

1 Kenneth S. Kasdan, SBN 71427
Michael D. Turner, SBN 126455
2 Joseph A. Mahoney, SBN 82405
KASDAN, SIMONDS, WEBER & VAUGHAN LLP
3 19900 MacArthur Boulevard, Suite 850
Irvine, California 92612
4 Telephone: (949) 851-9000
Facsimile: (949) 833-9455
5 KKasdan@kasdansimonds.com
MTurner@kasdansimonds.com
6 Jmahoney@kasdansimonds.com

7 Attorneys for Plaintiffs and the Proposed Class

8

9

SUPERIOR COURT OF CALIFORNIA

10

COUNTY OF RIVERSIDE - RIVERSIDE COURT

11

ROGER SWEIDAN, individually and on behalf
of a class of similarly situated persons,
12 SUSAN LOOMIS, individually and on behalf
of a class of similarly situated persons,
13 ANTHONY RADICIA, individually and on behalf
of a class of similarly situated persons,
14 CHRISTINA RADICIA, individually and on
behalf of a class of similarly situated persons,

15

Plaintiffs,

16

v.

17

WIRSBO COMPANY, an Illinois Corporation;
18 UPONOR NORTH AMERICA, INC., a Delaware
Corporation,
UPONOR, INC., an Illinois Corporation,
19 UPONOR WIRSBO, a Business Entity of
Unknown Form,
20 K. HOVNANIAN COMMUNITIES, INC., a
California Corporation, formerly known as K.
HOVNANIAN FORECAST HOMES
21 SOUTHERN, INC., a California Corporation,
formerly known as, K. HOVNANIAN
22 FORECAST HOMES, INC., a California
Corporation;
23 HOVNANIAN ENTERPRISES, INC., a Delaware
Corporation;
24 EXECUTIVE PLUMBING, INC., a California
Corporation;
25 and
DOES 1 through 6,000, inclusive,

26

Defendants.

27

28

///

Case No. RIC 10014729

Assigned to Hon. Mac R. Fisher
Department RV 06

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

**1. Violation of Standards for Residential
Construction**

JURY TRIAL DEMANDED

UNLIMITED CIVIL CASE

1 Plaintiffs Roger Sweidan, Susan Loomis, Anthony Radicia, and Christina Radicia, individually
2 and on behalf of all others similarly situated (hereinafter "Plaintiffs") bring this action and allege as follows:
3

4 INTRODUCTION

5 1. Plaintiffs are the current owners of new residential units located in the State of California, whether
6 purchased directly from the original seller, or subsequently purchased, from any other seller, intended
7 for the purpose of dwelling therein ("HOMES") where the original purchase agreements for the HOMES
8 were signed by the original seller, on or after January 1, 2003 and therefore actionable defects for deficiencies
9 in the original construction of the HOMES against builders, general contractors, subcontractors, material
10 suppliers and individual product manufacturers for the incorporation of defective components into the
11 HOMES are brought pursuant to violations of the standards set forth in California *Civil Code* section
12 895 et seq.

13 2. As part of the original construction and original sale of Plaintiffs' HOMES plumbing was provided
14 at the HOMES and defendants were builders, general contractors, subcontractors, material suppliers,
15 product manufacturers, and/or distributors and were responsible in some manner for the incorporation
16 of defective components into the HOMES which were used in the original construction of the plumbing
17 lines of Plaintiffs' HOMES including, but not limited to, yellow brass fittings.

18 3. Yellow brass fittings which were installed as part of original construction as a component of the
19 plumbing lines in Plaintiffs' HOMES are corroding through various processes of dezincification so as
20 to impede the useful life of the plumbing systems which is an actionable defect as a violation of the standard
21 set forth in California *Civil Code* section 896(a)(15) and this action is brought for the incorporation of
22 yellow brass fittings, a defective component, into the plumbing lines of Plaintiffs' HOMES.

23 THE PARTIES

24 4. Plaintiffs Roger Sweidan and Susan Loomis, are the owners of a single-family residence located
25 at 31130 Desert View Court, in Menifee, California. Plaintiffs acquired their equitable and legal ownership
26 of the property on, or about, March 8, 2007.

27 5. Plaintiffs Anthony Radicia, and Christina Radicia, are the owners of a single-family residence
28 located at 29056 Heaton Lane, in Menifee, California. Plaintiffs acquired their equitable and legal ownership

1 of the property on, or about, July 30, 2005.

2 6. Plaintiffs are excused from procedures contained within Title 7, Chapter 4 of the California *Civil*
3 *Code* pre-litigation process, pursuant to California *Civil Code* section 931, which states "[a]s to any
4 class action claims that address solely the incorporation of a defective component into a residence, the
5 named and unnamed class members need not comply with..." Title 7, Chapter 4.

6 7. Defendant WIRSBO COMPANY is an Illinois Corporation, who at all relevant times herein,
7 was doing business in the State of California with its principal business operations conducted from offices
8 in Apple Valley, Minnesota.

9 8. Defendant UPONOR NORTH AMERICA, INC. is a Delaware Corporation, who at all relevant
10 times herein, was doing business in the State of California with its principal business operations conducted
11 from offices in Minneapolis, Minnesota.

12 9. Defendant UPONOR, INC., is an Illinois Corporation, who at all relevant times herein, was doing
13 business doing business in the State of California with its principal business operations conducted from
14 offices in Minneapolis, Minnesota.

15 10. Defendant UPONOR WIRSBO, is a Business Entity of Unknown Form, who at all relevant times
16 herein, doing business in the State of California with its principal business operations conducted from
17 offices in Apple Valley, Minnesota.

18 11. Plaintiffs are ignorant of the names of defendants fictitiously named herein as DOES 1-500
19 (collectively "OTHER WIRSBO DEFENDANTS"), who at all relevant times herein, were doing business
20 in the State of California.

21 12. WIRSBO COMPANY, UPONOR NORTH AMERICA, INC., UPONOR, INC., UPONOR WIRSBO,
22 and OTHER WIRSBO DEFENDANTS are collectively referred to herein as the "WIRSBO COMPANIES"
23 and were manufacturers and material suppliers of components of Plaintiffs' HOMES for original construction
24 including, but not limited to, yellow brass fittings installed in the plumbing lines of the HOMES.

25 13. Defendant K. HOVNANIAN COMMUNITIES, INC., formerly known as K. HOVNANIAN
26 FORECAST HOMES SOUTHERN, INC., formerly known as, K. HOVNANIAN FORECAST HOMES,
27 INC. is a California Corporation, who at all relevant times herein, was doing business in the State of
28 California with its principal business operations conducted from offices in Ontario, California.

1 14. Defendant HOVNANIAN ENTERPRISES, INC. is a Delaware Corporation, who at all relevant
2 times herein, was doing business in the State of California with its principal business operations conducted
3 from offices in Red Bank, New Jersey.

4 15. Plaintiffs are ignorant of the names of defendants fictitiously named herein as DOES 501-1,500
5 (collectively "OTHER DEVELOPER DEFENDANTS"), who at all relevant times herein were doing
6 business in the State of California.

7 16. K. HOVNANIAN COMMUNITIES, INC., formerly known as K. HOVNANIAN FORECAST
8 HOMES SOUTHERN, INC., formerly known as, K. HOVNANIAN FORECAST HOMES, INC,
9 HOVNANIAN ENTERPRISES, INC., and OTHER DEVELOPER DEFENDANTS are collectively
10 referred to herein as the "DEVELOPER DEFENDANTS" and were the developers and builders of Plaintiffs'
11 HOMES and were responsible in some manner for the incorporation of defective components into the
12 HOMES which were used in the original construction of the plumbing lines of Plaintiffs' HOMES including,
13 but not limited to, yellow brass fittings manufactured and supplied by WIRSBO COMPANIES.

14 17. Defendant EXECUTIVE PLUMBING, INC. is a California Corporation, who at all relevant times
15 herein, was doing business in the State of California.

16 18. Plaintiffs are ignorant of the names of defendants fictitiously named herein as DOES 1,501-5,000
17 (collectively "OTHER SUBCONTRACTOR DEFENDANTS"), who at all relevant times herein were
18 doing business in the State of California.

19 19. EXECUTIVE PLUMBING, INC. and "OTHER SUBCONTRACTOR DEFENDANTS" are
20 collectively referred to herein as the "SUBCONTRACTOR DEFENDANTS" and supplied labor and
21 material during the construction of Plaintiffs' HOMES and were responsible in some manner for the
22 incorporation of defective components into the HOMES which were used in the original construction
23 of the plumbing lines of Plaintiffs' HOMES including, but not limited to, yellow brass fittings manufactured
24 and supplied by WIRSBO COMPANIES.

25 20. Plaintiffs are ignorant of the names of defendants fictitiously named herein as DOES 5,001-6,000
26 (collectively "DISTRIBUTOR DEFENDANTS"), who at all relevant times herein, were doing business
27 in the State of California and who acted as material suppliers of yellow brass fittings manufactured and
28 supplied by WIRSBO COMPANIES which were installed as part of original construction as a component

1 of the plumbing lines in Plaintiffs' HOMES.

2 21. Plaintiffs are ignorant of the true names and capacities of the parties sued as DOES 1 through
3 6,000, inclusive, and therefore sue them under fictitious names. Upon learning their true names and
4 capacities, Plaintiffs will amend the Complaint to reflect the same. Upon information and belief, Plaintiffs
5 allege that DOES 1 through 6,000, inclusive, are responsible in some manner for the occurrences herein
6 alleged and Plaintiffs damages as herein alleged were proximately caused by such occurrences.

7 **JURISDICTION AND VENUE**

8 22. This Court has jurisdiction over this action pursuant to California *Code of Civil Procedure* section
9 410.10. Plaintiffs seek damages on behalf of themselves and all others similarly situated under the laws
10 of the State of California.

11 23. Venue is proper in this Court pursuant to California *Code of Civil Procedure* section 392 because
12 the damages that Plaintiffs seek are for injuries to Plaintiffs' HOMES which are real property which are
13 located in all of the Counties of California, which includes Riverside County.

14 **CLASS ACTION ALLEGATIONS**

15 24. This suit is brought as a class action pursuant to California *Code of Civil Procedure* section 382,
16 on behalf of a class of:

17 all owners of originally constructed individual dwelling units, other
18 than condominium conversions, in the State of California where the
19 original purchase agreements for the individual dwelling units were
20 signed by the original seller, on or after January 1, 2003 where the
residential units had installed, as part of the original construction,
yellow brass fittings in the plumbing lines which were supplied and
manufactured by WIRSBO COMPANIES

21 25. Plaintiffs specifically exclude Defendants or its related entities from the proposed class, all subsidiaries
22 or affiliates of Defendants; any entity in which Defendants has a controlling interest; and any and all
23 of Defendants' employees, affiliates, legal representatives, heirs, successors or assignees.

24 26. Plaintiffs also specifically exclude from the class any person or entity that has previously commenced
25 and concluded a lawsuit against the WIRSBO COMPANIES arising out of the subject matter of this
26 lawsuit.

27 27. Plaintiffs also specifically exclude from the class the judge assigned to this case and any member
28 of the judge's immediate family.

1 28. Plaintiffs do not, as yet, know the exact size of the class, but estimate the number HOMES owned
2 by the class members to number not less than one hundred and sixty eight thousand (168,000).

3 29. The basis for the Class size estimate is that from 2003 to the date of the filing of this action
4 approximately 1,120,000 (one million one hundred and twenty thousand) new residential units were
5 constructed in the State of California and on information and belief Plaintiffs' estimate not less than
6 fifteen percent (15%) of the homes constructed between 2003 to the date of the filing of this action included
7 yellow brass fittings installed in the original plumbing lines supplied and manufactured by WIRSBO
8 COMPANIES.

9 30. The Joinder of the owners of one hundred and sixty eight thousand (168,000) HOMES would
10 be impracticable.

11 31. There are questions of law and fact common to the class that predominate over any questions
12 that may affect only individual members of the class, including, but not limited to:

- 13 (a) Whether California *Civil Code* section 896(a)(15) was violated by the supply of
14 defective yellow brass fittings incorporated as a component into the plumbing lines
of new residential housing originally sold after January 1, 2003;
- 15 (b) Whether California *Civil Code* section 896(a)(15) was violated by the manufacture
16 of defective yellow brass fittings incorporated as a component into the plumbing
lines of new residential housing originally sold after January 1, 2003;
- 17 (c) Whether any defenses raised are meritorious;
- 18 (d) Establishing corroding of the yellow brass fittings through various processes of
19 dezincification;
- 20 (e) Establishing that yellow brass fittings are corroding through various processes
of dezincification so as to impede the useful life of the plumbing systems;
- 21 (f) The necessary repair required to remedy the corrosion of the yellow brass fittings
22 supplied;
- 23 (g) Establishing the useful life of a plumbing system; and
- 24 (h) The measure of damages suffered by Plaintiffs and the class members.

25 32. Plaintiffs will fairly and adequately protect the interests of the class members in that Plaintiffs'
26 claims are typical and representative of the claims of all members of the class, all of whom own HOMES
27 where yellow brass fittings were installed in the original plumbing lines of the HOMES which were
28 manufactured and supplied by WIRSBO COMPANIES which are corroding through various processes

1 of dezincification and representation will further benefit the class because of the nature of the corrosion
2 of the components of the plumbing systems many class members may be unaware of the ongoing corrosion
3 that is impeding the useful life of their plumbing systems.

4 33. There are no defenses of a unique nature that may be asserted against Plaintiffs individually, as
5 distinguished from the other members of the class, and the relief sought is common to the class. Plaintiffs
6 are owners of HOMES, where WIRSBO COMPANIES supplied and manufactured yellow brass fittings
7 installed in the original plumbing lines of the HOMES, and do not have any interest that is in conflict
8 with or is antagonistic to the interests of the members of the class. Plaintiffs have retained competent
9 counsel experienced in multiparty complex construction defect actions to represent themselves and the
10 class.

11 34. A class action is superior to other available methods for the fair and efficient adjudication of
12 this controversy. In the absence of a class action WIRSBO COMPANIES and remaining defendants
13 will not be held liable for damages and will retain profits and avoid the natural assumption of risk and
14 risk spreading of business and class members who fail to detect the corrosion of WIRSBO COMPANIES'
15 yellow brass fittings within the period of limitations for filing an action may be left without remedy.

16 35. Plaintiffs allege that at all relevant times, each and every Defendant was acting as the duly authorized
17 agent of each and every other Defendant, that each Defendant is liable for each and every wrong committed
18 by each and every other Defendant, amongst other forms of joint and several liability. Defendants have
19 proximately caused Plaintiffs' indivisible damages, as alleged below, so as to make each Defendant liable,
20 either by joint and several liability, joint liability, several liability, proportionate liability or whole liability.

21 36. In addition to successor in interest liability, Plaintiffs allege that each individual entities comprising
22 the WIRSBO COMPANIES are, and at all relevant times were, directors, officers and/or owners of stock
23 and equitable interests of each of the other WIRSBO COMPANIES. The shares and equitable interests
24 so owned constitute 100 percent of the total number of shares issued and outstanding, and of all ownership
25 interests in such entities. Plaintiffs further allege that WIRSBO COMPANIES were and are the alter
26 egos of each other, have commingled assets, have commingled business operations, have ignored corporate
27 formalities, have formed multiple corporations to avoid valid debts and obligations, and that it would
28 be unjust to permit defendants to avoid individual liability through the use of sham entities.

1 37. There exists, and at all relevant times existed, a unity of interest and ownership between the WIRSBO
2 COMPANIES, such that any individuality and separateness between them has ceased, and WIRSBO
3 COMPANIES are the alter ego of one another, in that each of them was used as merely a shell, instrumentality,
4 and conduit by the others for the manufacture and supply of yellow brass fittings installed, at the time
5 of original construction, in the plumbing lines of Plaintiffs' HOMES in California.

6 38. WIRSBO COMPANIES, and each of them, were not and are not adequately capitalized for
7 performance of their responsibilities as a manufacturer and supplier of yellow brass fittings installed
8 in the plumbing lines of Plaintiffs' HOMES within the State of California; the object of their activities
9 was to generate income, funds and gain for the benefit of their respective true principals, including but
10 not limited to Does 1 to 500; their assets and liabilities were manipulated as between them so as to concentrate
11 the assets in some and the liabilities in others; and such entities, transactions and business structures
12 were employed by the WIRSBO COMPANIES with an intent to avoid performance of their duties and
13 satisfaction of their corporate and fiduciary responsibilities, and to use such business entities as a shield
14 against liability for the manufacture and supply of defective yellow brass fittings installed in the plumbing
15 lines of Plaintiffs' HOMES. Plaintiffs allege that there are not sufficient assets and capital within the
16 WIRSBO COMPANIES to fully satisfy any judgment Plaintiffs may obtain to repair the defective yellow
17 brass fittings in the plumbing lines of Plaintiffs' HOMES.

18 39. Adherence to the fiction of the separate existence of the WIRSBO COMPANIES would, under
19 the circumstances alleged above, permit abuse of the corporate privilege, sanction a fraud, promote injustice,
20 and produce an inequitable result, in that these true principals transferred funds and assets from WIRSBO
21 COMPANIES for these principals' undisclosed benefit and use, and enabled WIRSBO COMPANIES
22 to engage in the manufacturer and supply of yellow brass fittings installed in the plumbing lines of Plaintiffs'
23 HOMES within the State of California, without assets or capital sufficient to compensate Plaintiffs for
24 the cost of repairing the defective yellow brass fittings installed in the plumbing lines of Plaintiffs' HOMES,
25 arising from the failure of the WIRSBO COMPANIES to fulfill their responsibilities in the manufacture
26 and supply of components to plumbing lines of new residential construction in the State of California.

27 ///

28 ///

1 **DEMAND FOR TRIAL BY JURY**

2 40. Plaintiff, on behalf of themselves and all others similarly situated, hereby demands a trial by jury
3 for all issues so triable.

4 **FACTUAL ALLEGATIONS**

5 41. Plaintiffs' are the owners of HOMES located in the State of California.

6 42. Plaintiffs' HOMES contain defective yellow brass fittings in the plumbing lines installed at the
7 time of original construction, which were manufactured by WIRSBO COMPANIES and supplied by
8 the WIRSBO COMPANIES and DISTRIBUTOR DEFENDANTS.

9 43. Items referred to herein as "yellow brass fittings" are those with a material base with a zinc content
10 in excess of 15 percent and include products manufactured and sold by WIRSBO COMPANIES as defined
11 herein and include those sold under the names Pro PEX, and any other trade names by WIRSBO COMPANIES
12 including connections, brass couplings, brass elbows, brass tees, brass reducing tees, brass male threaded
13 adapters, brass female threaded adapters, brass sweat adapters, multi port tees, brass fitting adapters,
14 drop ear brass elbows, and brass swivel faucet adapters, including but not limited to ProPEX Part Numbers
15 Q4543850, Q4545050, Q4545075, Q4547575, Q4547510, 4541010, Q4542015, Q4542020, Q4546363,
16 Q4591010, Q4585050, Q4587575, Q4710500, Q4710750, Q4711000, Q4712000, Q4233850, Q4235038,
17 Q4235050, Q4125050, Q4705050, Q4707575, Q4701010, Q4702000, Q4705575, Q4707555, Q4707557,
18 Q4707550, Q4707710, Q4701775, Q4701751, Q4701150, Q4701175, Q4702575, Q4702051, Q4702053,
19 Q4702055, Q4702275, Q4702210, Q4702213, Q4702215, Q4525050, Q4525075, Q4527575, Q4527510,
20 Q4521075, Q4521010, Q4522020, Q4526375, Q4575050, Q4575075, Q4577575, Q4577510, Q4571075,
21 Q4571010, Q4572020, Q4576375, Q4513850, Q4515050, Q4515075, Q4517550, Q4517575, Q4517510,
22 Q4511010, Q4512020, Q4516350, Q4516375, Q4503850, Q4505050, Q4505075, Q4507550, Q4507575,
23 Q4507510, Q4501010, Q4502020, Q4506350, Q4506375, Q4653850, Q4655050, Q2120375, G4547575,
24 G4541010, G4541307, G4541310, G4541313, G4541507, G4541510, G4541513, G4541515, G4542020,
25 G4711250, G4711500, G4517575, G4511010, G4511313, and G4511515.

26 44. DEVELOPER DEFENDANTS were the original sellers and builders, as defined in California
27 *Civil Code* section 911, of Plaintiffs' HOMES.

28 45. SUBCONTRACTOR DEFENDANTS supplied labor and material for the construction of Plaintiffs'

1 HOMES at the time of original construction.

2 46. The original purchase agreements for the original sale of Plaintiffs' HOMES by the original seller
3 were signed on, or after, January 1, 2003.

4 47. Individual product manufacturers, material suppliers, builders, general contractors, and subcontractors
5 are subject to an action for recovery of damages for the violation of the standards enumerated in California
6 *Civil Code* section 895 et seq., which includes California *Civil Code* section 896(a)(15), for the incorporation
7 of defective yellow brass fittings in the plumbing lines of Plaintiffs' HOMES at the time of original
8 construction.

9 48. The yellow brass fittings which were manufactured by WIRSBO COMPANIES are corroding
10 through various processes of dezincification so as to impede the useful life of the plumbing system of
11 Plaintiffs' HOMES and Plaintiffs bring this action pursuant to California *Civil Code* section 895 et seq.
12 for the violation of the building standards contained at California *Civil Code* section 896(a)(15).

13 49. Between 2000 to the date of the filing of this action, the WIRSBO COMPANIES, individually
14 and collectively, acted in the capacity and engaged in the business of a manufacturer and material supplier
15 of defective yellow brass fittings which were components incorporated at the time of original construction
16 into the plumbing lines of Plaintiffs' HOMES.

17 50. WIRSBO COMPANIES were negligent in the design and manufacture of the yellow brass fittings
18 for a number of reasons, including WIRSBO COMPANIES' choice of a high zinc content brass alloy
19 as the material used for the yellow brass fittings.

20 51. WIRSBO COMPANIES knew or should have known that the brass alloy chosen for the yellow
21 brass fittings made the fittings susceptible to corroding through various processes of dezincification.

22 52. The yellow brass fittings fail their intend purpose because of the defective design and manufacture.

23 53. Between 2000 to the date of the filing of this action, the DISTRIBUTOR DEFENDANTS, individually
24 and collectively, acted in the capacity and engaged in the business of a material supplier of defective
25 yellow brass fittings which were components incorporated at the time of original construction into the
26 plumbing lines of Plaintiffs' HOMES.

27 54. DISTRIBUTOR DEFENDANTS knew or should have known that the high zinc content of the
28 brass alloy of the yellow brass fittings made the fittings susceptible to corroding through various processes

1 of dezincification.

2 55. DISTRIBUTOR DEFENDANTS acted as a material suppliers and failed to inspect or inquire
3 into the susceptibility of the yellow brass fittings corroding through various processes of dezincification
4 prior to the supply of yellow brass fittings to contractors and subcontractors for incorporation, at the
5 time of original construction, as a component into the plumbing lines of Plaintiffs' HOMES.

6 56. DEVELOPER DEFENDANTS were original sellers and builders, as defined in California *Civil*
7 *Code* section 911, of Plaintiffs' HOMES, and pursuant to California *Civil Code* section 895 et seq. are
8 responsible to Plaintiffs for the incorporation of defective yellow brass fittings as components of the
9 plumbing lines in Plaintiffs' homes installed at the time of original construction.

10 57. SUBCONTRACTOR DEFENDANTS supplied and incorporated the defective yellow brass fittings
11 into the plumbing lines of Plaintiffs' HOMES at the time of original construction.

12 58. SUBCONTRACTOR DEFENDANTS knew or should have known that the high zinc content
13 of the brass alloy of the yellow brass fittings made the fittings susceptible to corroding through various
14 processes of dezincification.

15 59. SUBCONTRACTOR DEFENDANTS failed to inspect or inquire into the susceptibility of the
16 yellow brass fittings to corroding through various processes of dezincification, prior to the incorporation,
17 at the time of original construction, as a component into the plumbing lines of Plaintiffs' HOMES.

18 60. Plaintiffs have incurred and, during the pendency of this action, will incur expenses for attorney's
19 fees and costs herein. Such attorney's fees and costs are necessary for the prosecution of this action and
20 will result in a benefit to each of the members of the class. This action will result in the enforcement
21 of important rights supported by strong public policy affecting the public interest which will confer a
22 significant benefit on the general public and a large class of persons, where the necessity and financial
23 burden of private enforcement are such as to make the award appropriate, and where such fees should
24 not in the interest of justice be paid out of the recovery, pursuant to *California Code of Civil Procedure*
25 §1021.5.

26 61. Plaintiffs were also required to retain the services of experts and consultants to investigate the
27 violations of the building standard contained at California *Civil Code* section 896(a)(15) and seek damages
28 for investigative costs pursuant to California *Civil Code* § 944.

1 62. COMPLEX ACTION. The facts and circumstances as alleged in this Complaint will involve
2 the management of a large number of witnesses and substantial documentary evidence, will include a
3 large number of parties, may involve extensive pre-trial motions which may raise difficult or novel issues
4 that will be time-consuming to resolve, and the remedies of which are requested will require substantial
5 post judgment judicial supervision. As such, the action will require exceptional judicial management
6 to avoid placing unnecessary burdens on the Court or the litigants and to expedite the case, keep costs
7 reasonable, and promote effective judicial decision-making by the Court, the parties and counsel, and
8 as such is designated by Plaintiffs as a complex case pursuant to *California Rules of Court* Rule 3.400
9 et seq.

10
11 **FIRST CAUSE OF ACTION INDIVIDUALLY, AND ON BEHALF OF CLASS**
12 **(Violation of Standards for Residential Construction)**
13 **[By Plaintiffs Against WIRSBO COMPANIES, DISTRIBUTOR DEFENDANTS,**
14 **DEVELOPER DEFENDANTS, SUBCONTRACTOR DEFENDANTS**
15 **and Does 1-6,000, Inclusive]**

16 63. Plaintiffs reallege Paragraphs 1 through 62 of the Complaint above and incorporate them herein
17 by reference as if fully set forth at this point.

18 64. Plaintiffs allege Defendants are liable for damages arising out of and related to the incorporation
19 of defective yellow brass fittings manufactured and supplied by WIRSBO COMPANIES installed in
20 Plaintiffs' HOMES at original construction which are corroding through various processes of dezincification
21 and are impeding the useful life of the plumbing systems of Plaintiffs' HOMES in violation of the building
22 standards for original construction as enumerated in California *Civil Code* section 896(a)(15).

23 65. As a direct and proximate result of these Defendants' violations of the standards for residential
24 construction Plaintiffs have been damaged in that they have been and will be required to incur expenses
25 to correct, replace and reconstruct these defective components within the PROJECT, as well as to correct,
26 replace and reconstruct the damage to property resulting therefrom, and they will be required to incur
27 expenses for related costs such as for relocation, loss of use, substitute housing, and other expenses, at
28 a cost which is presently unknown, but believed to be a sum in excess of seven hundred million dollars
(\$700,000,000). Plaintiffs were also required to retain the services of experts and consultants to investigate
the nature and extent of the alleged defective conditions and resulting damages, and seek damages for

1 investigative costs pursuant to California *Civil Code* § 944.

2 **PRAYER FOR RELIEF**

3 Wherefore:

4 1. Class Plaintiffs respectfully request that this Court certify this action as a class action
5 and certify Plaintiffs' as representative of the class and designating their counsel for the class;

6 2. For general and special damages according to proof at the time of trial and as
7 provided by law according to proof at time of trial and believed to be in excess of seven hundred
8 million dollars (\$700,000,000).

9 3. For costs and expenses of suit incurred herein;

10 4. For investigative costs pursuant to California *Civil Code* § 944;

11 5. For attorney's fees, pursuant to *California Code of Civil Procedure* §1021.5; and

12 6. For such other and further relief as the Court deems just and proper.

13
14 DATED: January 11, 2011

**KASDAN, SIMONDS, WEBER & VAUGHAN
LLP**

15
16 By: 

17 Kenneth S. Kasdan
18 Michael D. Turner
19 Joseph A. Mahoney
20 Attorneys for Plaintiffs
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY ELECTRONIC SERVICE/MAIL/FACSIMILE/PERSONAL

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is KASDAN SIMONDS WEBER & VAUGHAN LLP, 19900 MacArthur Blvd., Ste. 850, Irvine, California 92612.

On **January 11, 2011**, I served the document(s) described as: **FIRST AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

() **BY ELECTRONIC FILING & SERVICE VIA LEXISNEXIS FILE & SERVE** - I caused the above-entitled document(s) to be served through LexisNexis File & Serve at www.fileandserve.lexisnexis.com addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the LexisNexis File & Serve Filing Receipt Page/Confirmation will be maintained with the original document(s) in this office.

() **BY ELECTRONIC SERVICE VIA E-MAIL** - I caused the above-entitled document(s) to be served via e-mail addressed to all parties appearing on the attached service list for the above-entitled case, and will be maintained with the original document(s) in this office.

(X) **BY MAIL** - I caused the document(s) to be sealed in envelope(s) addressed to the addressee(s) listed below and caused such envelope(s) to be deposited in the mail at Irvine, California. The envelope(s) were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business.

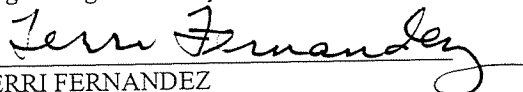
(X) **BY FACSIMILE SERVICE** - On the date shown, during the regular course of business, from facsimile machine telephone number (949) 833-9455, I caused the above-listed document(s) to be transmitted by facsimile to the person(s) and numbers(s) indicated on the attached Service List.

() **BY OVERNIGHT MAIL**. I placed the document(s) in sealed envelope(s) addressed accordingly and caused such envelope(s) to be deposited in the delivery box regularly maintained by AN **OVERNITE EXPRESS SERVICE**, in an envelope or package designated by AN **OVERNITE EXPRESS SERVICE** with delivery fees paid or provided for to the addressee(s) listed above or on the attached Service List.

(X) **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 11, 2011, at Irvine, California.

Original signed subsequent to service


TERRI FERNANDEZ

SERVICE LIST

Timothy A. Gravitt, Esq. Ivette Kincaid, Esq. ULICH & TERRY LLP 4041 MacArthur Blvd., Ste. 500 Newport Beach, CA 92660 Tel: (949) 250-9777 Fax: (949) 250-9797 Attorneys for Defendant, K. HOVNANIAN COMMUNITIES, INC., etc.	Maura Walsh Ochoa, Esq. Nancy M. Han, Esq. GROTEFELD, HOFFMAN, SCHCLEITER, et al. 505 Sansome St., Ste. 1950 San Francisco, CA 94111 Tel: (415) 344-9670 Fax: (415) 989-2802 Attorneys for Defendants, WIRSBO CO., UPONOR NORTH AMERICA, & UPONOR, INC.	Carol Sherman Zaist, Esq. Leah McKechnie, Esq. NEWMeyer & DILLON LLP 895 Dove St., 5th Fl. Newport Beach, CA 92660 Tel: (949) 854-7000 Fax: (949) 954-7099 Attorneys for LENNAR SALES CORP., and LENNAR HOMES OF CALIFORNIA, INC.
---	---	--