

1 LAW OFFICES OF JAMES G. KORSEN, INC.
A Professional Corporation
2 State Bar No. 71539
100 North Westlake Boulevard
3 Suite 201
Westlake Village, CA 91362-3764
4 Telephone: (805) 497-8085
Facsimile: (607) 428-6880
5 Attorney for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
12/17/2012 at 09:13:00 AM
Clerk of the Superior Court
By Fidel Ibarra, Deputy Clerk

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10
11 MARILYN PROPSTRA, an Individual;)
JOHN A. PROPSTRA, DIANE P.)
12 WILLIAM, and MARILYN S.)
PROPSTRA, as Co-Trustees of)
13 the SUZANNE P. PROPSTRA TRUST,)
Dated December 17, 1990, as)
14 Amended; and MARILYN PROPSTRA,)
as Trustee of the MARILYN S.)
15 PROPSTRA TRUST, Dated March 23,)
2004, as Amended,)

Case No.: 30-2012-00618774-CU-BC-CJC
UNLIMITED CIVIL CASE

COMPLAINT FOR DAMAGES FOR
1. NEGLIGENCE
2. BREACH OF CONTRACT
3. BREACH OF FIDUCIARY DUTY

16 Plaintiffs,)
17)

18 vs.)

Judge William M. Monroe

19 NU FLOW AMERICA, INC., a)
Corporation; BLAINE ENTERPRISES,)
INC., a Corporation, dba B&B)
20 PLUMBING, INC.; ABACUS PROJECT)
MANAGEMENT, INC., a Corporation;)
21 LAGUNA LIDO HOMEOWNERS')
ASSOCIATION, a California)
22 Non-Profit Mutual Benefit)
Corporation; and DOES 1 through)
23 50, inclusive,)

C-16

24 Defendants.)
25)
26)

27 Plaintiffs, MARILYN PROPSTRA, an Individual; JOHN A. PROPSTRA,
28 DIANE P. WILLIAN, and MARILYN S. PROPSTRA, as Co-Trustees of the

1 SUZANNE P. PROPSTRA TRUST, Dated December 17, 1990, as Amended; and
2 MARILYN PROPSTRA, as Trustee of the MARILYN S. PROPSTRA TRUST, Dated
3 March 23, 2004, as Amended, for causes of action against Defendants,
4 and each of them, allege:

5
6 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

7 1. The true names and capacities, whether individual,
8 corporate, associate, or otherwise, of Defendants DOES 1 through 50
9 are unknown to Plaintiffs, who therefore sue said Defendants by such
10 fictitious names. Plaintiffs will ask leave to amend this Complaint
11 to show their true names and capacities when the same have been
12 ascertained. Plaintiffs are informed and believe, and thereon allege,
13 that each of the Defendants designated herein as a DOE is legally
14 responsible in some manner for the events and happenings herein
15 referred to and caused damages proximately thereby to Plaintiffs.

16 2. Plaintiffs are informed and believe, and thereon allege,
17 that at all times herein mentioned, each of the Defendants herein was
18 acting as agents and/or servants and/or employees and/or
19 representatives of their co-Defendants herein, and in doing the things
20 herein alleged were acting within the course and scope of such agency,
21 service, employment, and representation and with the specific
22 knowledge, permission, and consent of each of the remaining
23 Defendants.

24 3. As used herein, the term "the Premises" refers to that real
25 property commonly known as "Unit number 212, together with Garage
26 number 34 and Locker number 531, at 31755 South Coast Highway, in the
27 City of Laguna Beach, County of Orange, State of California."

28 4. This Court has jurisdiction over Defendants, and each of

1 them, insofar as each is a resident, business entity, corporation, or
2 individual that has sufficient minimum contacts in California or is
3 otherwise intentionally availing itself of the benefits of the
4 California consumer market or otherwise is a citizen or business
5 entity doing business within the County of Orange, State of
6 California.

7 5. Plaintiffs are informed and believe, and thereon allege,
8 that at all times herein mentioned, Defendants NU FLOW AMERICA, INC.,
9 a Corporation, and DOES 1 through 5, and each of them, are, and at all
10 times herein mentioned were, corporations or other entities duly
11 licensed to do business, and doing business, in the City of Laguna
12 Beach, County of Orange, State of California. Said Defendant is
13 hereinafter referred to as "NU FLOW."

14 6. Plaintiffs are informed and believe, and thereon allege,
15 that at all times herein mentioned, Defendants BLAINE ENTERPRISES,
16 INC., a Corporation (hereinafter referred to as "B&B"), and DOES 6
17 through 10, and each of them, are, and at all times herein mentioned
18 were, corporations or other entities duly licensed to do business,
19 and doing business, in the City of Laguna Beach, County of Orange,
20 State of California under the fictitious business name of B&B
21 PLUMBING, INC.

22 7. Plaintiffs are informed and believe, and thereon allege,
23 that at all times herein mentioned, Defendants ABACUS PROJECT
24 MANAGEMENT, INC., a Corporation, and DOES 11 through 15, and each of
25 them, are, and at all times herein mentioned were, corporations or
26 other entities duly licensed to do business, and doing business, in
27 the City of Laguna Beach, County of Orange, State of California. Said
28 Defendant is hereinafter referred to as "ABACUS."

1 8. Plaintiffs are informed and believe, and thereon allege,
2 that at all times herein mentioned, Defendants LAGUNA LIDO HOMEOWNERS'
3 ASSOCIATION, a California Non-Profit Mutual Benefit Corporation, and
4 DOES 16 through 20, and each of them, are, and at all times herein
5 mentioned were, non-profit mutual benefit corporations or other
6 entities duly organized and existing under and by virtue of the laws
7 of the State of California, duly licensed to do business, and doing
8 business, in the County of Orange, State of California. Said
9 Defendant, by and through its Board of Directors, agents, and
10 employees, managed, operated, and controlled certain portions of that
11 property located at 31755 South Coast Highway in the City of Laguna
12 Beach, County of Orange, State of California, including the common
13 areas, plumbing waste, and other utility systems thereon, which
14 location is a condominium complex. At all times herein mentioned,
15 Plaintiffs were members of said Homeowners' Association by virtue of
16 their various ownership interests in the Premises and were entitled
17 to all rights under the governing documents of said Association and
18 as provided by law. Said Defendant is hereinafter referred to as
19 "LIDO," and said condominium complex is hereinafter referred to as the
20 "complex."

21 9. Pursuant to Section 2.05 of the recorded Declaration of
22 Covenants, Conditions, Restrictions, and Reservation of Easements in
23 effect and governing the LIDO, owners of condominiums therein, and the
24 Homeowners Association thereof, LIDO was specifically responsible for
25 maintaining, repairing, modifying, and altering the common areas
26 within the condominium complex, including, but not limited to, those
27 located appurtenant to and within the walls and/or floors of the
28 Premises, including the bearing walls (except for the finished

1 surfaces thereof), plumbing and pipes in the common area walls, sub
2 floors, finished surfaces and structural components of balconies,
3 balcony railings, patios, storage spaces, parking spaces in common
4 areas, and plumbing and electrical lines in common walls and common
5 areas" of the property located at 31755 South Coast Highway in the
6 City of Laguna Beach, County of Orange, State of California.

7 10. Plaintiffs are informed and believe, and thereon allege,
8 that since at least January 1, 2005, or such dates as will be proved
9 at the time of trial, LIDO, its management, officers, and directors,
10 and each of them, were aware that the plumbing system and various
11 components thereof, including, but not limited to, water and waste
12 pipes, valves, fixtures, and fittings, had become and were severely
13 deteriorated and in need of extensive repairs and/or replacement,
14 maintenance, and servicing to the extent that they posed an imminent
15 and foreseeable danger of leaking, bursting, and/or otherwise
16 malfunctioning. Said Defendant, its management, officers, and
17 directors, and each of them, were further aware that the failure in
18 whole or in part of such systems or the components thereof would
19 likely result in property damage to common areas and/or individual
20 condominium units, as well as disruption of services to such units,
21 potentially rendering them partially or totally uninhabitable, as
22 well. Plaintiffs are informed and believe, and thereon allege, that
23 at all times herein mentioned, all members of the Board of Directors
24 and all officers of the LIDO were aware that pipes and other
25 components of the plumbing system of the complex were located in the
26 floor of the Premises, as well as the common area walls thereof.

27 11. Commencing on or about April, 2002, the Premises were owned
28 one-half by Plaintiff, MARILYN PROPSTRA, an individual, and one-half

1 by Suzanne Propstra, an individual.

2 12. In or about September, 2004, Suzanne Propstra conveyed all
3 of her right, title, and interest in and to the Premises to Suzanne
4 Propstra, as trustee of the SUZANNE P. PROPSTRA TRUST, Dated
5 December 17, 1990.

6 13. On or about July 7, 2011, Suzanne Propstra became deceased.
7 Pursuant to the terms of the SUZANNE P. PROPSTRA TRUST, Dated
8 December 17, 1990, as of the death of Suzanne Propstra, JOHN A.
9 PROPSTRA, DIANE P. WILLIAN, and MARILYN PROPSTRA became the successor
10 Co-Trustees of the SUZANNE P. PROPSTRA TRUST, Dated December 17,
11 1990. Pursuant to the terms thereof, Plaintiff MARILYN PROPSTRA, an
12 individual, became the successor-in-interest to all right, title, and
13 interest of the SUZANNE P. PROPSTRA TRUST, Dated December 17, 1990,
14 in and to the Premises. Thus, at that point in time, Plaintiff
15 MARILYN PROPSTRA, an individual, was the sole owner of all right,
16 title, and interest in and to the Premises.

17 14. On or about September 7, 2011, said MARILYN PROPSTRA, an
18 individual, conveyed all of her right, title, and interest in and to
19 the Premises to MARILYN PROPSTRA, as Trustee of the MARILYN S.
20 PROPSTRA TRUST, Dated March 23, 2004, as Amended, and thereupon said
21 MARILYN PROPSTRA, as Trustee of the MARILYN S. PROPSTRA TRUST, Dated
22 March 23, 2004, as Amended, became the sole owner of the Premises.

23 15. Plaintiffs are informed and believe, and thereon allege,
24 that in or about November, 2009, LIDO and NU FLOW entered into a
25 written agreement, pursuant to which LIDO, on behalf of the
26 Homeowners' Association governing the complex and for the benefit of
27 the condominium owners themselves, retained NU FLOW for the purpose
28 of installing an epoxy or similar "lining" in the pipes and plumbing

1 fixtures of various portions of the complex, including, but not
2 limited to, those within the walls and floor forming the structural
3 components of the Premises. The exact scope of work, other than as
4 stated herein, is unknown to Plaintiffs at this time, as Defendants
5 have not furnished Plaintiffs with a legible copy of said written
6 agreement. Plaintiffs are further informed and believe, and thereon
7 allege, that, pursuant to said written agreement, NU FLOW was to be
8 paid the approximate sum of Thirty-Eight Thousand Dollars (\$38,000.00)
9 for the work described in this paragraph and that the work thereunder
10 was to be performed commencing on or about December 22, 2009. The
11 exact date that such work was commenced is unknown to Plaintiffs at
12 the present time. Said written agreement is hereinafter referred to
13 as the "NU FLOW AGREEMENT."

14 16. Although Plaintiffs were not parties to the NU FLOW
15 AGREEMENT, it was intended by the parties thereto—namely, LIDO and
16 NU FLOW—that Plaintiffs and the other condominium owners at the
17 complex would, as owners and users of the systems utilizing the pipes,
18 benefit from the NU FLOW contract in that they would enjoy the
19 benefits of an improved plumbing system, including improved water and
20 waste flow and discharge and a decrease in or the elimination of
21 further deterioration, leaks, and future maintenance costs. NU FLOW
22 so represented to LIDO, by and through its advertising and promotional
23 materials and sales presentations, and LIDO so represented to the
24 condominium owners at the complex, including, but not limited to,
25 Plaintiff MARILYN PROPSTRA in her individual capacity and as a Trustee
26 of the aforementioned MARILYN S. PROPSTRA TRUST, Dated March 23, 2004,
27 as Amended, prior to NU FLOW commencing any work within the complex
28 pursuant to the NU FLOW AGREEMENT.

1 17. Plaintiffs are informed and believe, and thereon allege,
2 that on or about December 23, 2009, or shortly thereafter, while NU
3 FLOW was performing work anticipated by the written agreement set
4 forth in Paragraph 15 hereof, and as a direct and proximate result of
5 NU FLOW's improper installation, supervision, and application of the
6 epoxy lining as described herein, a pipe or pipes, or other components
7 of the plumbing system maintained by LIDO and located in the common
8 area of the condominium complex in a wall or walls and floor forming
9 the structural component of the Premises, burst, backed up, leaked,
10 and/or otherwise malfunctioned, causing the sudden and continued
11 flooding of the Premises with water, waste, and other liquid.
12 Plaintiffs are further informed and believe, and thereon allege, that
13 at said time and place said pipes and plumbing were in the exclusive
14 control of LIDO and NU FLOW and that all Defendants knew that
15 Plaintiff MARILYN PROPSTRA, the sole resident/occupant of the Premises
16 was temporarily out of state and that no other person would be
17 residing in the Premises while the work on the pipes and plumbing was
18 being performed. In addition, Defendant NU FLOW was in sole and
19 complete control of the Premises and the means of repairing and/or
20 lining the pipes and plumbing components as afore described, while
21 said process was occurring, and LIDO had, by and through its on-site
22 employees and agents, was overseeing and monitoring the project as it
23 progressed. Plaintiffs herein did not become aware of the incident
24 until contacted by an agent of LIDO on or about December 23, 2009, at
25 the earliest, at which time waste was continuing to flow into the
26 Premises.

27 18. NU FLOW breached the NU FLOW AGREEMENT by failing and
28 refusing to perform the work described therein in a proper or

1 workmanlike manner, thus causing events described in Paragraph 17
2 hereof.

3 19. Plaintiffs, to the extent that they had any ownership or
4 possessory interest in the Premises at the time of the events set
5 forth herein, have performed all conditions and covenants on their
6 part to be performed pursuant to all written agreements set forth
7 herein, other than those which have been excused or which have been
8 rendered impossible to perform by Defendants, or any of them.

9 20. Plaintiffs are informed and believe, and thereon allege,
10 that subsequent to the events set forth in Paragraph 17 hereof, LIDO
11 entered into a written agreement with ABACUS, pursuant to which
12 ABACUS, a licensed general contractor in the State of California,
13 would perform construction management services and the retention and
14 supervision of other contractors and subcontractors for the purpose
15 of performing repair services in connection with the damage caused by
16 the events set forth in said Paragraph 17. Plaintiffs have not been
17 provided with a copy of said written agreement and are therefore
18 ignorant of the exact terms and conditions thereof, including the
19 consideration and precise scope of work set forth therein. Said
20 written agreement is hereinafter referred to as the "ABACUS
21 AGREEMENT." Notwithstanding said present lack of knowledge, the
22 general terms of the scope of said work were described to Plaintiff
23 MARILYN PROPSTRA by members of the Board of Directors of LIDO and by
24 their on-site property manager, Jim Brickley, prior to and while
25 ABACUS' personnel were performing said supervisory and managerial
26 services in connection with said repairs.

27 21. It was intended by the parties to the ABACUS AGREEMENT that
28 Plaintiffs and the other condominium owners at the complex, would

1 benefit from the ABACUS AGREEMENT in that they, as owners thereof,
2 would enjoy the benefits of contemplated repairs, including the repair
3 and cleanup of water, waste material, and other property and related
4 damages sustained by the condominiums in the complex, including the
5 Premises, and eventually enjoy improved water and waste flow and
6 discharge and a decrease in or the elimination of leaks and future
7 maintenance costs. ABACUS and LIDO, by and through their employees,
8 managers, directors, officers, and other managerial employees were at
9 all times aware of the fact that the Premises had sustained extensive
10 damage as a result of the events set forth in Paragraph 17 hereof and
11 that Plaintiff MARILYN PROPSTRA was losing and would continue to lose
12 the use of said Premises both personally and for income-producing
13 activities and uses during the repair period. Thus said Defendants
14 were aware that time was of the essence with respect to completing
15 such repairs to the Premises.

16 22. Pursuant to the ABACUS AGREEMENT, ABACUS and various
17 subcontractors and contractors hired by ABACUS and LIDO proceeded to
18 attempt to effect a cleanup of the water and waste material on the
19 Premises and to perform necessary repairs to the pipes and plumbing
20 systems in and adjacent to the Premises, knowing all the while that
21 the Premises were uninhabitable as a result of the events described
22 in Paragraph 17 hereof and the subsequent events that continued,
23 including, but not limited to, continued discharge of water and waste
24 directly onto and into the Premises following the retention of ABACUS
25 for the services described herein, as well as the development of the
26 presence of mold, including mold hazardous to human health directly
27 within the Premises. These damages and the contemplated repairs
28 necessitated the removal of all furniture, personal property,

1 appliances, certain structural elements, and portions of the Premises.

2 23. Plaintiffs are informed and believe, and thereon allege,
3 that in or about July, 2010, LIDO entered into a written agreement
4 with "B&B PLUMBING, INC., a California Corporation," pursuant to which
5 "B&B PLUMBING, INC.," representing itself to be a California licensed
6 plumbing contractor, agreed to perform certain work on the Premises
7 and areas adjacent thereto, including the common area walls and floors
8 of said Premises. Plaintiffs are informed and believe, and thereon
9 allege, that "B&B PLUMBING, INC.," is actually a fictitious business
10 name of Defendant BLAINE ENTERPRISES, INC., a Corporation. Said
11 written agreement is hereinafter referred to as the "B&B AGREEMENT."

12 24. Plaintiffs are informed and believe, and thereon allege,
13 that the services to be performed pursuant to the B&B AGREEMENT
14 included, but were not limited to, investigating and documenting the
15 existing waste line running through the kitchen on the Premises to
16 ascertain and repair the damage thereto, reroute existing waste and
17 water lines within the floors and walls of the Premiss, saw cutting,
18 trenching and breaking out various areas of the concrete floor within
19 the Premises, patching the trenches upon completion of repairs, and
20 re-piping of various areas within the Premises. Plaintiffs are
21 informed and believe, and thereon allege, that at the time of entering
22 into the B&B AGREEMENT, all services to be rendered and the labor and
23 material furnished pursuant to the B&B AGREEMENT were intended to be
24 for the benefit of Plaintiffs, among other condominium owners, and
25 that B&B was aware that time was of the essence in that the Premises
26 were and would remain uninhabitable until the completion of all such
27 repairs in a proper and workmanlike manner. The precise financial
28 terms of the B&B AGREEMENT are unknown to Plaintiffs, but the price

1 to be paid to B&B is believed to be in excess of Eleven Thousand
2 Dollars (\$11,000.00) on account of the labor and material to be
3 furnished. Pursuant to the B&B AGREEMENT, B&B applied for and
4 obtained certain Building Permits from the City of Laguna Beach,
5 pursuant to which the work under the B&B AGREEMENT was to be performed
6 and which required that all applicable Building Codes, standards, and
7 requirements be complied with and followed in effecting said repairs.

8 25. During the course of the repairs to the Premises, the LIDO,
9 by and through its Board of Directors and managerial and other
10 employees present on the Premises and within the complex, monitored
11 the damages to the Premises and the cleanup, remediation, and repairs
12 thereon. At all times herein mentioned, the Board of Directors of
13 LIDO was apprised, or should have been apprised, by said employees of
14 the progress and course of said repairs. During the course of said
15 repairs, Plaintiff would travel to the Premises to monitor the
16 progress of the repairs and was also apprised of same by LIDO
17 employees.

18 26. Plaintiff MARILYN PROPSTRA, individually and as Trustee of
19 the applicable Trusts, is informed and believes, and thereon alleges,
20 that at some point in approximately November, 2011, or shortly prior
21 thereto, Defendants, and each of them, deemed the repairs to the
22 pipes, plumbing, and related components of Premises and adjacent areas
23 to be complete and pursuant to all applicable building codes,
24 standards and requirements. In fact, said repairs were neither
25 complete nor performed pursuant to all applicable Building Codes,
26 standards, and requirements in that pipes and plumbing fixtures within
27 the Premises continued to leak directly into the Premises, and pipes
28 and component structures thereof were not installed or constructed in

1 compliance with the applicable Building Codes, standards, and
2 requirements. Defendants, and each of them, were notified of said
3 deficiencies both verbally and in writing by the City of Laguna Beach
4 and/or Plaintiffs but continued to fail and refuse to remedy the
5 deficiencies, all the while denying that they existed, and
6 notwithstanding the fact that the City of Laguna Beach had issued
7 written Notifications of Violations to Defendants as a result thereof.

8
9 **FIRST CAUSE OF ACTION**

10 **For Negligence**

11 **(Against Defendants NU FLOW and DOES 1-5)**

12 27. Plaintiffs repeat and reallege each and every allegation set
13 forth in Paragraphs 1 through 26 hereof and incorporate same by this
14 reference as though fully set forth at length herein.

15 28. As a direct and proximate result of the negligence of NU
16 FLOW, Plaintiffs' Premises and the fixtures, appliances, wall and
17 floor coverings, and other items of personal and real property located
18 therein sustained damage, and Plaintiffs thereby lost the use of said
19 Premises, which became diminished in value because of the mold
20 infestation that occurred as a result of the acts and omissions of
21 said Defendant, as set forth herein, and had to be remediated in order
22 to restore the Premises to their proper condition. The presence of
23 of mold at this time will have to be disclosed to any future
24 purchasers, resulting in such diminution in value. In addition,
25 Plaintiff MARILYN PROPSTRA, individually and as Trustee of the MARILYN
26 S. PROPSTRA TRUST, Dated March 23, 2004, as Amended, incurred various
27 compensatory and consequential damages as a result thereof. The exact
28 amount of said damages, value of said loss of use, and amount of

1 diminution in value are unknown to said Plaintiffs at this time, and
2 Plaintiffs will ask leave to amend this Complaint to set forth the
3 exact amount thereof when the same has been ascertained.

4
5 **SECOND CAUSE OF ACTION**

6 **For Breach of Written Contract**

7 **(Against Defendants LIDO and DOES 16-20)**

8 29. Plaintiffs repeat and reallege each and every allegation set
9 forth in Paragraphs 1 through 26 hereof and incorporate same by this
10 reference as though fully set forth at length herein.

11 30. The written and recorded Declaration of Covenants,
12 Conditions, Restrictions, and Reservation of Easements in effect and
13 governing the LIDO, owners of condominiums therein, and the
14 Homeowners' Association thereof constitutes an agreement between
15 Plaintiffs and the LIDO, pursuant to which LIDO agrees to perform its
16 various obligations set forth therein.

17 31. Plaintiffs are informed and believe, and thereon allege,
18 that by virtue of their positions as elected members of the Board of
19 Directors of the LIDO, said directors were acting on behalf of the
20 LIDO and were in a position to know, or should have known, that there
21 existed defects and deteriorating conditions in the pipes and plumbing
22 components of the common areas of the complex, including the walls and
23 floors of the Premises well before December, 2009, and that they
24 either failed to make reasonable inquiry and/or failed to take
25 reasonable steps to correct the defects and/or deteriorating
26 conditions within said component in a timely manner.

27 32. Plaintiffs are further informed and believe, and thereon
28 allege, that Defendant LIDO failed and refused to accumulate

1 reasonable Reserves to investigate, maintain, and repair said pipes
2 and components of the plumbing system within the complex and more
3 particularly in the area of the Premises, all in breach of their
4 obligations under the recorded Declaration of Covenants, Conditions,
5 Restrictions, and Reservation of Easements in effect and governing the
6 LIDO, owners of condominiums therein, and the Homeowners' Association
7 thereof, as well as pursuant to the requirements of California law.
8 In addition, and without limitation, pursuant to California *Civil Code*
9 Section 1354(a), LIDO is responsible for repairing, replacing, and
10 maintaining the common area, other than exclusive use common area,
11 which obligations are therefore implied by law in addition to being
12 set forth in the recorded Declaration of Covenants, Conditions,
13 Restrictions, and Reservation of Easements in effect and governing the
14 LIDO, owners of condominiums therein, and the Homeowners' Association
15 thereof. Furthermore, said Defendant unreasonably delayed the repairs
16 to the Premises, which caused waste material to continue to enter the
17 Premises and accumulate therein, even after certain new pipes were
18 installed, increasing the damages to the Premises and thus increasing
19 the damages sustained by Plaintiffs herein.

20 33. As a direct and proximate result of the breach of the
21 recorded Declaration of Covenants, Conditions, Restrictions, and
22 Reservation of Easements in effect and governing the LIDO, owners of
23 condominiums therein, and the Homeowners' Association thereof,
24 Plaintiff has sustained compensatory and consequential damages in an
25 amount in excess of the jurisdictional minimum required by this Court,
26 which amount will be proved at the time of trial.

27 ///

28 ///

1 Plaintiff repeatedly advised LIDO, by and through its managerial
2 employees and agents, including ABACUS and LIDO's counsel (who
3 demanded that all communications be made through them), that the
4 repairs had not been completed properly and that Defendants, and each
5 of them, had failed to comply with Notices of Violations issued in
6 writing by the City of Laguna Beach.

7 36. ABACUS and LIDO had a duty to oversee the repairs to the
8 common area and other areas within and adjacent to the Premises. Said
9 Defendants, and each of them, failed to act with reasonable care in
10 that they failed and refused to make reasonable inquiry and/or failed
11 to take reasonable steps to correct and repair or supervise the
12 correction and repair of Premises or the defects that still caused
13 water and waste liquid to enter the Premises from the same components
14 of the plumbing system and pipes that had supposedly been repaired by
15 them and/or at their direction following the occurrence of the events
16 set forth in Paragraph 17 hereof. Said acts and omissions commenced
17 immediately following said occurrence and continued through at least
18 August 11, 2011, when Defendants finally received approval from the
19 City of Laguna Beach for the repairs effected to the Premises by
20 Defendants, and each of them.

21 37. As a direct and proximate result of the negligence of said
22 Defendants, and each of them, Plaintiff MARILYN PROPSTRA, individually
23 and as Trustee of the MARILYN S. PROPSTRA TRUST, Dated March 23, 2004,
24 as Amended, sustained property damage and lost the use of the
25 Premises, all causing her to sustain compensatory and consequential
26 damage in an amount in excess of the jurisdictional minimum required
27 by this Court, which amount will be proved at the time of trial.

28 ///

1 FOURTH CAUSE OF ACTION

2 For Negligence

3 (Against Defendants B&B and DOES 6-10)

4 38. Plaintiffs repeat and reallege each and every allegation set
5 forth in Paragraphs 1 through 26 hereof and incorporate same by this
6 reference as though fully set forth at length herein.

7 39. Pursuant to California *Civil Code* Section 1354(a), LIDO is
8 responsible for repairing, replacing, and maintaining the common area,
9 other than exclusive use common area. Following the events described
10 in Paragraph 17 hereof, the LIDO, by and through its managerial
11 employees, agents, and Board of Directors, represented to Plaintiff
12 MARILYN PROPSTRA, individually and as Trustee of the MARILYN S.
13 PROPSTRA TRUST, Dated March 23, 2004, as Amended, that the Premises
14 had been repaired properly and pursuant to all applicable Building
15 Codes, standards, and requirements. Subsequent thereto, on several
16 occasions, LIDO, by and through its managerial employees, agents, and
17 Board of Directors represented to said Plaintiff that the same were
18 being complied with and followed in effecting said repairs. As a
19 result, LIDO, by and through its Board of Directors and managerial
20 employees, and agents, repeatedly demanded that said Plaintiff provide
21 LIDO with a definitive schedule of repairs that she planned to make
22 to her personal property within the Premises and demanded that she
23 pursue same to completion. In addition thereto, at the direction of
24 LIDO, through its employees, the defective pipes and plumbing which
25 had been reported by the LIDO to have been repaired following the
26 occurrence set forth in Paragraph 17 were intentionally covered with
27 drywall so that they would not be visible or easily accessible to the
28 City Inspectors or Plaintiff's own contractor prior to final approval

1 by the City of Laguna Beach as required by law. In response, said
2 Plaintiff repeatedly advised LIDO, by and through its managerial
3 employees and agents, including ABACUS and LIDO's counsel (who
4 demanded that all communications be made through them), that the
5 repairs had not been completed properly and that Defendants, and each
6 of them, had failed to comply with Notices of Violations issued in
7 writing by the City of Laguna Beach.

8 40. ABACUS and LIDO had a duty to oversee the repairs to the
9 common area and other areas within and adjacent to the Premises. Said
10 Defendants, and each of them, failed to act with reasonable care in
11 that they failed and refused to make reasonable inquiry and/or failed
12 to take reasonable steps to correct and repair or supervise the
13 correction and repair of Premises or the defects that still caused
14 water and waste to enter and accumulate within the Premises from the
15 same components of the plumbing system and pipes that had supposedly
16 been repaired by them and/or at their direction following the
17 occurrence of the events set forth in Paragraph 17 hereof. Said acts
18 and omissions commenced immediately following said occurrence and
19 continued through at least August 11, 2011, when Defendants finally
20 received approval from the City of Laguna Beach for the repairs
21 effected to the Premises by Defendants, and each of them. It was not
22 until that time that Plaintiff could commence the repairs and
23 restoration of the Premises that were part of the condominium, which
24 she thereupon promptly commenced and pursued to completion.

25 41. As a direct and proximate result of the negligence of said
26 Defendants, and each of them, Plaintiff MARILYN PROPSTRA, individually
27 and as Trustee of the MARILYN S. PROPSTRA TRUST, Dated March 23, 2004,
28 as Amended, sustained property damage, diminution in value of the

1 Premises, and lost the use of the Premises, all causing her to sustain
2 compensatory and consequential damage in an amount in excess of the
3 jurisdictional minimum required by this Court, which amount will be
4 proved at the time of trial.

5
6 **FIFTH CAUSE OF ACTION**

7 **For Breach of Contract**

8 **(Against Defendants ABACUS and DOES 11-15)**

9 42. Plaintiffs repeat and reallege each and every allegation set
10 forth in Paragraphs 1 through 26 hereof and incorporate same by this
11 reference as though fully set forth at length herein.

12 43. For the reasons set forth herein, Plaintiffs, as owners of
13 the Premises, were intended and anticipated Third-Party Beneficiaries
14 of the ABACUS AGREEMENT.

15 44. Said Defendant failed and refused to perform its obligations
16 under the ABACUS AGREEMENT in that it failed to properly supervise and
17 manage the repairs to the common areas adjacent to the Premises and
18 failed and refused to correct continuing defects occasioned by such
19 attempts at repairs. As a direct and proximate result of the breach
20 of the ABACUS AGREEMENT by said Defendant, the repairs were not made
21 in a timely or proper manner, and said Defendant repeatedly failed and
22 refused to remedy same, all the while claiming that the repairs were
23 properly effected and in compliance with all applicable Building
24 Codes, standards, and requirements and that the same had been complied
25 with and followed in effecting said repairs.

26 45. Following the events described in Paragraph 17 hereof,
27 ABACUS, by and through its authorized agents and employees,
28 represented to Plaintiff MARILYN PROPSTRA, individually and as Trustee

1 of the MARILYN S. PROPSTRA TRUST, Dated March 23, 2004, as Amended,
2 that the Premises had been repaired properly and pursuant to all
3 applicable Building Codes, standards, and requirements and that the
4 same had been complied with and followed in effecting said repairs.
5 In addition thereto, ABACUS, through its agents and employees,
6 intentionally covered the defective and non-compliant pipes and
7 plumbing components with drywall so that they would not be visible or
8 easily accessible to the City or Plaintiff's own contractor prior to
9 final approval by the City of Laguna Beach as required by law. Said
10 Defendants failed to comply with Notices of Violations issued in
11 writing by the City of Laguna Beach in a timely manner.

12 46. Pursuant to the ABACUS AGREEMENT, ABACUS had agreed to
13 oversee the repairs to the common area and other areas within and
14 adjacent to the Premises. Said Defendant failed to make reasonable
15 inquiry of contractors and subcontractors during the course of said
16 repairs and/or failed to take reasonable steps to correct and repair
17 or supervise the correction and repair of the common area portions
18 appurtenant to and/or within the Premises or the defects that caused
19 or that were still causing water and waste to enter the Premises from
20 the same components of the plumbing system and pipes that had
21 supposedly been repaired by them and/or at their direction following
22 the occurrence of the events set forth in Paragraph 17 hereof. Said
23 breaches continued through at least August 11, 2011, when Defendants
24 finally requested and received approval from the City of Laguna Beach
25 for the repairs effected to the Premises by Defendants, and each of
26 them.

27 47. As a direct and proximate result of the breach of the ABACUS
28 AGREEMENT by said Defendant, Plaintiff MARILYN PROPSTRA, individually

1 and as Trustee of the MARILYN S. PROPSTRA TRUST, Dated March 23, 2004,
2 as Amended, sustained property damage, diminution in value, and lost
3 the use of the Premises, all causing her to sustain compensatory and
4 consequential damages in an amount in excess of the jurisdictional
5 minimum required by this Court, which amount will be proved at the
6 time of trial.

7
8 **SIXTH CAUSE OF ACTION**

9 **For Breach of Contract**

10 **(Against Defendants B&B and DOES 6-10)**

11 48. Plaintiffs repeat and reallege each and every allegation set
12 forth in Paragraphs 1 through 26 hereof and incorporate same by this
13 reference as though fully set forth at length herein.

14 49. For the reasons set forth herein, Plaintiffs, as owners of
15 the Premises, were the intended and anticipated Third-Party
16 Beneficiaries of the B&B AGREEMENT.

17 50. Said Defendant failed and refused to perform its obligations
18 under the B&B AGREEMENT in that it failed to properly perform the
19 repairs to the common areas adjacent to and within the Premises,
20 failed and refused to correct continuing defects occasioned by such
21 attempts at repairs as required by the B&B AGREEMENT, and failed and
22 refused to obtain final approval/sign-off from the City of Laguna
23 Beach pursuant to the very Building Permit it had obtained in
24 connection with the work. Plaintiffs are informed and believe, and
25 thereon allege, that said Defendant failed and refused to have a pipe
26 that had been placed in the floor of the Premises by B&B inspected
27 prior to covering it in concrete, all in violation of the applicable
28 Building Codes and regulations, as well as in violation of the terms

1 and conditions of the Building Permit and in violation of the B&B
2 AGREEMENT itself.

3 51. As a direct and proximate result of the breach of the B&B
4 AGREEMENT by said Defendant, the repairs were not made in a timely or
5 proper manner, and said Defendant repeatedly failed and refused to
6 remedy same, all the while claiming that the repairs were properly
7 effected and in compliance with all applicable Building Codes,
8 standards, and requirements and that the same had been complied with
9 and followed in effecting said repairs.

10 52. As a direct and proximate result of the breach of the B&B
11 AGREEMENT by said Defendant, Plaintiff MARILYN PROPSTRA, individually
12 and as Trustee of the MARILYN S. PROPSTRA TRUST, Dated March 23, 2004,
13 as Amended, sustained property damage, diminution in value, and lost
14 the use of the Premises, all causing her to sustain compensatory and
15 consequential damages in an amount in excess of the jurisdictional
16 minimum required by this Court, which amount will be proved at the
17 time of trial.

18
19 **SEVENTH CAUSE OF ACTION**

20 **For Breach of Contract**

21 **(Against Defendants NU FLOW and DOES 1-5)**

22 53. Plaintiffs repeat and reallege each and every allegation set
23 forth in Paragraphs 1 through 26 hereof and incorporate same by this
24 reference as though fully set forth at length herein.

25 54. Plaintiffs, as owners of the Premises, were intended and
26 anticipated Third-Party Beneficiaries of the NU FLOW AGREEMENT.

27 55. Said Defendant failed and refused to perform its obligations
28 under the NU FLOW AGREEMENT in that it failed to properly perform the

1 repairs to the common areas adjacent to the Premises, thus causing the
2 events to occur as described in Paragraph 17 hereof.

3 56. As a direct and proximate result of the breach of the NU
4 FLOW AGREEMENT by said Defendant, Plaintiff MARILYN PROPSTRA,
5 individually and as Trustee of the MARILYN S. PROPSTRA TRUST, Dated
6 March 23, 2004, as Amended, sustained property damage and lost the use
7 of the Premises, all causing her to sustain compensatory and
8 consequential damages in an amount in excess of the jurisdictional
9 minimum required by this Court, which amount will be proved at the
10 time of trial.

11
12 **EIGHTH CAUSE OF ACTION**

13 **For Breach of Fiduciary Duty**

14 **(Against Defendants LIDO and DOES 16-20)**

15 57. Plaintiffs repeat and reallege each and every allegation set
16 forth in Paragraphs 1 through 26, 31 through 35, and 37 through 39
17 hereof and incorporate same by this reference as though fully set
18 forth at length herein.

19 58. Plaintiffs are informed and believe, and thereon allege,
20 that at least since January, 2005, LIDO, through its various
21 Directors, officers, agents, and employees, became aware of numerous
22 water and moisture defects and deteriorating conditions in the common
23 areas of the complex and the need for addressing these conditions in
24 a meaningful way.

25 59. Plaintiffs are informed and believe, and thereon allege,
26 that notwithstanding the fiduciary duties owed by the Board of
27 Directors of LIDO to repair the defects and/or deteriorating
28 conditions in portions of the common area, including, but not limited

1 to, those areas within the walls of the Premises, the Board of
2 Directors failed to correct these and other known defects and/or
3 deteriorating conditions and/or engaged in excessive deferred
4 maintenance and/or failed to otherwise fulfill their duties to
5 Plaintiffs and to the other members of the LIDO Homeowners'
6 Association in breach of their fiduciary duty to the Association and
7 the members thereof.

8 60. By virtue of the obligations imposed by law and the
9 relationship between the LIDO Board of Directors, on the one hand, and
10 the members of the LIDO HOMEOWNERS' ASSOCIATION and the members
11 thereof, including Plaintiffs, on the other hand, the LIDO Board of
12 Directors owed Plaintiffs a fiduciary duty to, at all times, act in
13 good faith and to protect the interests of each member of the
14 Association.

15 61. Plaintiffs are informed and believe, and thereon allege,
16 that, by virtue of their positions as duly elected members of the
17 Board of Directors, said Directors were in the unique position to
18 know, or should have known, that there existed defects and/or
19 dangerous conditions in the complex as more fully set forth
20 hereinabove and that they either failed to make reasonable inquiry
21 and/or failed to take reasonable steps to correct the defects and/or
22 deteriorating conditions within the complex.

23 62. By reason of the facts alleged hereinabove, LIDO, by and
24 through its Board of Directors, breached the fiduciary duty owed to
25 Plaintiffs and to other owners within the complex.

26 63. As a direct and proximate result of the breach of fiduciary
27 duty by the Board of Directors of LIDO, Plaintiffs have suffered the
28 damages set forth herein, the exact amount of which are unknown at

1 this time.


2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Plaintiffs seek Judgment against Defendants, and each of them, for:

1. Compensatory damages according to proof, which amount will be in excess of the jurisdictional minimum required by this Court;
2. Consequential damages according to proof, which amount will be in excess of the jurisdictional minimum required by this Court;
3. Damages for loss of use according to proof, which amount will be in excess of the jurisdictional minimum required by this Court;
4. Prejudgment interest at the maximum interest rate permitted by law;
5. Reasonable attorneys' fees as allowed by law; and
6. Such other and further relief as the court may deem proper.

DATED: December 13, 2012

LAW OFFICES OF JAMES G. KORSEN, INC.
A Professional Corporation

By: 

JAMES G. KORSEN
Attorney for Plaintiffs
MARILYN PROPSTRA, an Individual;
JOHN A. PROPSTRA, DIANE P. WILLIAM,
and MARILYN S. PROPSTRA, as Co-
Trustees of the SUZANNE P. PROPSTRA
TRUST, Dated December 17, 1990, as
Amended; and MARILYN PROPSTRA as
Trustee of the MARILYN S. PROPSTRA
TRUST, Dated March 23, 2004, as
Amended