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CYNTHIA M. CHARLES, also known as
CYNTHIA MICHELLE RUZANSKI,
MACORMICK T. GOZUM, JO ANNE C. GOZUM,
MICHAEL CRABBE-JONES, BRENDA CRABBE-JONES,
IVY N. KUMAI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CYNTHIA M. CHARLES, also known as)	CIVIL NO.: <u>09-1-1932-08</u>	S 13
CYNTHIA MICHELLE RUZANSKI;)	(Construction Defects)	
MACORMICK T. GOZUM; JO ANNE C.)		
GOZUM; MICHAEL CRABBE-JONES;)	CLASS ACTION COMPLAINT;	
BRENDA CRABBE-JONES, IVY N.)	DEMAND FOR JURY TRIAL;	
KUMAI, individually, On Behalf of)	SUMMONS	
Themselves and all Others Similarly)		
Situated,)		
)		
Plaintiffs,)		
)		
vs.)		
)		

[Caption Continued]

HASEKO HOMES, INC., a Hawaii)
corporation, HASEKO CONSTRUCTION,)
INC. a Hawaii corporation, JOHN DOES 1-)
10; JANE DOES 1-10; DOE)
PARTNERSHIPS 1-10, DOE)
CORPORATIONS 1-10; DOE JOINT)
VENTURERS 1-10; DOE ENTITIES 1-10;)
DOE GOVERNMENTAL ENTITIES 1-10;)
and DOE ORGANIZATIONS 1-10,)
))
Defendants.)
))
))
))

CLASS ACTION COMPLAINT

Comes now Plaintiffs CYNTHIA M. CHARLES, also known as CYNTHIA MICHELLE RUZANSKI; MACORMICK T. GOZUM; JO ANNE C. GOZUM; MICHAEL CRABBE-JONES; BRENDA CRABBE-JONES and IVY N. KUMAI, (collectively “Plaintiffs”) by and through their attorneys, OGAWA LAU NAKAMURA & JEW and ALEXANDER T. MACLAREN, ESQ. and for complaint against Defendants HASEKO HOMES, INC., a Hawaii Corporation, HASEKO CONSTRUCTION, INC., a Hawaii corporation, JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10; DOE JOINT VENTURERS 1-10; DOE ENTITIES 1-10; DOE GOVERNMENTAL ENTITIES 1-10; and DOE ORGANIZATIONS 1-10, (collectively “Defendants”) allege and aver as follows:

PRELIMINARY STATEMENT AND PARTIES

1. At all relevant times herein, Plaintiffs CYNTHIA M. CHARLES, also known as CYNTHIA MICHELLE RUZANSKI; MACORMICK T. GOZUM; JO ANNE C. GOZUM; MICHAEL CRABBE-JONES; BRENDA CRABBE-JONES; and IVY N. KUMAI, are and were

residents of the City and County of Honolulu, State of Hawaii. Plaintiffs CYNTHIA M. CHARLES, also known as CYNTHIA MICHELLE RUZANSKI; MACORMICK T. GOZUM; JO ANNE C. GOZUM; MICHAEL CRABBE-JONES; BRENDA CRABBE-JONES; and IVY N. KUMAI bring this action pursuant to Rule 23 of the Hawaii Rules of Civil Procedure, on behalf of themselves as well as all other owners similarly situated, including single family homes and town homes (the “residential units”) developed and sold by Defendant HASEKO HOMES, INC. as set forth below:

2. At all relevant times herein, Defendant HASEKO HOMES, INC. (“HASEKO”), was and is a Hawaii corporation with its principal place of business in the City and County of Honolulu, State of Hawaii.

3. At all relevant times herein, Defendant HASEKO CONSTRUCTION, INC. (“HASEKO CONSTRUCTION”), was and is a Hawaii corporation with its principal place of business in the City and County of Honolulu, State of Hawaii.

4. At all relevant times herein, JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10; DOE JOINT VENTURERS 1-10; DOE ENTITIES 1-10; DOE GOVERNMENTAL ENTITIES 1-10; and DOE ORGANIZATIONS 1-10, (collectively “Doe Defendants”) were and are persons, corporations, partnerships, entities, organizations and/or governmental entities who or which in some manner presently unknown to Plaintiffs, breached contractual or other duties and obligations; or acted in a negligent, wrongful, tortious and/or collusive manner, or engaged in actions or activities regarding the design, construction and/or procurement of materials used in the development, design and/or construction of the residential units and proximately causing or contributing in some manner to the claims herein and damages suffered by the Plaintiffs. Each and every Doe

Defendant had, in some manner, a legal duty or responsibility to the Plaintiff class as reasonably foreseeable purchasers and residents to use reasonable care in the development, construction, inspection, and/or repair of the residential units of the Plaintiff class. Plaintiffs have been unable to ascertain the names and identities of the Doe Defendants from diligent investigation that has been conducted to date, which has included a search of relevant records available to Plaintiffs and interviews of available persons with knowledge of matters and facts concerning this action. Accordingly, Plaintiffs request leave to amend their Complaint to insert the true names and/or identities and their relevant capacities, actions, activities and/or responsibilities of the Doe Defendants when their names and any other relevant matters or facts are ascertained.

5. HASEKO was the developer and seller of residential units, including but not limited to single family homes and townhomes, in what is known as Area 1 of the Ocean Pointe master planned community (“Ocean Pointe”) located in the District of Ewa, City and County of Honolulu, State of Hawaii.

6. Plaintiffs are informed and believe that HASEKO CONSTRUCTION was and is a contractor licensed in the State of Hawaii and was the contractor and/or construction manager for HASEKO in the construction of the residential units at Ocean Pointe.

7. This Complaint arises out of the premature and continuing corrosion, rusting, failure, deterioration and disintegration of galvanized steel hurricane strap tie holdowns which Plaintiffs are informed and believe were purchased, installed and negligently incorporated into the construction of the residential units at Ocean Pointe and which has resulted in spalling, cracking and other damages to the concrete foundations and to the wind uplift protection system of the residential units and poses risks of serious bodily injury and physical harm in the event of the failure of the hurricane straps in high winds.

8. Plaintiffs have provided written notice to Defendants HASEKO and HASEKO CONSTRUCTION of their claim of construction defect and the public safety and life-safety issues as alleged herein. Plaintiffs have filed this Complaint subject to Hawaii Revised Statutes § 672E-8 as Plaintiffs are informed and believe that any delay in filing this Complaint may preclude its filing and/or may preclude relief to certain prospective class members under applicable statutes of limitations and/or statutes of repose.

9. Plaintiffs are owners of residential units in the Ocean Pointe master planned community (“Ocean Pointe subdivision”). All events material herein occurred within the City and County of Honolulu, State of Hawaii, and within the jurisdiction of the Circuit Court of the First Circuit, State of Hawaii and venue is proper in this Court. The amounts at issue herein are within the jurisdictional limits of the Circuit Court of the First Circuit.

10. Plaintiffs propose to be the class representatives because they have suffered property damage and the potential for serious bodily injury as a result of the breach of their duties, and/or the negligent, wrongful, tortious or collusive conduct of Defendant’s agents including, but not limited to, concrete contractors and framing contractors in connection with the purchase, use, installation and incorporation of the hurricane tie-down straps in the construction of the residential units.

11. The question of law common and predominant to the Plaintiffs and the proposed class is whether actions taken by Defendant’s agents and subcontractors in, among other things, negligently and/or improperly using, installing and/or bending of hurricane straps during installation which has resulted in extensive uniform and common property damage to the structures occupied by the Plaintiff class.

12. The proposed class is ascertainable. Defendant HASEKO, as well as government records, can identify the names and addresses of the owners of the approximately 680 single family homes and the 250 town homes which exhibit the same problem and damages alleged herein. .

13. The Association of Apartment Owners of Ke Aina Kai Townhomes, a condominium association of homeowners of the townhouses located in Area 1 of Ocean Pointe which collectively owns and/or manages the common elements of the Association and is a prospective additional party whose presence may be required pursuant to Hawaii Rules of Civil Procedure Rule 19 as a necessary party due to its ownership and/or management of effected property.

14. Upon information and belief, Defendant HASEKO and HASEKO CONSTRUCTION, by and through their subsidiaries, agents and contractors oversaw the overall development and construction of the residential units in question. Upon further information and belief, Defendant HASEKO'S and HASEKO CONSTRUCTIONS'S agents and subcontractors negligently damaged the residential units by improperly specifying, ordering, installing and/or handling the hurricane straps at issue during the installation process.

15. Plaintiffs are informed and believe, and thereon allege on information and belief, that at all times pertinent to this Complaint, each Defendant was the agent and/or employee of each of its co-Defendants, and in doing the things described herein, was acting within the scope and course of his/her authority as an agent and employee, and each Defendant has ratified and approved the acts of his/her agents and employees.

16. Plaintiffs are informed and believe and allege based upon information and belief that Defendant HASEKO owned, developed, constructed, and sold the residential units at Ocean

Pointe at issue to individual members of the class, or their predecessors in title and represented that the residential units were built with quality materials and with a special attention to detail.

17. Plaintiffs are informed and believe and allege based upon information and belief that Defendant HASEKO was a seller, developer, and marketer of mass produced residential tract housing, including without limitation, mass produced residential units, single family homes and town houses, at issue.

CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action under the provisions of Rule 23(a) and Rule 23(b), Hawaii Rules of Civil Procedure. The requirements of both rules are satisfied.

A. The class is so numerous that joinder of all members is impracticable, as required by Rule 23(a)(1), Hawaii Rules of Civil Procedure. Upon information and belief, there are approximately 680 single family homes and 250 town homes using the hurricane straps, also denominated as “Simpson Strong Ties.”

B. There are questions of law or fact common to the class as required by Rule 23(a)(2), Hawaii Rules of Civil Procedure. Owners of the residential units, single family homes and town homes, in question were and are all subjected to property damage and potential serious bodily injury as a result of the negligent conduct alleged herein below. The question of law common and predominant to Plaintiffs and the proposed class include the following:

· whether Defendants and their agents, subsidiaries, affiliates, and subcontractors, have negligently performed certain critical aspects of construction, to wit, the bending of hurricane ties after the pouring of the spread footings and prior to the framing of the structure walls;

- whether the class members homes had hurricane straps installed in their residential units in violation of the Uniform Building Code of the City and County of Honolulu, 1994 Edition and 1997 Edition, respectively (collectively “UBC”) in effect at the time of construction of the residential units in question;
- whether the hurricane straps installed in the residential units of class members create a threat to public safety and serious bodily injury due to the corrosion and deterioration of structural soundness designed to protect class member’s residential units from damage due to high winds;
- whether the installed hurricane straps have a corrosion resistance equal to or greater than a hot-dipped galvanized coating of 1.5 ounces of zinc per square foot of surface area as required by the UBC;
- whether class members are entitled to replacement and/or repairs to their residential units and foundations;
- whether Defendants misrepresented the quality of materials used in the design and construction of the residential units; and
- whether framing and/or other contractors and subcontractors, working for Defendants as a pattern and practice, routinely bent back hurricane straps during construction in a manner which allowed intrusion of water, followed by deterioration and corrosion with resulting proximate property damage to class residential units.

C. The proposed class representatives have claims typical of the class, as described in paragraph 18.B. above, and as required by Rule 23(a)(3), Hawaii Rules of Civil Procedure. Those claims and the underlying facts are described below.

D. Plaintiffs will fairly and adequately protect the interests of the class, as required by Rule 23(a)(4), Hawaii Rules of Civil Procedure. Neither Plaintiffs nor their counsel have interests antagonistic to those of the proposed class. Moreover, Plaintiffs' attorneys are competent and experienced in litigation matters.

E. A class action is proper under Rule 23(b), Hawaii Rules of Civil Procedure, because Defendants have acted or refused to act on grounds generally applicable to the class (they have constructed homes and purchased and incorporated in their construction the galvanized steel hurricane strap tie holdowns through their agents, affiliates, and subsidiaries in a negligent fashion that has caused class wide property damage and the potential for serious bodily injury in a standard fashion). The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members of the class and could establish incompatible standards of conduct for the party opposing the class as required by Rule 23(b)(1)(A), Hawaii Rules of Civil Procedure, and/or risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests as required by Rule 23(b)(1)(B), Hawaii Rules of Civil Procedure. Further, questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior to any other methods for the fair and efficient adjudication of the controversy, as required by Rule 23(b)(3), Hawaii Rules of Civil Procedure.

FACTS

19. Plaintiffs presently own residential units located in Area 1 of Ocean Pointe, Ewa Beach, State of Hawaii. Plaintiffs acquired their home assuming that the structure would be

properly built and would not have extensive or costly repairs due to property damage occurring during the course of construction and would not pose a potential for serious bodily injury in high winds.

20. Defendant HASEKO acquired, subdivided, and constructed the subdivisions affecting the homes in question including but not limited to Area 1 (A, B, C) of Ke Aina Kai covered by the Ke Aina Kai Community Association and including approximately 680 homes negligently and/or improperly constructed with the hurricane straps which homes and homeowners do not have a homeowners warranty agreement with defendants. Additionally, Defendant HASEKO HOMES, INC. acquired, developed, and constructed town homes in Area 1 (A, B, C) of Ke Aina Kai including approximately 250 town homes negligently and/or improperly constructed with the hurricane straps.

21. Upon information and belief, Defendants, their subsidiaries and agents, by negligently and/or improperly installing the hurricane straps while framing walls of the residential units of class members in question, are responsible for the property damage that subsequently occurred and are also responsible for the potential for serious bodily injury that is likely to result from a failure of the hurricane straps.

22. Improper bending during installation of hurricane straps allows, among other things, the intrusion of water which causes decay, cracking, warping, buckling, spalling, and other damage to the structure of the homes, including but not limited to the damages to the concrete foundation and the wind uplift protection system in question.

FIRST CAUSE OF ACTION

Negligence -Uniform Building Code Violations

23. Plaintiffs incorporate and re-allege as though fully set forth herein Paragraphs 1 through 22, inclusive.

24. The City and County of Honolulu has adopted the 1994 Edition of the Uniform Building Code (UBC) Chapter 21 of the 1994 UBC includes certain prescriptive requirements for construction which are intended to promote public safety and welfare by reducing the risk of wind-induced damages to masonry construction, and provides that:

“All metal connectors and fasteners used in exposed locations or in areas otherwise subject to corrosion shall be of corrosion-resistant or noncorrosive material. When the terms ‘corrosion resistant’ or ‘noncorrosive’ are used in this chapter, they shall mean having a corrosion resistance equal to or greater than a hot-dipped galvanized coating of 1.5 ounces of zinc per square foot (3.95 g/m²) of surface area.”

25. Chapter 23 of the 1994 Edition of the UBC includes certain prescriptive requirements for construction which are intended to promote public safety and welfare by reducing the risk of wind-induced damages to conventional light-frame construction and provides that:

2365.5 Complete Load Path and Uplift Ties.

2365.5.1 General. Blocking, bridging, straps, approved framing anchors or mechanical fasteners shall be installed to provide continuous ties from the roof to the foundation system.

Tie straps shall be 1 1/8-inch (28.6 mm) by 0.036-inch (0.91 mm)(No. 20 gauge) sheet steel and shall be corrosion resistant as herein specified.

2365.5.2 Wall-to-foundation tie. Exterior walls shall be tied to a continuous foundation, or an elevated foundation system in accordance with Section 2365.10.

2365.5.4 Floor-to-foundation tie. The lowest-level exterior wall studs shall be connected to the foundation sill plate or an approved elevated foundation system with vent tie straps spaced not more than 48 inches (1219 mm) on center. Tie straps shall be nailed and installed in accordance with Table A-23-B and Figure A-23-1.

The 1997 Edition of the UBC included similar prescriptive requirements that were adopted by the City and County of Honolulu.

26. Section 2365.3 of Chapter 23 also provides that “CORROSION RESISTANT or NONCORROSIVE is material having a corrosion resistance equal to or greater than a hot-dipped galvanized coating of 1.5 ounces of zinc per square foot (4 g/m sq.) of surface area.” The 1997 edition of the UBC contained similar prescriptive requirements and was adopted by the City and County of Honolulu.

27. The Ocean Pointe subdivision is located in a high wind area and the requirements of Chapters 21 and 23 of the 1994 and 1997 Editions of the UBC, as adopted by the City and County of Honolulu, applied to the construction of the residential housing units in question.

28. These UBC provisions govern and relate to galvanized steel hurricane strap tie holdowns, for the purposes of being installed and incorporated in building construction projects, for life safety purposed, to prevent injury and damage to persons, and/or property from wind uplift forces, and to comply with the prescriptive requirements of various editions of the UBC, including, but not limited to Chapters 24 and 25 of the 1991 Edition of the UBC.

29. The subject galvanized steel hurricane strap tie holdowns, were placed at regular intervals around the outermost edge of the concrete slab foundation for each building, with a length of each strap embedded at a specified depth inside of the concrete slab foundation and a

specified length of each strap above the concrete slab foundation attached to the wall studs, to provide a continuous tie from the foundation to the wall.

30. After construction of class members residential units the subject galvanized hurricane strap tie holdowns began to prematurely and continuously corrode, rust, fail, deteriorate and disintegrate, thus causing cracking, spalling and other damage to class members residential units.

31. As a direct result of the premature and continuing corrosion, rusting, failure, deterioration and disintegration of subject galvanized steel hurricane strap tie holdowns which has occurred and is occurring to homes, Plaintiffs have suffered damages, costs, loss and expense and are reasonably likely to suffer further damages, costs, loss and expense in the future.

32. During the proximal period from when Defendant HASEKO acquired the property for development of the project to the date of this Complaint, Defendants and each of them, negligently improved, constructed, installed, and managed the homes of the Plaintiff class as herein alleged and other elements of the project previously unknown and otherwise failed to supply adequate materials, products, goods, devices, and procedures so that those elements of the project described herein do not function properly and are defective so as to create unsafe and unhealthy conditions, created the potential for serious bodily injury and have caused consequential damage to the buildings, improvements, and/or personal property at the project and the loss of use of the property.

33. Specifically, Defendants failed to comply with the requirements of the UBC then in effect and failed to adequately construct the project such that the project components as described including the hurricane straps and concrete foundation crack, split, settle, rot, and otherwise prematurely deteriorate because they do not function properly and are defective so as

to create dangerous, unsafe and unhealthy conditions that give rise to the potential for serious bodily injury in the event of high winds and/or a hurricane.

34. As a direct and proximate result of the negligent acts or omissions of Defendants, and each of them, the residential units of the class incurred damage, denying the class members complete and undisturbed enjoyment and use thereof and the potential for serious bodily injury, all to the class members' detriment.

35. Plaintiffs and members of the class have further suffered consequential damages to real and/or personal property within the project as a result of these acts or omissions, which damages far exceed the minimum jurisdictional amount of this Court, with the precise amounts to be proven at trial.

36. Defendants are liable to Plaintiffs pursuant to the doctrine of negligence for violation of the Building Codes.

37. As a result of the negligence for violation of Building Codes and carelessness on the part of Defendants, Plaintiffs have suffered damages, costs, loss and expense; have the potential risk of serious bodily injury in high winds and/or a hurricane and are reasonably likely to suffer further damages, costs, loss and expense in the future, and as a result thereof, Defendants are liable to Plaintiffs for damages, including the reasonable cost of correcting the dangerous condition, special and consequential damages, in amounts to be proven at trial.

SECOND CAUSE OF ACTION

Negligence - Failure to Warn - Misrepresentation

38. Plaintiffs incorporate and re-allege as though fully set forth herein Paragraphs 1 through 37, inclusive.

39. Defendant HASEKO knew and intended that the project would be used by Plaintiff class members for ordinary residential purposes common to such developments. Class members took possession of and accepted responsibility for their residential units for these intended purposes.

40. Upon information and belief, Defendant HASEKO represented that their residential units were built with quality material and with a special attention to detail.

41. Defendants had a duty to warn purchasers of the residential units that the galvanized steel hurricane strap tie holdowns might be unreasonably dangerous and/or defective and that such materials might not withstand the normal high winds in the area and might prematurely and continuously corrode, rust, fail and deteriorate and create a dangerous life safety condition for the owners of the residential units.

42. The failure to warn created and gave rise to a dangerous condition and/or a substantial and unreasonable risk of serious bodily injury and/or substantial property damage to Plaintiffs and members of the class and also to their guests and invitees.

43. The hurricane straps in question were not of sufficient quality and failed to meet the requirements of the UBC. Furthermore, Defendant HASEKO failed to pay special attention to insure that the components used in the construction of the residential units in Area 1 at Ocean Pointe were not defective and would not result in a dangerous and serious safety condition.

44. Plaintiff class members are informed and believe and allege based on information and belief that Defendants, and each of them, knew that each residential unit would be purchased and acquired and so used, after only a superficial inspection and inquiry for defects by prospective purchasers, that the subject properties due to the installation problems identified herein were defective and unfit for their intended use in the manner described here, and that

Defendants knew and expressly and implicitly represented by the presence of the homes on the market and by their promotions that the Plaintiffs' residential units were fit for the purpose of providing habitable residential units and, further, that the Defendants knew or, in the exercise of reasonable care, should have known that the residential units were not fit to provide habitable residential units and/or usable common areas.

45. As a direct and proximate result of the defects in the project and the actions of Defendants as set forth herein, Plaintiffs and the other class member residential unit owners in the City and County of Honolulu, State of Hawaii are entitled to recover actual and consequential damages, including but not limited to damages to their property and for the reasonable costs of repairs to their residential units to prevent serious bodily injury before it occurs, in an amount to be proven at trial.

THIRD CAUSE OF ACTION

Strict Liability

46. Plaintiffs incorporate and re-allege as though fully set forth herein Paragraphs 1 through 45, inclusive.

47. Defendant HASEKO is a mass developer of homes for sale in the City and County of Honolulu, State of Hawaii and its agents and/or suppliers of components used in the construction of the residential units are engaged in the sale of such products, including but not limited to the hurricane strap tie holdowns in question.

48. Plaintiffs are informed and believe and allege based on information and belief that these components of the residential units, single family homes and/or townhomes, of the Plaintiff class are defective and/or defectively designed, installed and/or constructed, which has caused

property damage to those and/or other components of the Plaintiff class residential units and/or other associated common elements to Plaintiff Associations in the condominium townhomes subclass and the defective components are unreasonably dangerous and/or create an unreasonably dangerous condition to Plaintiffs and other residential unit class members in the likely event of high winds and/or a hurricane.

49. Defendants had a duty to Plaintiff homeowners not to sell and/or incorporate defective and/or dangerous products or components into the residential units in the Ocean Pointe subdivision sold to Plaintiffs and other class members that have the potential to cause serious bodily injury in the likely event of high winds and/or a hurricane.

50. Plaintiffs and other class members are home owners in the City and County of Honolulu, State of Hawaii, who have suffered property damage and the potential for serious bodily injury as the result of the negligence and/or other actions of the Defendants.

51. The actions of Defendants, as described herein, constitute negligence.

52. Plaintiffs and other class member residential unit owners in the City and County of Honolulu, State of Hawaii, were injured in their property and are subject to the potential for serious bodily injury as a direct and proximate result of the negligent conduct of Defendant HASEKO, its agents, subsidiaries, subcontractors and suppliers including, but not limited to framing and foundation contractors who improperly handled the design, purchase and/or installation of the hurricane straps during construction.

53. As a result of the negligence of Defendants and the resulting damages to Plaintiffs and the other class member residential unit owners, Plaintiffs and the other class member residential unit owners are entitled to recover damages, including special and consequential

damages for the damages to their property and for the reasonable costs of repairs to their residential units to prevent serious bodily injury before it occurs.

FOURTH CAUSE OF ACTION

Breach of Implied Warranty of Habitability

54. Plaintiffs incorporate and re-allege as though fully set forth herein Paragraphs 1 through 53, inclusive.

55. Defendants are in the business of developing, constructing and/or selling residential units to the general public.

56. Defendants impliedly warranted in the sale of residential units to Plaintiffs and other class members and their assignees that the residential units would be of good quality, built with quality materials and would be habitable, safe and comply with all building codes and be fit for their intended use as residential dwellings.

57. Plaintiffs and other class members were and are direct and/or third party beneficiaries of such implied warranties.

58. The defects and deficiencies proximately caused by Defendants exposes Plaintiffs and other class members and their guests and invitees to a substantial risk of damage to their persons and to their residential units in the event of high winds.

59. As a direct and proximate result of the defects in the project and Defendants' breaches of their implied warranties, Plaintiffs and the other class members have suffered actual and consequential damages in an amount to be proven at trial.

PRAYER

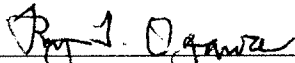
WHEREFORE, Plaintiffs ask the Court for the following relief and seek judgment against the Defendants jointly and severally as follows:

1. Define the class and subclasses as pleaded herein, if the Court finds that such definitions are desirable for the purpose of determining damages;
2. Take all other appropriate steps to protect the rights of the class members as alleged herein;
3. Award damages to each member of the class for the property damage experienced in the construction of the residence, according to proof with an award of interest on the funds necessary to achieve a repair of the homes;
4. Determine that Defendants through its agents, subsidiaries, subcontractors, and others negligently constructed or allowed the negligent construction of the residential units, single family homes and town homes, in question by the inappropriate bending of the hurricane straps and negligently constructing the residential units in a way that caused class substantial damage;
5. Establish a common fund as prayed for herein to allow for the repair and/or compensation of class members, according to proof;
6. For all damages in all causes of action, including but not limited to, damages for loss of use of the property, the reasonable costs of repair to prevent serious bodily injury and property damages, and all special and consequential damages in an amount to be proven at trial;
7. For pre-judgment interest at the maximum legal rate on all sums awarded;
8. For professional and technical fees and costs;

9. For all reasonable attorneys fees, costs of suit, plus interest, incurred in this action; and

10. For such other and further relief at law or in equity, as the Court may deem just and proper in the circumstances.

Dated: Honolulu, Hawaii AUG 19 2009.



ROY T. OGAWA
ALEXANDER T. MACLAREN
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

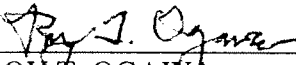
STATE OF HAWAII

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and DOE ORGANIZATIONS 1-10,)	
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Defendants.)	
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DEMAND FOR JURY TRIAL

Plaintiffs CYNTHIA M. CHARLES, also known as CYNTHIA MICHELLE RUZANSKI; MACORMICK T. GOZUM; JO ANNE C. GOZUM; MICHAEL CRABBE-JONES; BRENDA CRABBE-JONES, and IVY N. KUMAI, by and through their undersigned counsel, hereby demand a jury trial as to all issues so triable herein.

DATED: Honolulu, Hawaii, AUG 19 2009 .



 ROY T. OGAWA
 ALEXANDER T. MACLAREN
 Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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Defendants.)	
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SUMMONS

STATE OF HAWAII

TO: DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to file and serve upon the law firm of OGAWA, LAU, NAKAMURA & JEW, attorneys for Plaintiffs CYNTHIA M. CHARLES, also known as CYNTHIA MICHELLE RUZANSKI, MACORMICK T. GOZUM, JO ANNE C. GOZUM, MICHAEL CRABBE-JONES, BRENDA CRABBE-JONES, and IVY N. KUMAI, whose address is 600 Ocean View Center, 707 Richards Street, Honolulu, Hawaii

96813, an answer to the Complaint which is herewith served upon you, within TWENTY (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

PROCESS SERVER: You are prohibited from making personal delivery of this Summons between 10:00 p.m. and 6:00 a.m. on premises not open to the general public unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

DEFENDANT(S): Failure to obey this Summons may result in an entry of judgment and default judgment against you.

AUG 19 2009

DATED: Honolulu, Hawaii, _____.



Clerk of the Above-Entitled Court