE

5 v. )

6 KB HOME (previously "Kaufman and Broad, Inc." )  
and "Kaufman and Broad Home Corporation"), )

7 Defendant. )  
8

STATE OF CALIFORNIA

9 SS.

COUNTY OF SAN DIEGO

10 IT IS HEREBY CERTIFIED that:

11 I, Pamela G. Bradley, am a citizen of the United States over the age of eighteen years and a  
12 resident of San Diego County, California; my business address is Office of the U.S. Attorney, Federal  
13 Office Building, 880 Front Street, Room 6293, San Diego, California 92101-8893; I am not a party to  
the above-entitled action; and

14 On August 3, 2005, I deposited in a Federal Express box at San Diego, California, in the above-  
entitled action, in a Federal Express envelope, a copy of:

15 MODIFIED CONSENT DECREE

16 addressed to:

17 William C. Macleod  
18 Collier, Shannon and Scott  
3050 K Street, NW  
19 Suite 400  
Washington, DC 20007  
20 (202) 342-8811

Patricia F. Bak  
Division of Enforcement  
Bureau of Consumer Protection  
Federal Trade Commission  
601 New Jersey Ave., NW  
Room 2111  
Washington, DC 20001  
(202) 326-2842

Eugene M. Thirolf  
Elizabeth Stein  
Office of Consumer Litigation  
U.S. Department of Justice  
1331 Pennsylvania Ave., NW  
Suite 950N  
Washington, DC 20004  
(202) 307-0092

21  
22 the last known address at which place there is delivery service of Federal Express from the Federal  
23 Express Service.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Executed in San Diego, California on August 3, 2005.

26   
27 PAMELA G. BRADLEY  
28