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8 Company, LLC, successor by conversion  
of Pulte Home Corporation; Centex  
9 Homes; and Centex Real Estate Company,  
LLC

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
12

13 Pulte Home Company, LLC, a  
14 Michigan limited liability company,  
15 successor by conversion of Pulte Home  
Corporation; Centex Homes, a Nevada  
16 general partnership; and Centex Real  
17 Estate Company, LLC, a Nevada  
limited liability company,

18 Plaintiff,

19 v.

20 HDI Global Specialty SE, a foreign  
21 corporation; Kinsale Insurance  
22 Company, an Arkansas corporation;  
23 First Specialty Insurance Corporation, a  
Missouri corporation; United Specialty  
24 Insurance Company, a Delaware  
25 corporation; Peleus Insurance  
Company, a Virginia corporation;  
26 Ironshore Specialty Insurance  
27 Company, an Arizona corporation; Starr  
Indemnity & Liability Company, a  
28 Texas corporation; First Mercury

Case No.

**COMPLAINT FOR:**

**(1) Declaratory Judgment;**  
**(2) Breach of Contract – Duty to**  
**Defend; and**  
**(3) Breach of Contract – Duty to**  
**Indemnify**

**DEMAND FOR JURY TRIAL**

Insurance Company, a Delaware corporation; QBE Specialty Insurance Company, a North Dakota corporation; Allied World Assurance Company (US) Inc., a Delaware company; Twin City Fire Insurance Company, an Indiana corporation; Rockhill Insurance Company, an Arizona corporation; Old Republic Insurance Company, a Pennsylvania corporation; Liberty Mutual Fire Insurance Company, a Wisconsin corporation; ACE American Insurance Company, a Pennsylvania corporation; Benchmark Insurance Company, a Kansas corporation; James River Insurance Company, an Ohio corporation; and Clear Blue Specialty Insurance Company, a Texas corporation,

Defendants.

Plaintiffs Pulte Home Company, LLC, Centex Homes, and Centex Real Estate Company, LLC (collectively, “Pulte” or “Plaintiff”), allege as follows:

### **PARTIES**

1. Pulte Home Company, LLC is a Michigan limited-liability company. Its member, PulteGroup, Inc., is a Michigan corporation with its principal place of business in Georgia. Pulte Home Company, LLC is the successor by conversion of Pulte Home Corporation.

2. Centex Homes is a Nevada general partnership. The partners of Centex Homes are: (a) Centex Real Estate Company, LLC formerly Centex Real Estate Corporation, (b) Nomas LLC, and (c) Centex International II, LLC.

3. At all times mentioned herein, Nomas LLC was and is a Nevada limited liability company with its principal place of business in Atlanta, Georgia. The sole member of Nomas LLC is Centex International II, LLC.

4. At all times mentioned herein, Centex International II, LLC, was and is a Nevada limited liability company with its principal place of business in Atlanta, Georgia. The sole member of Centex International II, LLC is Centex LLC, which is also a Nevada limited liability company with its principal place of business in Atlanta, Georgia.

5. At all times mentioned herein, the sole member of Centex LLC is Centex Home Corporation which is a Michigan Corporation with its principal place of business in Atlanta, Georgia.

6. Centex Real Estate Company, LLC, is a Nevada limited liability company. Its member, Todd Sheldon, is a Georgia resident. Centex Real Estate Company is formerly known as Centex Real Estate Corporation, a Nevada corporation.

7. Plaintiffs are informed and believe, and on that basis, allege that HDI Global Specialty SE, fka International Insurance Company of Hannover Ltd. (“HGS”) was and is a foreign corporation with its principal place of business in Germany.

8. Plaintiffs are informed and believe, and on that basis, allege that Kinsale Insurance Company (“Kinsale”) was and is an Arkansas corporation with its principal place of business in Virginia.

9. Plaintiffs are informed and believe, and on that basis, allege that First Specialty Insurance Corporation (“FSIC”) was and is a Missouri corporation with its principal place of business in Missouri.

10. Plaintiffs are informed and believe, and on that basis, allege that United Specialty Insurance Company (“USIC”) was and is a Delaware corporation with its principal place of business in Texas.

11. Plaintiffs are informed and believe, and on that basis, allege that Peleus Insurance Company (“Peleus”) was and is a Virginia corporation with its principal place of business in Virginia.

12. Plaintiffs are informed and believe, and on that basis, allege that

1 Ironshore Specialty Insurance Company (“Ironshore”) was and is an Arizona  
2 corporation with its principal place of business in New York.

3 13. Plaintiffs are informed and believe, and on that basis, allege that Starr  
4 Indemnity & Liability (“Starr”) was and is a Texas corporation with its principal place  
5 of business in New York.

6 14. Plaintiffs are informed and believe, and on that basis, allege that First  
7 Mercury Insurance Company (“FMIC”) was and is a Delaware corporation with its  
8 principal place of business in New Jersey.

9 15. Plaintiffs are informed and believe, and on that basis, allege that QBE  
10 Specialty Insurance Company (“QBE”) was and is a North Dakota corporation with  
11 its principal place of business in Wisconsin.

12 16. Plaintiffs are informed and believe, and on that basis, allege that Allied  
13 World Assurance Company (US) Inc. (“Allied World”) was and is a Delaware  
14 corporation with its principal place of business in New York.

15 17. Plaintiffs are informed and believe, and on that basis, allege that Twin  
16 City Fire Insurance Company (“Twin City”) was and is an Indiana corporation with  
17 its principal place of business in Connecticut.

18 18. Plaintiffs are informed and believe, and on that basis, allege that Rockhill  
19 Insurance Company (“Rockhill”) was and is an Arizona corporation with its principal  
20 place of business in Missouri.

21 19. Plaintiffs are informed and believe, and on that basis, allege that Old  
22 Republic Insurance Company (“Old Republic”) was and is a Pennsylvania  
23 corporation with its principal place of business in Pennsylvania.

24 20. Plaintiffs are informed and believe, and on that basis, allege that Liberty  
25 Mutual Fire Insurance Co. (“Liberty Mutual”) was and is a Wisconsin corporation  
26 with its principal place of business in Massachusetts.

27 21. Plaintiffs are informed and believe, and on that basis, allege that ACE  
28 American Insurance Company (“ACE”) was and is a Pennsylvania corporation with

1 its principal place of business in Pennsylvania.

2 22. Plaintiffs are informed and believe, and on that basis, allege that  
3 Benchmark Insurance Company (“Benchmark”) was and is a Kansas corporation with  
4 its principal place of business in Minnesota.

5 23. Plaintiffs are informed and believe, and on that basis, allege that James  
6 River Insurance Company (“James River”) was and is an Ohio corporation with its  
7 principal place of business in Virginia.

8 24. Plaintiffs are informed and believe, and on that basis, allege that Clear  
9 Blue Specialty Insurance Company (“Clear Blue”) was and is a Texas corporation  
10 with its principal place of business in Puerto Rico.

### 11 **JURISDICTION AND VENUE**

12 25. This Court has original jurisdiction over this action founded on diversity  
13 of citizenship pursuant 28 U.S.C. § 1332, because the matters in controversy exceed  
14 \$75,000.00 per defendant, exclusive of interest and costs, and because complete  
15 diversity exists between Pulte and Defendants.

16 26. Venue is proper in this Court in accordance with 28 U.S.C. § 1391.

### 17 **GENERAL ALLEGATIONS**

#### 18 **The Avelina Project**

19 27. Pulte is a homebuilder that participated in the construction of a  
20 residential project known as the Avelina community (the “Project”), which is  
21 located in Perris, California.

22 28. Pulte performed no work on the Project; instead, subcontractors  
23 performed all of the work.

24 29. BMC Stock Holdings, Inc. dba Building Materials Construction  
25 Services, Inc. – BMC West Corporation (“BMC”) subcontracted with Pulte to,  
26 among other things, perform lathe/stucco and framing work at the Project.

27 30. Campbell Painting (“Campbell”) subcontracted with Pulte to, among  
28 other things, perform painting labor at the Project.

1           31.    Champion Windows, Inc. (“Champion Windows”) subcontracted with  
2 Pulte to, among other things, install window systems at the Project.

3           32.    PSLQ, Inc. dba GreenBee Landscaping Services (“GreenBee”)  
4 subcontracted with Pulte to, among other things, lay concrete and perform  
5 foundation/flatwork labor on the Project.

6           33.    G.S.W. Flooring, Inc. (“GSW”) subcontracted with Pulte to, among  
7 other things, install flooring, carpet, vinyl, and tile at the Project.

8           34.    Homesite Services, Inc. (“Homesite”) subcontracted with Pulte, to  
9 among other things, install shower and tub enclosures at the Project.

10          35.    Interior Specialists, Inc. (“ISI”) subcontracted with Pulte to, among  
11 other things, install flooring, carpet, vinyl, and tile at the Project.

12          36.    Leonard Roofing, Inc. (“Leonard Roofing”) subcontracted with Pulte  
13 to, among other things, perform roofing labor and install roofing systems at the  
14 Project.

15          37.    Next Level Door and Millwork, Inc. (“Next Level”) subcontracted with  
16 Pulte to, among other things, perform finish carpentry labor at the Project.

17          38.    NP Mechanical, Inc. (“NP Mechanical”) subcontracted with Pulte to,  
18 among other things, install heating, ventilation, and air conditioning (“HVAC”) and  
19 plumbing systems at the Project.

20          39.    Platinum Landscaping (“Platinum”) subcontracted with Pulte to, among  
21 other things, perform landscaping, irrigation, and finish grading at the Project.

22          40.    Porter’s Equipment Rental, Inc. (“Porter’s Equipment”) subcontracted  
23 with Pulte to, among other things perform rough & finish grading labor at the  
24 Project.

25          41.    T&R Construction and T&R Painting & Drywall (collectively “T&R  
26 Painting”) subcontracted with Pulte to, among other things, perform drywall labor  
27 on the Project.

28          42.    Timberlake Cabinetry dba American Woodmark Corp (collectively

1 “Timberlake”) subcontracted with Pulte to, among other things, install cabinets at  
2 the Project.

3 43. Total Comfort, Inc. (“Total Comfort”) subcontracted with Pulte to,  
4 among other things, install HVAC systems at the Project.

5 44. TruTeam of California (“TruTeam”) subcontracted with Pulte to,  
6 among other things, install insulation at the Project.

7 **The HGS Policies**

8 45. Campbell performed work at the Project pursuant to one or more  
9 written subcontracts that it entered with Pulte.

10 46. Each subcontract required Campbell to maintain commercial general  
11 liability insurance with minimum limits of \$1,000,000 combined single limit per  
12 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed  
13 operations aggregate, and to name Pulte and its affiliates as additional insureds  
14 under those insurance policies.

15 47. Campbell obtained commercial general liability policies from HGS (the  
16 “HGS Policies”):

Insurer	Policy Number	Policy Period	Named Insured
HGS	IG011001114-00	06/28/12-06/28/13	Campbell
	IG011001114-01	06/28/13-06/28/14	
	IG011001114-02	06/28/14-06/28/15	
	IG01200262200	01/16/16-01/16/17	
	IG01200262201	01/16/17-01/16/18	

24 48. The HGS Policies were endorsed to cover Pulte as an “additional  
25 insured” with respect to liability arising out of the named insured’s work or  
26 operations.

27 49. The coverage afforded under the HGS Policies requires Defendant  
28 HGS to defend and indemnify Pulte against all claims that allege (duty to defend)



1 and result in (duty to indemnify) liability for covered property damage or bodily  
2 injury arising out of the named insured's work or operations.

### 3 **The Kinsale Policy**

4 50. Campbell performed work at the Project pursuant to one or more  
5 written subcontracts that it entered with Pulte.

6 51. Each subcontract required Campbell to maintain commercial general  
7 liability insurance with minimum limits of \$1,000,000 combined single limit per  
8 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed  
9 operations aggregate, and to name Pulte and its affiliates as additional insureds  
10 under those insurance policies.

11 52. Campbell obtained a commercial general liability policy from Kinsale  
12 (the "Kinsale Policy"):

13 Insurer	Policy Number	Policy Period	Named Insured
14 Kinsale	01000026155-0	01/16/15-01/16/16	Campbell

15  
16 53. The Kinsale Policy was endorsed to cover Pulte as an "additional  
17 insured" with respect to liability arising out of the named insured's work or  
18 operations.

19 54. The coverage afforded under the Kinsale Policy requires Defendant  
20 Kinsale to defend and indemnify Pulte against all claims that allege (duty to defend)  
21 and result in (duty to indemnify) liability for covered property damage or bodily  
22 injury arising out of the named insured's work or operations.

### 23 **The Benchmark Policies**

24 55. Porter's performed work at the Project pursuant to one or more written  
25 subcontracts that it entered with Pulte.

26 56. Each subcontract required Porter's to maintain commercial general  
27 liability insurance with minimum limits of \$1,000,000 combined single limit per  
28 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed



operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

57. Porter's obtained commercial general liability policies from Benchmark (the "Benchmark Policies"):

Insurer	Policy Number	Policy Period	Named Insured
Benchmark	BIC5015618	12/29/16 – 12/29/17	Porter's
	BIC5017520	12/29/17 – 12/29/18	
	BIC5019177	12/29/18 – 12/29/19	
	BIC5020666	12/29/19 – 12/29/20	
	BIC5022243	12/29/20 – 12/29/21	
	BIC5023916	12/29/21 – 12/29/22	
	BIC5025583	12/29/22 – 12/29/23	

58. The Benchmark Policies were endorsed to cover Pulte as an "additional insured" with respect to liability arising out of the named insured's work or operations.

59. The coverage afforded under the Benchmark Policies requires Defendant Benchmark to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured's work or operations.

#### **The FSIC Policies**

60. Champion Windows and Next Level performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

61. Each subcontract required Champion Windows and Next Level to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

62. Champion Windows and Next Level obtained commercial general liability policies from FSIC (the “FSIC Policies”):

Insurer	Policy Number	Policy Period	Named Insured
FSIC	RSG0000053-00	11/01/12-11/01/13	Champion Windows
	RSG0000053-01	11/01/13-11/01/14	
	IRG2002220 00	11/01/14-11/01/15	
	IRG2002220-01	11/01/15-11/01/16	
	IRG2002220-02	11/01/16-06/29/17	
FSIC	IRG200233701	02/28/16-02/28/17	Next Level
	IRG200233702	02/28/17-02/28/18	
	IRG200233703	02/28/18-02/28/19	

63. The FSIC Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insureds’ work or operations.

64. The coverage afforded under the FSIC Policies requires Defendant FSIC defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insureds’ work or operations.

#### **The USIC Policies**

65. Champion Windows, GreenBee GSW Flooring, Homesite, Leonard Roofing, Next Level, NP Mechanical, Porter’s, Platinum, and T&R Painting performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

66. Each subcontract required Champion Windows, GreenBee, GSW Flooring, Homesite, Leonard Roofing, Next Level, NP Mechanical, Porter’s, Platinum, and T&R Painting to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000

1 general aggregate, and \$2,000,000 products/completed operations aggregate, and to  
 2 name Pulte and its affiliates as additional insureds under those insurance policies.

3 67. Champion Windows, GreenBee, GSW Flooring, Homesite, Leonard  
 4 Roofing, Next Level, NP Mechanical, Porter's, Platinum, and T&R Painting  
 5 obtained commercial general liability policies from USIC (the "USIC Policies"):

Insurer	Policy Number	Policy Period	Named Insured
USIC	BVO1432904	06/29/14-06/29/15	Champion Windows
	BVO1543476	06/29/15-06/29/16	
	BVO1653689	06/29/16-06/29/17	
USIC	BTO1416789	04/16/14-04/16/15	GreenBee
	BTO1527625	04/16/15-04/16/16	
	DBRUS000304-00	04/16/18-04/16/19	
USIC	BTO1416884	05/22/14-05/22/15	GSW Flooring
	BTO1527692	05/22/15-05/22/16	
	BTO1416884	05/22/16-05/22/17	
USIC	BTO1436677	03/01/14-03/01/15	Homesite
	BTO1547533	03/01/15-03/01/16	
	BTO1658183	03/01/16-03/01/17	
	ATN-SF1760322	03/01/17-03/01/18	
	ATN-SF1871585	03/01/18-03/01/19	
	ATNSF1984088	03/01/19-03/01/20	
	ATN21107805	03/01/20-03/01/21	
	ATN22111636	03/01/21-03/01/22	
USIC	ATN23126087	03/01/22-03/01/24	Leonard Roofing
	TWCG41000200	08/19/10-08/19/11	
	AJBH15269	08/19/11-11/27/11	
	BTO1215906	11/27/12-11/27/13	

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Insurer	Policy Number	Policy Period	Named Insured
	BTO1326486	11/27/13-11/27/14	
	BTO1437347	11/27/14-11/27/15	
	BTO1326486	11/27/15-11/27/16	
	ANTSF1650014	11/27/16-11/27/17	
	ATN-SF1761273	11/27/17-11/27/18	
	ATN-SF1873384	11/27/18-11/27/19	
USIC	ATN-SF1914006	02/28/19-02/28/20	Next Level
	ATN2025849	02/28/20-02/28/21	
	ATN213760	02/28/21-02/28/22	
USIC	BTO1316043	03/11/13-03/11/14	NP Mechanical
	BTO1426689	03/11/14-03/11/15	
	BTO1537569	03/11/15-03/11/16	
	BTO1648467	07/11/16-07/11/17	
	ATN-SF1620082	12/18/16-12/18/17	
	ATN-SF1731315	12/18/17-12/18/18	
	ATN-SF1843437	12/18/18-12/18/19	
USIC	ATN2066974	10/15/20-10/15/21	T&R Painting
USIC	ATN2316268	4/30/23 – 4/30/24	Porter's Equipment
USIC	BTO1417008	1/17/14 – 7/17/15	Platinum
	BTO1527811	7/17/15 – 7/17/16	Landscaping
	BTO1638482	7/17/16 – 7/17/17	
	ATNSF1740840	7/17/17 – 7/17/18	

68. The USIC Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insured’s work or operations.

69. The coverage afforded under the USIC Policies requires Defendant USIC to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured's work or operations.

### **The Peleus Policies**

70. Champion Windows and GreenBee performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

71. Each subcontract required Champion Windows and GreenBee to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

72. Champion Windows and GreenBee obtained commercial general liability policies from Peleus (the "Peleus Policies"):

Insurer	Policy Number	Policy Period	Named Insured
Peleus	103GL001866700	06/29/17-06/29/18	Champion
	103GL001866701	06/29/18-06/29/19	Windows
Peleus	103 GL 0034724	04/16/20-04/16/23	GreenBee

73. The Peleus Policies were endorsed to cover Pulte as an "additional insured" with respect to liability arising out of the named insured's work or operations.

74. The coverage afforded under the Peleus Policies requires Defendant Peleus to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured's work or operations.

### **The James River Policies**

75. Leonard obtained commercial general liability policies from James

River (the “James River Policies”):

Insurer	Policy Number	Policy Period	Named Insured
James River	000975680	11/27/19 – 11/27/20	Leonard
	000975681	11/27/20 – 11/27/21	
	000975682	11/27/21 – 11/27/22	
	00097568-3	11/27/22 – 11/27/23	
	00097568-4	11/27/23 – 11/27/24	

76. The James River Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insured’s work or operations.

77. The coverage afforded under the James River Policies requires Defendant James River to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured’s work or operations.

#### **The Clear Blue Policies**

78. NP Mechanical and Next Level obtained commercial general liability policies from James River (the “James River Policies”):

Insurer	Policy Number	Policy Period	Named Insured
Clear Blue	AR01RS220391800	2/28/22 – 2/28/23	Next Level
	AR01RS220391801	2/28/23 – 2/28/24	
Clear Blue	AR01RS210359500	12/18/21 – 12/18/22	NP Mechanical
	AR01RS210359501	12/18/22 – 12/18/23	
	AR01RS210359502	12/18/23 – 12/18/24	

79. The James River Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insured’s work or operations.

80. The coverage afforded under the James River Policies requires Defendant James River to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured's work or operations.

### **The Ironshore Policy**

81. GreenBee performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

82. Each subcontract required GreenBee to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

83. GreenBee obtained a commercial general liability policy from Ironshore (the "Ironshore Policy"):

Insurer	Policy Number	Policy Period	Named Insured
Ironshore	AG90105800	04/16/17-04/16/18	GreenBee

84. The Ironshore Policy was endorsed to cover Pulte as an "additional insured" with respect to liability arising out of the named insured's work or operations.

85. The coverage afforded under the Ironshore Policy requires Defendant Ironshore to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured's work or operations.

### **The Starr Policies**

86. T&R Painting and ISI performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

87. Each subcontract required T&R Painting and ISI to maintain



commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

88. T&R Painting and ISI obtained commercial general liability policies from Starr (the “Starr Policies”):

Insurer	Policy Number	Policy Period	Named Insured
Starr	SLPGGL0078103	04/28/14-04/28/15	T&R Painting
	SLPGGL0078104	04/28/15-04/28/16	
Starr	100025503161	05/15/16-05/15/17	ISI
	100025503171	05/15/17-05/15/18	
	100025503181	05/15/18-05/15/19	

89. The Starr Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insured’s work or operations.

90. The coverage afforded under the Starr Policies requires Defendant Starr to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured’s work or operations.

### **The FMIC Policy**

91. NP Mechanical performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

92. Each subcontract required NP Mechanical to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

93. NP Mechanical a commercial general liability policy from FMIC (the “FMIC Policy”):

Insurer	Policy Number	Policy Period	Named Insured
FMIC	WA-CGL-0000006576-03	03/11/14-03/11/15	NP Mechanical

94. The FMIC Policy was endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insured’s work or operations.

95. The coverage afforded under the FMIC Policy requires Defendant FMIC to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured’s work or operations.

#### **The QBE Policy**

96. Timberlake performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

97. Each subcontract required Timberlake to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

98. Timberlake obtained a commercial general liability policy from QBE (the “QBE Policy”):

Insurer	Policy Number	Policy Period	Named Insured
QBE	CGA3971209	03/01/14-03/01/16	Timberlake

99. The QBE Policy was endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insured’s work or operations.

100. The coverage afforded under the QBE Policy requires Defendant QBE

1 to defend and indemnify Pulte against all claims that allege (duty to defend) and  
2 result in (duty to indemnify) liability for covered property damage or bodily injury  
3 arising out of the named insured's work or operations.

4 **The Allied World Policy**

5 101. Timberlake performed work at the Project pursuant to one or more  
6 written subcontracts that it entered with Pulte.

7 102. Each subcontract required Timberlake to maintain commercial general  
8 liability insurance with minimum limits of \$1,000,000 combined single limit per  
9 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed  
10 operations aggregate, and to name Pulte and its affiliates as additional insureds  
11 under those insurance policies.

12 103. Timberlake obtained a commercial general liability policy from Allied  
13 World (the "Allied World Policy"):

Insurer	Policy Number	Policy Period	Named Insured
Allied World	3100209	03/01/16-03/01/20	Timberlake

17 104. The Allied World Policy was endorsed to cover Pulte as an "additional  
18 insured" with respect to liability arising out of the named insured's work or  
19 operations.

20 105. The coverage afforded under the Allied World Policy requires  
21 Defendant Allied World to defend and indemnify Pulte against all claims that allege  
22 (duty to defend) and result in (duty to indemnify) liability for covered property  
23 damage or bodily injury arising out of the named insured's work or operations.

24 **The Twin City Policy**

25 106. Timberlake performed work at the Project pursuant to one or more  
26 written subcontracts that it entered with Pulte.

27 107. Each subcontract required Timberlake to maintain commercial general  
28 liability insurance with minimum limits of \$1,000,000 combined single limit per

1 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed  
2 operations aggregate, and to name Pulte and its affiliates as additional insureds  
3 under those insurance policies.

4 108. Timberlake obtained commercial a general liability policy from Twin  
5 City (the “Twin City Policies”):

6 Insurer	Policy Number	Policy Period	Named Insured
7 Twin City	14ECSS56202	03/01/17-03/01/20	Timberlake

8  
9 109. The Twin City Policy was endorsed to cover Pulte as an “additional  
10 insured” with respect to liability arising out of the named insured’s work or  
11 operations.

12 110. The coverage afforded under the Twin City Policy requires Defendant  
13 Twin City to defend and indemnify Pulte against all claims that allege (duty to  
14 defend) and result in (duty to indemnify) liability for covered property damage or  
15 bodily injury arising out of the named insured’s work or operations.

16 **The Rockhill Policies**

17 111. Total Comfort performed work at the Project pursuant to one or more  
18 written subcontracts that it entered with Pulte.

19 112. Each subcontract required Total Comfort to maintain commercial  
20 general liability insurance with minimum limits of \$1,000,000 combined single limit  
21 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed  
22 operations aggregate, and to name Pulte and its affiliates as additional insureds  
23 under those insurance policies.

24 113. Total Comfort obtained commercial general liability policies from  
25 Rockhill (the “Rockhill Policies”):

26 ///

27 ///

28 ///

Insurer	Policy Number	Policy Period	Named Insured
Rockhill	RCGLPG02633-00	08/11/15-08/11/16	Total Comfort
	RCGLPG02633-01	08/11/16-08/11/17	

114. The Rockhill Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of the named insured’s work or operations.

115. The coverage afforded under the Rockhill Policies requires Defendant Rockhill to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of the named insured’s work or operations.

#### **The Old Republic Policies**

116. TruTeam performed work at the Project pursuant to one or more written subcontracts that it entered with Pulte.

117. Each subcontract required TruTeam to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

118. TruTeam obtained commercial general liability policies from Old Republic (the “Old Republic Policies”):

Insurer	Policy Number	Policy Period	Named Insured
Old Republic	MWZY5552514	06/30/14-06/30/15	TruTeam
	MWZY5552515	06/30/15-06/30/16	
	MWZY5552516	06/30/16-06/30/17	
	MWZY310455	06/30/17-06/30/18	

119. The Old Republic Policies were endorsed to cover Pulte as an

1 “additional insured” with respect to liability arising out of the named insured’s work  
2 or operations.

3 120. The coverage afforded under the Old Republic Policies requires  
4 Defendant Old Republic to defend and indemnify Pulte against all claims that allege  
5 (duty to defend) and result in (duty to indemnify) liability for covered property  
6 damage or bodily injury arising out of the named insured’s work or operations.

7 **The Liberty Mutual Policies**

8 121. BMC performed work at the Project pursuant to one or more written  
9 subcontracts that it entered with Pulte.

10 122. Each subcontract required BMC to maintain commercial general  
11 liability insurance with minimum limits of \$1,000,000 combined single limit per  
12 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed  
13 operations aggregate, and to name Pulte and its affiliates as additional insureds  
14 under those insurance policies.

15 123. BMC obtained commercial general liability policies from Liberty  
16 Mutual (the “Liberty Mutual Policies”):

Insurer	Policy Number	Policy Period	Named Insured
Liberty Mutual	EB5661067195038	12/01/18-12/01/19	BMC
	EB5661067195039	12/01/19-12/01/20	
	EB5-661-067195-039	12/01/20-12/01/21	
	TB2-651-004212-111	12/01/21-12/01/22	
	TB2-651-004212-112	12/01/22-12/01/23	

24 124. The Liberty Mutual Policies were endorsed to cover Pulte as an  
25 “additional insured” with respect to liability arising out of the named insured’s work  
26 or operations.

27 125. The coverage afforded under the Liberty Mutual Policies requires  
28 Defendant Liberty Mutual to defend and indemnify Pulte against all claims that

1 allege (duty to defend) and result in (duty to indemnify) liability for covered  
2 property damage or bodily injury arising out of the named insured's work or  
3 operations.

#### 4 **The ACE Policies**

5 126. BMC performed work at the Project pursuant to one or more written  
6 subcontracts that it entered with Pulte.

7 127. Each subcontract required BMC to maintain commercial general  
8 liability insurance with minimum limits of \$1,000,000 combined single limit per  
9 occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed  
10 operations aggregate, and to name Pulte and its affiliates as additional insureds  
11 under those insurance policies.

12 128. BMC obtained commercial general liability policies from ACE (the  
13 "ACE Policies"):

14 Insurer	Policy Number	Policy Period	Named Insured
15 ACE	XSLG27627353	1/4/15-1/4/16	BMC
	16 XSLG27627882	12/1/15-12/1/16	
	17 XSLG2762843	1/1/16-1/1/17	

18  
19 129. The ACE Policies were endorsed to cover Pulte as an "additional  
20 insured" with respect to liability arising out of the named insured's work or  
21 operations.

22 130. The coverage afforded under the ACE Policies requires Defendant  
23 ACE to indemnify Pulte against all claims that result in (duty to indemnify) liability  
24 for covered property damage or bodily injury arising out of the named insured's  
25 work or operations.

#### 26 **Other Policies Issued by the Defendants**

27 131. Upon information and belief the Defendant insurers may have issued  
28 additional insurance policies to the implicated subcontractors listed in this



1 complaint, which are not specifically listed in this complaint.

2 132. As described below, Plaintiff tendered its defense and indemnity to the  
3 Defendant insurers under the policies listed above, as well as any other policies  
4 which they may have issued to their respective named insured subcontractors.

5 **The Abby Claims**

6 133. In or around October 30, 2020, 32 homeowners in the Avelina  
7 community in Perris, California initiated a civil action against Pulte, entitled *Abby*,  
8 *et al. v. Centex Homes, et al.*, Case No. RIC2003924, pending before the Riverside  
9 County Superior Court of the State of California, alleging property damage to their  
10 homes as a result of defective construction, including, but not limited to, property  
11 damage to and arising out from the construction of the assembly of stucco systems,  
12 foundation systems, including the MASA anchors, concrete flatwork, grading,  
13 landscaping, cabinet and counter-tops, drywall systems, door systems, garage door  
14 systems, window systems, plumbing, painting, electrical, framing and roofing  
15 systems.

16 134. The plaintiff homeowners subsequently dismissed various homeowner  
17 plaintiffs and added additional homeowner plaintiffs, ultimately reaching a total of  
18 57 homeowner plaintiffs. The homeowner plaintiffs opted to stay the civil action  
19 and pursue their individual claims in arbitration with the American Arbitration  
20 Association. The civil action and the individual arbitrations are collectively referred  
21 to as the “*Abby Claims*.”

22 135. The plaintiff homeowners recently produced expert reports and a cost  
23 of repair in the *Abby* matter alleging that the cost to repair the property damage to  
24 their homes totals more than \$6.9 million. The plaintiff homeowners have demanded  
25 over \$9 million in damages from Pulte for property damage arising out of the work,  
26 operations, and/or ongoing operations of the Defendant insurers’ named insured  
27 subcontractors listed herein.

28 136. As a result of the *Abby Claims*, Pulte has incurred and will continue to

1 incur significant costs, including, but not limited to, forensic, investigative, and  
2 repair costs, attorneys' fees, and other expenses.

3 137. The plaintiff homeowners are seeking damages from Pulte for property  
4 damage arising out of and/or resulting from the Defendants' named insured  
5 subcontractors' work on the Project. If the plaintiff homeowners are successful in  
6 obtaining an award and/or judgment against Pulte, Pulte will have incurred liability  
7 arising out of and/or resulting from the work of the Defendants' named-insured  
8 subcontractors.

9 138. Pulte tendered its defense and indemnity of the *Abby* Claims to each of  
10 the Defendant insurers under the insurance policies listed herein.

11 139. First Mercury agreed to participate in Pulte's defense under the policies  
12 it issued to NP Mechanical. Peleus agreed to participate in Pulte's defense under the  
13 policies it issued to Champion Windows. USIC agreed to participate in Pulte's  
14 defense under the policies it issued to GreenBee. First Mercury, Peleus, and USIC  
15 are referred to herein as the "Participating Insurers" as to Pulte's claims arising out  
16 of these policies only.

17 140. Other than the Participating Insurers, each and every other Defendant  
18 rejected—or otherwise failed to respond to—Pulte's tenders for defense and  
19 indemnity of the *Abby* Claims, leaving Pulte with substantial unreimbursed defense  
20 costs and to fact potentially substantial damages to the homeowners.

21 141. Pursuant to the insurance policies issued by the Defendants to their  
22 respective named-insured subcontractors, as specified herein, the Defendants owe a  
23 duty to pay all of the defense fees and costs that Pulte incurred and will continue to  
24 incur in defending against the *Abby* Claims.

25 142. Pursuant to the insurance policies issued by the Defendants to their  
26 respective named-insured subcontractors, as specified herein, the Defendants have a  
27 duty to indemnify Pulte for any liability Pulte incurs as a result of the *Abby* Claims  
28 for property damage that arises out of and/or that is caused in whole or in part by the

1 Defendants' respective named insured subcontractors' work.

2 143. The Defendants breached their duties by refusing to defend Pulte, or in  
3 the case of the Participating Insurers, failing to fully defend Pulte. On information  
4 and belief, Defendants misrepresented policy provisions and/or material facts related  
5 to coverage, failed to make prompt payment of Pulte's demands for reimbursement  
6 of its defense costs, and/or otherwise failed to respond to Pulte's tender of its  
7 defense of the *Abby* Claims. As a result of Defendants' conduct, Pulte has been  
8 forced to expend significant resources defending itself against the *Abby* Claims. As  
9 of the date of the filing of this Complaint, Pulte has incurred in excess of \$1.5  
10 million in attorneys' fees and costs defending against the *Abby* Claims, and will  
11 continue to incur significant expenses defending against the *Abby* Claims, which are  
12 ongoing.

13 144. Upon information and belief, the Defendants failed to investigate or  
14 timely respond to Pulte's tender of defense and indemnity, if they responded at all.

15 145. Upon information and belief, the Defendants failed to consider the  
16 allegations in the pleadings, facts provided by Pulte, or facts easily discernable.

17 146. Pleading further and in the alternative, in addition to these specific  
18 allegations based on insurance policy endorsements directly adding Pulte as an  
19 additional insured to each policy issued by the Defendants and listed herein, each  
20 policy listed herein above contained a provision or provisions the effect of which is  
21 to allow Pulte to stand in the shoes of the Defendants' named-insured subcontractors  
22 for purposes of coverage.

23 147. The above is not an exclusive list of the Defendants' potential liability  
24 to Pulte as other theories of potential coverage and recovery may be apparent based  
25 on the specific policies and/or specific actions of each Defendant.

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27 ///

28

**FIRST CAUSE OF ACTION**

**Declaratory Judgment**

(By Pulte Against All Defendants)

148. Pulte realleges the allegations contained in paragraphs 1 through 147 inclusive, and incorporates them by reference as though fully set forth herein.

149. Pulte is named as an additional insured or is a known third-party beneficiary of each of the insurance policies issued by the Defendants listed herein.

150. An actual controversy has arisen and now exists between Plaintiff, on the one hand, and Defendants, on the other hand, in that Plaintiff contends that it is an additional insured under the policies listed herein, that Defendants owe a separate and independent duty to promptly provide Plaintiff with a full and conflict-free defense of the *Abby* Claims, and that Defendants owe a duty to indemnify Pulte for damages arising out of the work or operations of Defendants' named-insured subcontractors.

151. Plaintiff is informed and believe that Defendants contend otherwise.

152. Pulte seeks a judicial resolution of the controversy and a declaration of the following:

i. Pulte is an additional insured under the Defendants' policies listed herein;

ii. The Defendants have a duty to fully defend Pulte against the *Abby* Claims; and

iii. The Defendants' must indemnify Pulte for damages arising out of the work or operations of Defendants' named-insured subcontractors.

153. A declaratory judgment is both proper and necessary so that the respective rights, duties, and obligations of Plaintiff and Defendants may be determined.

///

**SECOND CAUSE OF ACTION**

**Breach of Contract – Duty to Defend**

(By Pulte Against All Defendants Except the Participating Insurers and ACE)

154. Pulte realleges the allegations contained in paragraphs 1 through 153, inclusive, and incorporates them by reference as though fully set forth herein.

155. Pulte requested that Defendants defend Pulte against the *Abby* Claims under the insurance policies each of the Defendants issued to their respective named-insured subcontractors, as described more fully above. Pulte has performed all obligations owing under each of the policies in connection with its tender of defense, and Pulte has satisfied all relevant conditions precedent.

156. Defendants have failed to discharge their contractual duties to defend Pulte against the *Abby* Claims. More particularly, Defendants: (1) breached their contracts by failing to promptly respond to Pulte's tenders, if they responded at all; (2) breached their contracts by refusing to provide Pulte with a defense; and (3) breached their contracts by refusing to fully investigate Pulte's tender.

157. As a direct and proximate result of Defendants' conduct as alleged in this Complaint, Pulte has been damaged and will continue to be damaged in an amount to be proven at trial.

**THIRD CAUSE OF ACTION**

**Breach of Contract – Duty to Indemnify**

(By Pulte Against All Defendants)

158. Pulte realleges the allegations contained in paragraphs 1 through 157, inclusive, and incorporates them by reference as though fully set forth herein.

159. Pulte requested that Defendants indemnify Pulte against the *Abby* Claims under the insurance policies each of the Defendants issued to their respective named-insured subcontractors, as described more fully above. Pulte has performed all obligations owing under each of the policies in connection with its tender of indemnity, and Pulte has satisfied all relevant conditions precedent.

160. Defendants have failed to discharge their contractual duties to indemnify Pulte against the *Abby* Claims. More particularly, Defendants (1) breached their contracts by wrongfully denying that they have a duty to indemnify Pulte, (2) refusing to fund a Settlement with the homeowners, (3) refusing to offer settlement monies in response to reasonable demands by Pulte that the insurers pay certain settlement amounts attributable to the damages that the homeowners in the *Abby* matter are seeking from Pulte for property damage arising out of the Defendant insurers' respective named insured subcontractors' work.

161. As a direct and proximate result of Defendants' conduct as alleged in this Complaint, Pulte has been damaged and will be continued to be damaged in an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Pulte prays for judgment against Defendants as follows:

#### **1. FIRST CAUSE OF ACTION**

- a. For declaratory relief as described above;
- b. For all costs and expenses at the full extent permitted by law;
- c. For pre-judgment interest and post-judgment interest at the full extent permitted by law;
- d. For attorney's fees to the extent recoverable by applicable law; and
- e. For such other and further relief as the Court deems fair and proper.

#### **2. SECOND CAUSE OF ACTION**

- a. For general and specific damages in an amount to be proven at trial;
- b. For punitive damages at the full extent permitted by law;
- c. For all costs and expense at the full extent permitted by law;
- d. For pre-judgment interest and post-judgment interest at the full extent permitted by law;
- e. For attorney's fees to the extent recoverable by applicable law, which shall be taxed against the Defendants as costs; and

f. For such other and further relief as the Court deems fair and proper.

**3. THIRD CAUSE OF ACTION**

- a. For general and specific damages in an amount to be proven at trial;
- b. For punitive damages at the full extent permitted by law;
- c. For all costs and expense at the full extent permitted by law;
- d. For pre-judgment interest and post-judgment interest at the full extent permitted by law;
- e. For attorney's fees to the extent recoverable by applicable law, which shall be taxed against the Defendants as costs; and
- f. For such other and further relief as the Court deems fair and proper.

DATED: March 18, 2024

PAYNE & FEARS LLP  
Attorneys at Law

By: /s/ Blake A. Dillion

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**DEMAND FOR JURY TRIAL**

Pursuant to Local Rule 38-1 and Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs Pulte Home Company, LLC, Centex Homes, and Centex Real Estate Company, LLC respectfully request a jury trial on all issues so triable.

DATED: March 18, 2024

PAYNE & FEARS LLP  
Attorneys at Law

By: /s/ Blake A. Dillion

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