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**FILED**  
**SAN MATEO COUNTY**

DEC 02 2008

Clerk of the Superior Court

By   
DEPUTY CLERK

5 Attorneys for Plaintiff:  
MANDALAY HEIGHTS AT TERRABAY HOMEOWNERS ASSOCIATION  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN MATEO  
10 UNLIMITED JURISDICTION

11 MANDALAY HEIGHTS AT TERRABAY  
HOMEOWNERS ASSOCIATION,

12 Plaintiff,

13 vs

14 WESTERN PACIFIC HOUSING, INC., D. R.  
15 HORTON; and DOES 1-100, inclusive,

16 Defendants.  
17

Case No :

**CV 478893**

COMPLAINT FOR

- 1 ) 1 STRICT PRODUCTS LIABILITY
- 2 ) 2. BREACH OF IMPLIED WARRANTY
- 3 ) (FITNESS)
- 4 ) 3 BREACH OF IMPLIED WARRANTY
- 5 ) (MERCHANTABILITY)
- 6 ) 4. NEGLIGENCE
- 7 ) 5. NEGLIGENCE PER SE

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19 **GENERAL ALLEGATIONS**

20 1 Plaintiff, MANDALAY HEIGHTS AT TERRABAY HOMEOWNERS ASSOCIATION  
21 (hereinafter "Plaintiff" or "Association"), is a non-profit mutual benefit corporation organized and  
22 existing under and by virtue of the laws of the State of California, established to maintain, repair, and  
23 manage 135 single family residential homes located in South San Francisco, California, (hereinafter  
24 "Subject Property"). As set forth in California Civil Code §1368.3 and Code of Civil Procedure §382,  
25 Plaintiff is entitled to and authorized to maintain and commence litigation for damages to common  
26 areas, damage to the separate interests which the Association is obligated to maintain or repair, for  
27 damage to the separate interests which arise out of, or is integrally related to, damage to the common  
28 areas or separate interests that the Association is obligated to maintain or repair, and damage to separate  
interests as a representative of its members.



1           9.       Within the last ten years, the Defendants, and each of them, developed and mass  
2 produced the Subject Property and/or otherwise participated in the stream of commerce for sale of the  
3 Subject Property and in the units where the Subject Property is located

4           10      At all times herein mentioned and material hereto, Defendants knew and intended that the  
5 Subject Property would be purchased by members of the public at large, and used by them without  
6 further inspection for defects.

7           11.     Plaintiff's members purchased units at the Subject Property from said Defendants and  
8 moved into it with their families.

9           12      At the time of the purchase by Plaintiff's members, the Subject Property was defective  
10 and unfit for its intended purposes because the Defendants did not construct the Subject Property in a  
11 workmanlike manner as manifested by, but not limited to, numerous defects which have resulted in  
12 damage to the homes and their component parts. The defects include, without limitation, the following:

- 13           (a)     Excessively cracked stucco;
- 14           (b)     Efflorescence on the stucco;
- 15           (c)     Missing drip screeds from soffits;
- 16           (d)     Mis-flashed windows,
- 17           (e)     Failed IGU;
- 18           (f)     On roofs riser strips missing or incomplete;
- 19           (g)     Roof valleys are not supported;
- 20           (h)     Unfastened tiles and cracked tiles;
- 21           (i)     Other defects that will be proven at time of trial

22           13.     Within the last 3 years Plaintiff became aware of the defects and deficiencies. The  
23 Plaintiff thereafter gave and/or attempted to give the Defendants due and timely notice of the defective  
24 quality of the above mentioned items.

25           14.     The defects alleged herein above are defects that were not apparent by reasonable  
26 inspection of the Subject Property at the time of the purchase. The defects thereafter manifested.





1 30. Because of the foregoing breaches of implied warranties by the Defendants, and each of  
2 them, Plaintiffs have been specifically damaged as herein above in an about to be determined at trial

3 **FOURTH CAUSE OF ACTION**

4 **NEGLIGENCE**

5 31. Plaintiff incorporates by reference all previous paragraphs of this complaint as though set  
6 forth in full herein.

7 32. The aforementioned Defendants so carelessly and negligently planned, constructed,  
8 modified, inspected, and/or performed work and services at the Subject Property so as to proximately  
9 cause defects and damages to the systems, buildings, and improvements as herein above.

10 33. Because of the carelessness and negligence of each of the Defendants, and as a legal  
11 result thereof, Plaintiff has damaged as previously alleged herein above described.

12 34. Within the last 3 years Plaintiff discovered the defective quality of the Subject Property.

13 35. The defects and damages described herein above caused by the negligently and carelessly  
14 performed work of the Defendants, and each of them, were defects not apparent by reasonable  
15 inspection of the Subject Property at the time of purchase.

16 **FIFTH CAUSE OF ACTION**

17 **NEGLIGENCE PER SE**

18 36. Plaintiff incorporates by reference all previous paragraphs of this complaint as though set  
19 forth in full herein.

20 37. Various provisions of the then-applicable building codes and Civil Code §895 et seq.  
21 placed on the Defendants non-delegable duties to construct, plan, design and/or inspect the Subject  
22 Property in accordance with the requirements of said building codes. The Defendants failed to comply  
23 with Civil Code §895 et seq. and breached their duty by negligently constructing, planning, designing  
24 and/or inspecting the Subject Property.

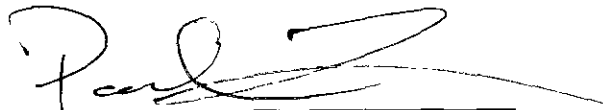
25 38. As a legal result of said building code violations, Plaintiff has suffered injuries of the  
26 types that the building codes specifically were designed to prevent, e.g., physical damage to their homes  
27 and the appurtenances thereto, as more fully set forth above.

1           39.    As a legal result of the building code violations in the Subject Property which were  
2 caused by the Defendants as hereinabove alleged, Plaintiff has been damaged as previously alleged  
3 above in an amount to be determined at trial

4           **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them, as  
5 follows.

- 6           1.    For compensatory damages according to proof;
- 7           2.    For interest thereon at the maximum legal rate;
- 8           3.    For prejudgment interest on all sums awarded at the maximum legal rate,
- 9           4.    For costs of suit incurred herein;
- 10          5.    For professional, consultant and technical fees according to proof;
- 11          6.    For loss of use in an amount according to proof,
- 12          7.    For damages to personal property according to proof;
- 13          8.    For attorney's fees;
- 14          9.    For such other and further relief as the Court deems just and proper.

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16 DATED: December 2, 2008

  
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PAUL K. LEE  
Attorney for Plaintiff