

1 DANIEL M. PETROCELLI (S.B. #97802)
dpetrocelli@omm.com
2 O'MELVENY & MYERS LLP
1999 Avenue of the Stars
3 Los Angeles, California 90067-6035
Telephone: (310) 553-6700

4 VISION L. WINTER (S.B. #234172)
vwinter@omm.com
5 O'MELVENY & MYERS LLP
2765 Sand Hill Road
6 Menlo Park, California 90067-6035
7 Telephone: (650) 473-2600

8 DENIS F. SHANAGHER (S.B. #100222)
dfshanagher@duanemorris.com
9 DUANE MORRIS LLP
One Market Plaza, Suite 2200, Spear Tower
10 San Francisco, CA 94105-1127
Telephone: (415) 957-3318

11 Attorneys for Plaintiff MILLENNIUM TOWER
12 ASSOCIATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15 MILLENNIUM TOWER ASSOCIATION, a
16 California nonprofit mutual benefit corporation,

17 Plaintiff,

18 v.

19 MISSION STREET DEVELOPMENT LLC, a
Delaware Limited Liability Company; MISSION
20 STREET HOLDINGS LLC, a Delaware Limited
Liability Company; MILLENNIUM PARTNERS
21 MANAGEMENT LLC, a New York Limited
Liability Company; MILLENNIUM PARTNERS
22 LLC, a New York Limited Liability Company;
MILLENNIUM PARTNERS I, INC., a New York
23 Corporation; CHRISTOPHER M. JEFFRIES, an
individual; PHILIP E. AARONS, an individual;
24 PHILIP H. LOVETT, an individual; SEAN
JEFFRIES, an individual; JOHN LUCIANO, an
25 individual; WEBCOR CONSTRUCTION, INC., an
unknown business entity; WEBCOR
26 CONSTRUCTION LP, dba WEBCOR BUILDERS,
a California Limited Partnership; HANDEL
27 ARCHITECTS LLP, a New York Limited Liability
Partnership; TREADWELL & ROLLO, INC., an
28 unknown business entity; T & R CONSOLIDATED,

FILED
San Francisco County Superior Court

MAR 29 2017

CLERK OF THE COURT
BY: Kalene Johnson
Deputy Clerk

Case No. CGC-17-557830

COMPLAINT FOR:
1) VIOLATION OF CAL. CIV. CODE
§ 895 *ET SEQ.*;
2) NEGLIGENCE;
3) BREACH OF EXPRESS
WARRANTIES;
4) BREACH OF IMPLIED
WARRANTIES;
5) STRICT LIABILITY;
6) NEGLIGENT
MISREPRESENTATION;
7) FRAUDULENT
MISREPRESENTATION;
8) FRAUDULENT CONCEALMENT;
9) BREACH OF FIDUCIARY DUTY;
10) VIOLATION OF CAL. BUS. &
PROF. CODE § 17200 *ET SEQ.*;
11) INVERSE CONDEMNATION;
12) TRESPASS;
13) NUISANCE; AND
14) VIOLATION OF CAL. CIV. CODE
§ 832.

JURY TRIAL DEMANDED

By Fax

1 INC., a California Corporation and successor in
2 interest to TREADWELL & ROLLO; LANGAN
3 ENGINEERING AND ENVIRONMENTAL
4 SERVICES, INC., a New Jersey Corporation and
5 successor in interest to TREADWELL & ROLLO;
6 DESIMONE CONSULTING ENGINEERS LLC, a
7 Delaware Limited Liability Company; DESIMONE
8 CONSULTING ENGINEERS, PLLC, a California
9 Professional Limited Liability Company;
10 TRANSBAY JOINT POWERS AUTHORITY, a
11 public entity; ARUP NORTH AMERICA
12 LIMITED, a United Kingdom Corporation; and
13 DOES 1 through 100,

14 Defendants.

15 I. INTRODUCTION

16 1. The Millennium Tower, a 419-unit luxury condominium project at 301 Mission
17 Street in San Francisco, was the tallest residential high rise on the West Coast when it opened in
18 2009. Shimmering like a translucent 58-story crystal, this landmark structure attracted a diverse
19 community of more than a thousand residents. Urban professionals welcomed the opportunity to
20 live minutes from the financial district's hive of corporate headquarters; retirees and empty-
21 nesters traded the equity in their suburban homes for the panoramic vistas of a waterfront
22 skyscraper; and young families with children embraced the unique experience of a vertical
23 neighborhood. With units averaging nearly \$2 million, the tower's developer, Millennium
24 Partners, generated in excess of \$750 million in sales between 2009 and 2013¹.

25 2. To the dismay of those who sank so much of their life savings into the
26 Millennium Tower, the Tower itself is now sinking—and has been for years, even before the first
27 unit was sold in 2009. As much of the Bay Area and beyond has come to learn, Millennium
28 Partners erected this glamorous building on an improperly designed and constructed foundation
system, then looked the other way as the building was further besieged by other construction
defects and negligent construction practices. By the time it debuted as “the luxury benchmark

¹ J.K. Dineen, *Millennium Tower in San Francisco is a \$750M sellout*, S.F. Bus. Times (Apr. 5, 2013), <http://www.bizjournals.com/sanfrancisco/print-edition/2013/04/05/millennium-tower-in-san-francisco-is.html>.

1 for San Francisco city living,”² the high-rise tower had already sunk more than 8 inches into the
2 mud, sand, and clay on which it was built. And the sinking continues unabated. The Tower has
3 since dropped another 8 inches, bringing it now 16 inches closer to the “diverse tapestry of arts,
4 culture and culinary delights”³ that originally drew its residents to this vibrant South of Market
5 neighborhood. As the Tower has sunk, it has also tilted. The precast concrete floors are now
6 non-level, and at the top, where a penthouse unit sold for \$9.8 million, the tower leans by more
7 than 12 inches.

8 3. But those who knew of the high rise’s troubles kept it secret for years, and two
9 parties even memorialized their agreement to keep all exchanged documents and information
10 confidential.⁴ Millennium Partners and the Transbay Joint Powers Authority (“TJPA”), which
11 was preparing to build an underground and above-ground transit center (“Transit Center”) on an
12 adjacent site, entered into a bilateral confidentiality agreement covering all documents and
13 information exchanged. Rejecting transparency and accountability, Millennium Partners and the
14 TJPA agreed that the “[d]ocuments and information” exchanged about the Property and the
15 Transit Center were proprietary and confidential.⁵ The Millennium Tower Association
16 (“HOA”)—the not-for-profit association responsible for the key building systems—was shut out,
17 and the truth about the mounting problems was hidden, and stayed hidden, for many years.

18 4. For its part, Millennium Partners is an experienced New York-based real estate
19 development firm that boasts of having developed more than 2,900 luxury condominiums, eight
20 five-star hotels, including the 40-story Four Seasons near Moscone Center, two extended-stay
21 luxury hotels, 1,200,000 square feet of office space, and 1,000,000 square feet of retail space,
22 among other developments.⁶ It claims to own and operate an impressive portfolio worth over
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24 ² Millennium Partners, <http://millenniumptrs.com/about-mp/> (last visited Mar. 28, 2017).

25 ³ *Id.*

26 ⁴ The March 17, 2010 Confidentiality Agreement replaced and superseded a February 26, 2010
27 agreement in its entirety, and the parties to the March 17, 2010 Confidentiality Agreement agreed
28 that the “February 26, 2010 agreement shall have no further force and effect.”

⁵ Confidentiality Agreement between Millennium Partners and the TJPA (March 17, 2010).

⁶ Millennium Partners, <http://millenniumptrs.com/about-mp/> (last visited Mar. 28, 2017).

1 \$4 billion.⁷ In other words, purchasers of Millennium Tower units had every reason to believe
2 that they were placing their faith in a developer with the resources and know-how to properly
3 design and construct a building whose height was not a moving target. And, in addition to the
4 residents who bought into the dream of a world-class property built to the highest standards, the
5 other inhabitants of bustling SoMa reasonably trusted that the slender skyscraper towering above
6 them was constructed responsibly.

7 5. Christopher Jeffries and his son Sean Jeffries directed and led the development of
8 Millennium Tower. Christopher Jeffries is a founder of Millennium Partners and retains the
9 largest ownership interest.⁸ Even with his partnership's vast holdings, Christopher Jeffries
10 himself makes the final decisions about the Millennium Tower and speaks with authority about
11 the causes of its sinking and tilting. Christopher Jeffries was the primary spokesperson for
12 Millennium Partners in its September 20, 2016 press conference at City Hall, where he insisted
13 that "[Millennium Partners] did this building the right way."⁹ The co-founders of Millennium
14 Partners, Philip Aarons and Philip Lovett, also had significant involvement overseeing and
15 managing the development of the Millennium Tower, but, as Mr. Aarons testified, "the final
16 decisions at Millennium are made by Chris Jeffries."¹⁰

17 6. Other day-to-day responsibilities for the Millennium Tower's development fell to
18 Sean Jeffries, leader of West Coast development for Millennium Partners and the sole member of
19 the entity that Millennium Partners created to oversee the project at 301 Mission Street—Mission
20 Street Development. As part of a strategic nationwide push, Sean Jeffries had expanded the West
21 Coast office to complete various projects valued at over a billion dollars, including the
22

23 ⁷ *Id.*

24 ⁸ Aug. 12, 2010 Philip Aarons Dep. 9:11-13 & 43:17-21, cited as Ex. 5 to Plaintiff's Notice of Filing
25 Exhibits in Support of Plaintiffs' Responses to Defendants' Motions for Summary Judgment and
26 Motions for Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No. 1:11-
27 cv-22806-KMW, ECF No. 338-5.

28 ⁹ Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking*, Popular Mechs. (Oct. 24,
2016), <http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/>.

¹⁰ Aug. 12, 2010 Philip Aarons Dep. 42:18-21, *supra* note 8.

1 Millennium Tower.¹¹ Sean Jeffries was joined on the West Coast by Vice President John
2 Luciano, whom Millennium Partners installed on the HOA board from 2009 to 2016.

3 7. After the confidential exchange of documents over the Millennium Tower's
4 worsening condition, both Sean Jeffries and John Luciano kept the alarming data regarding the
5 Tower's sinking from the HOA and continued selling the condominium units to unsuspecting
6 homeowners. This subterfuge went on for years as Millennium Partners, and specifically Sean
7 Jeffries, kept receiving regular reports that the Millennium Tower was sinking and tilting but
8 never shared those reports with the HOA.

9 8. On information and belief, the HOA alleges that Sean Jeffries, acting through
10 multiple Millennium Partners entities, helped to make sure that no other entity shared that
11 information, either. The TJPA, for instance, had been granted certain easements to the
12 Millennium Tower property, which the agency needed to proceed with its excavation activities.
13 Sean Jeffries signed the original October 10, 2008 easement agreement as the authorized
14 representative of Mission Street Development. After responsibility for the Millennium Tower
15 transferred from Mission Street Development to the HOA, the easement agreement had to be
16 updated in 2011 to reflect that change; the amendment required the TJPA to provide monitoring
17 data, which would have included the building's sinking and tilting, to Mission Street
18 Development and the HOA. Sean Jeffries signed the amended easement agreement and
19 designated himself as the HOA's "authorized representative"—thereby intercepting the TJPA's
20 data before it could ever reach the HOA members not employed by Millennium Partners.¹² On
21 information and belief, the HOA alleges that Sean Jeffries was not a member of the board of
22 directors of the HOA at the time of signing and was not authorized to sign or receive such
23 monitoring data on behalf of the HOA.

24 9. Long after construction was complete and all units had been sold, Sean Jeffries
25 continued to involve himself with the building's management and attend periodic HOA meetings.

26 _____
27 ¹¹ Kristine Carber, *The Feel-Good Developer*, Gentry Wealth (Summer 2012).

28 ¹² At least two board members were residents not employed by Millennium Partners at the time the
September 1, 2011 First Amendment to the Easement Agreement was signed.

1 In early 2014, after the Tower had sunk over 13 inches, and residents noticed signs of sidewalk
2 settlement, Sean Jeffries wrote to the HOA's president to propose quarterly meetings between the
3 HOA and Millennium Partners. Sean Jeffries also agreed to provide updates on the adjoining
4 TJPA construction site, where the Transit Center was still under construction, including
5 substantial underground work to accommodate the extension of the Caltrain line and the future
6 High Speed Rail project.

7 10. In a February 2014 update to the HOA, Sean Jeffries professed ignorance about
8 the Tower's troubles: "I have not been made aware to date of any information that gives us
9 concern for the safety of the building or any significant impact on the structure."¹³ But Sean
10 Jeffries was aware. He knew that the Tower was sinking and tilting, and he also knew that
11 excavation for the TJPA's underground "train box" and the associated construction were
12 significantly impacting the Tower. Rather than alert those who had the most to lose, Sean
13 Jeffries continued to hide this information from the HOA.

14 11. The TJPA likewise knew that its construction activities would affect the
15 Millennium Tower and that its excavation activities alone would cause the Tower to sink further.
16 As a condition of the easement permitting access to the Millennium Tower, the TJPA agreed that
17 "[t]he Support System and the Transit Center shall be designed and constructed to stabilize the
18 soil beneath the [property], prevent the material movement and/or settlement of the [property]
19 and provide for the structural support, integrity and safety of the [property] during and after
20 TJPA's construction of the Transit Center"¹⁴

21 12. The TJPA, through its massive, ill-planned construction operation, and
22 Millennium Partners, with its defective design and construction, both contributed to the myriad
23 problems plaguing the Millennium Tower. These problems were compounded by the active
24 concealment by Millennium Partners and its employees, and the apparent complicity of the
25 TJPA.

26 13. Other factors, including inadequate garage construction and waterproofing,

27 ¹³ Letter from Sean Jeffries (Millennium Partners) to Jeff Peters (HOA) (Feb. 28, 2014).

28 ¹⁴ October 10, 2008 Easement Agreement between the TJPA and Mission Street Development.

1 defective windows, curtain wall corrosion and water intrusion, inter-unit odor transmission,
2 cracks, and alignment issues, have also taken a toll on the livability of the Millennium Tower.
3 Millennium Partners bills the property as “rare” and “an address like no other.” And it is indeed
4 rare and unique, but now mainly because failures of this magnitude in planning, design,
5 development, and construction are almost unheard of in contemporary high rises.

6 14. Burdened with design and construction defects, and further battered by the TJPA
7 construction activities on its land and the adjoining property, the Millennium Tower has
8 continued its slow descent into the prehistoric clay on which it was built. Unable to initially
9 detect the sinking and tilting on its own—and kept from the truth by the parties that did know—
10 the HOA learned far too late of the conditions jeopardizing the Millennium Tower. Had it
11 known sooner, the HOA could have demanded that the developer implement a retrofit, or it
12 could have sought to halt other activities contributing to the damage, such as those of the TJPA.

13 15. Millennium Partners and the TJPA now each publically places unequivocal blame
14 on the other. Regardless of who contributed most to the damage, one fact is indisputable: Both
15 Millennium Partners and the TJPA possessed the damning data but did nothing with it. Neither
16 tried to stem the sinking; neither sought to alert the HOA.

17 16. And now, in an attempt to show that adjoining construction sites are the exclusive
18 cause of the sinking, Millennium Partners has sought an order to stop the TJPA from any final
19 dewatering. Forced to confront its own culpability, Millennium Partners instead points the finger
20 at others, despite sitting on the data for years and never seeking to stop the dewatering when it
21 would have made a difference.

22 17. The victims of this debacle are the residents and the HOA, who placed their trust
23 and confidence—and over half a billion dollars—in the hands of Millennium Partners. With this
24 Complaint for strict liability, breach of warranties, fraud, and negligence, as well as violations of
25 the California Civil Code and California Business and Professions Code, among other claims, the
26 HOA seeks what it plainly deserves—a safe home free from continued sinking and tilting, the
27 same home that its members thought they were buying before the truth was revealed.

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II. THE PROPERTY

18. The Millennium Tower development is located at 301 Mission Street in San Francisco and comprises three primary structures: a 58-story tower (the "Tower"), an adjacent 12-story building on a reinforced concrete podium that includes residences and common areas (the "Podium"), and a five-level subterranean garage (the "Garage") (collectively, the Tower, the Podium, and the Garage constitute the "Millennium Tower" or "Property"). The Millennium Tower consists of 419 separate residential condominiums and two commercial units, forming a mixed-use condominium project.

19. The underlying real property is a rectangular lot measuring approximately 183.5 feet by 275 feet, a total area of approximately 50,463 square feet. The Property is bounded by Mission Street to the northwest, Fremont Street to the southwest, and Beale Street to the northeast. The future Transit Center abuts the Property to the southeast, and the temporary and permanent easements granted to the TJPA encroach five feet onto the Property on the southeast side.

20. The Millennium Tower is more fully described in the Map entitled "Final Map 4146 A 420 Unit Residential Unit and 8 Commercial Unit Mixed Use Condominium Project" filed for record in the Official Records of the City and County of San Francisco, State of California, on May 15, 2008, in Book 105 of Condominium Maps, pages 146-147 (the "Center Map"), being Lot 19 of Assessor's Block 3719, to be developed as described on the condominium plan entitled "A Mixed Use Condominium Plan for Millennium Tower – 301 Mission Street – San Francisco, California" filed for record in the Official Records of the City and County of San Francisco, State of California, on March 13, 2009, as Document Number 2009-I732547-00 in Reel J847, Image 0102, and more particularly, contains two Commercial Components and three Residential Components.

21. Under the governing documents, and pursuant to California law, the HOA is the owner of the common areas of the Millennium Tower, including but not limited to the land, foundations, footings, beams, supports, roofs, interior and exterior load-bearing walls, Garage, basement areas, exterior building surfaces, window walls, curtain walls, glazing, electrical

1 rooms, sewer and drainage systems, and utility pipes and conduits. The HOA is responsible for
2 the operation and administration of the common areas and the maintenance, repair, and
3 replacement of all improvements within the common areas. The HOA has the sole and exclusive
4 right to pursue claims and causes of action related to deficiencies in, and damage to, the common
5 areas of the Millennium Tower.

6 III. THE PARTIES

7 22. Plaintiff HOA is a California nonprofit mutual benefit corporation formed and
8 existing under the laws of the State of California and established as a common interest
9 development, as described in California Civil Code sections 4080 and 5980, with its principal
10 place of business within the County of San Francisco, California. The HOA represents the
11 interests of the owners of condominium units and the sub-associations in this common-interest
12 development.

13 23. By the express terms of the HOA's governing documents, and pursuant to
14 California Civil Code section 5980, the HOA is granted the general authority and responsibility
15 to bring this action in its own name as the real party in interest and without joining with it the
16 members in matters pertaining to the Millennium Tower.

17 24. The HOA has the sole and exclusive right and duty to manage, operate, control,
18 repair, replace, and restore the Millennium Tower, including the right to enter into contracts to
19 accomplish its duties and obligations. It also has all the powers necessary to carry out its rights
20 and obligations, including the right, duty, and power to contract for legal services to prosecute
21 any action affecting the HOA when it deems such action necessary to enforce its powers, rights,
22 and obligations, including the bringing of this action. Under California Civil Code sections 4775
23 and 5980, the HOA seeks recovery for damages to the Millennium Tower, including, among
24 other things, damages to the common areas; damages to the separate interests that the HOA is
25 obligated to maintain and repair; and damages to the separate interests within the HOA's
26 common interest, power, and standing.

27 25. Defendant Mission Street Development LLC ("MSD") is a limited liability
28 company formed and existing under the laws of the State of Delaware, and doing business in the

1 City and County of San Francisco, California, including the development, construction,
2 improvement, marketing, and sale of the Millennium Tower and its units.

3 26. Defendant Mission Street Holdings LLC (“MSH”) is a limited liability company
4 formed and existing under the laws of the State of Delaware, and doing business in the City and
5 County of San Francisco, California, including the development, construction, improvement,
6 marketing, and sale of the Millennium Tower and its units.

7 27. Defendant Millennium Partners Management LLC (“MPM”) is a limited liability
8 company formed and existing under the laws of the State of New York, and doing business in the
9 City and County of San Francisco, California, including the development, construction,
10 improvement, marketing, and sale of the Millennium Tower and its units. MPM was the
11 “Assured” for a 2007 loss occurring at the Millennium Tower in 2007. On information and
12 belief, the HOA alleges that MPM employees were also entitled to a discounted price on
13 Millennium Tower units by virtue of MPM’s involvement and affiliation with the development.

14 28. Defendant Millennium Partners LLC (“MP LLC”) is a limited liability company
15 formed and existing under the laws of the State of New York, and doing business in the City and
16 County of San Francisco, California, including the development, construction, improvement,
17 marketing, and sale of the Millennium Tower and its units. On information and belief, the HOA
18 alleges that MP LLC served as a Guarantor in connection with a loan provided to MSD in 2005,
19 the purpose of which was to finance the construction of the Millennium Tower. And pursuant to
20 the Millennium Tower Move In/Out Procedures, MP LLC is required to be listed as an additional
21 insured on moving companies’ liability insurance policies.

22 29. Defendant Millennium Partners I, Inc. (“MPI”) is a corporation formed and
23 existing under the laws of the State of New York, and doing business in California as New York
24 SF Millennium Partners I, Inc., including the development, construction, improvement,
25 marketing, and sale of the Millennium Tower and its units.

26 30. Collectively, MSD, MSH, MPM, MP LLC, and MPI constitute the “Millennium
27 Defendants.”

28 31. Defendant Christopher M. Jeffries is a Founding Partner and controlling

1 shareholder of MPI and has been involved in the development, management, and or/sale of the
2 Millennium Tower and its units.

3 32. Defendant Philip E. Aarons is a Founding Partner and Principal of MPI and has
4 been involved in the development, management, and or/sale of the Millennium Tower and its
5 units.

6 33. Defendant Philip H. Lovett is a Founding Partner and Principal of MPI and has
7 been involved in the development, management, and or/sale of the Millennium Tower and its
8 units.

9 34. Collectively, Christopher Jeffries, Aarons, and Lovett constitute the “Millennium
10 Founders.”

11 35. All three Millennium Founders were involved in the development and management of
12 the Millennium Tower and bear responsibility for the Millennium Tower’s defective development,
13 design, and construction.

14 a. On information and belief, the HOA alleges that Christopher Jeffries directs and
15 manages all Millennium Partners’ projects. This has been the case since he
16 founded Millennium Partners and “set his sights on key gateway cities across the
17 United States” for his new form of mixed-use developments.¹⁵ His co-founder
18 Aarons acknowledged as much, stating that Christopher Jeffries makes the “final
19 decisions” at Millennium.¹⁶ Christopher Jeffries took ownership of and defended
20 the San Francisco project at a September 20, 2016 press conference declaring:
21 “We did this building the right way.”¹⁷

22 b. On information and belief, the HOA alleges that Aarons also speaks and acts as a
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24 ¹⁵ Millennium Partners, <http://millenniumptrs.com> (last visited Mar. 28, 2017).

25 ¹⁶ Aug. 12, 2010 Philip Aarons Dep. 42:18-21, cited as Ex. 5 to Plaintiff’s Notice of Filing Exhibits
26 in Support of Plaintiffs’ Responses to Defendants’ Motions for Summary Judgment and Motions for
Judgment on the Pleadings, *Altenel, Inc. v. Millennium Partners, LLC, et al.*, No. 1:11-cv-22806-
KMW, ECF No. 338-5.

27 ¹⁷ Associated Press, *San Francisco Skyscraper Is Leaning - And Sinking*, Popular Mechs. (Oct. 24,
28 2016), <http://www.popularmechanics.com/technology/infrastructure/a23521/san-francisco-skyscraper-is-leaningand-sinking/>.

1 representative for and owner of the Millennium Tower. He too represented
2 Millennium Partners at the September 2016 press conference. Aarons was
3 involved in high-level strategic decisions about the Millennium Tower project in
4 its early development phases; for example, he joined Sean Jeffries to meet with
5 potential designers and architects for the project in 2006. He is identified as an
6 “Important MP [Person]” in the Millennium Tower Sales Manual.¹⁸

7 c. On information and belief, the HOA alleges that Lovett is responsible for the day-
8 to-day operations and management of Millennium Partners.¹⁹ Accordingly, he is
9 listed as an emergency contact in the Millennium Tower Sales Manual²⁰ and was
10 involved in communications regarding the budgets for each of the Millennium
11 Tower constituent residences,²¹ among other supervisory and management
12 activities.

13 36. Defendant Sean Jeffries is Vice President of MPI and the sole member of MSD.
14 Sean Jeffries signed the September 1, 2011 First Amendment to the Easement Agreement
15 between the TJPA and the HOA, and was listed as the designated recipient of monitoring data
16 from the TJPA regarding the sinking and tilting of the Tower. On information and belief, Sean
17 Jeffries is a resident of San Francisco, California..

18 37. Defendant John Luciano is Vice President of MPM and was a member of the
19 HOA’s Board from 2009 through 2016. On information and belief, John Luciano is a resident of
20 San Francisco, California.

21 38. On information and belief, the HOA alleges that MSD, MSH, MPM, and MP LLC
22 were at all relevant times the alter egos or agents of MPI and the Millennium Founders, because
23 a unity of interest and ownership existed between MSD, MSH, MPM, MP LLC, MPI,
24 Christopher Jeffries, Aarons, and Lovett, and adherence to the fiction of separate corporate

25 ¹⁸ Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.

26 ¹⁹ Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).

27 ²⁰ Millennium Tower San Francisco Sales Manual, Book 1, Oct. 2007.

28 ²¹ Email from David Goben to Stephanie Kay-Foss regarding Preliminary Budget Comments (Feb. 28, 2013).

1 existence would promote injustice under these circumstances.

- 2 a. On information and belief, the HOA alleges that The Millennium Defendants
3 hold themselves out as a single, unified enterprise, advertised as developer of
4 properties in Boston, New York, San Francisco, and Los Angeles, including
5 the Millennium Tower.²²
- 6 b. On information and belief, the HOA alleges that MSD, MSH, MPM, and MP
7 LLC existed as mere conduits or shell corporations for the interests and
8 manipulations of MPI, Christopher Jeffries, Aarons, and Lovett. The
9 Millennium Defendants' collective efforts to develop, construct, improve,
10 market, and sell the Millennium Tower allowed Christopher Jeffries to
11 effectuate his dream of developing "housing with a lifestyle" across the
12 country.²³
- 13 c. On information and belief, the HOA alleges that the Millennium Defendants
14 controlled and dominated their constituent entities and made crucial decisions
15 about the development, construction, and management of the building. For
16 instance, between 2011 and 2016, Sean Jeffries, on behalf of the Millennium
17 Defendants, positioned himself, or others employed by the Millennium
18 Defendants, as recipient of critical monitoring data from consulting engineers
19 who evaluated the settlement of the building.
- 20 d. On information and belief, the HOA alleges that the Millennium Defendants
21 disregarded the formal distinctions between their constituent entities, treating
22 them as one and the same. For example, "Millennium Partners" was the
23 recipient of invoices for construction and other professional services
24 completed at the Millennium Tower by various firms.²⁴ Steven Hood (an

25 ²² Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).

26 ²³ Jennifer Frey, *Striking It Ritz; For the, er, Richly Deserving, a Not-So-Humble Abode*, Wash. Post,
27 Aug. 24, 1999.

28 ²⁴ J&C Fuentes Invoice (May 21, 2010); Architectural Energy Corp. Invoice (April 30, 2010);
McMillan Companies Invoice (May 6, 2010).

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employee of Millennium Partners) and Sean Jeffries sent correspondence related to the Millennium Tower on behalf of the Millennium Defendants and on “Millennium Partners” letterhead.^{25 26}

- e. The Millennium Defendants all share a business address at 1995 Broadway, New York, New York.
- f. On information and belief, the HOA alleges that the assets of the Millennium Defendants’ constituent entities were commingled in the development of the Millennium Tower.
- g. The Millennium Defendants’ constituent entities share employees and executives. For instance, Richard Baumert, identified as a Managing Partner of Millennium Boston on the Millennium Partners website,²⁷ also signed the First Addendum to the Residential Purchase Agreement as Vice-President of Mission Street Holdings, LLC.²⁸ Other correspondence identifies him as an employee of Millennium Partners LLC.²⁹ The overlapping structure of employment and control confused business associates as well: Steven Hood is sometimes addressed as affiliated with “Millennium Partners” and other times with “Mission Street Development.”³⁰
- h. On information and belief, the HOA alleges that the Millennium Defendants also share attorneys. In other litigation relating to the sinking and tilting of the Millennium Tower, Peter Meier and the law firm Paul Hastings LLP represent MPI, MSD, MPM, Sean Jeffries, and John Luciano.

²⁵ Letter from Steven Hood to Kenneth Klein at Simpson Gumpertz & Heger (June 8, 2009).
²⁶ Letter from Sean Jeffries to Jeff Peters (Feb. 28, 2014).
²⁷ Millennium Partners, <http://millenniumptrs.com> (last visited March 28, 2017).
²⁸ First Addendum to the Residential Purchase Agreement (March 20, 2012) (for Buyers Richard and Jo-Tung Tu Chang).
²⁹ Letter from Shirley Cui to Richard Baumert (Oct. 27, 2009).
³⁰ Letter from Brian Dykes (TJPA) to Steven Hood (Mission Street Development) (Jan. 8, 2013); Letter from Ramin Golesorkhi and Joseph E. Romano (Langan Treadwell Rollo) to Steven Hood (Millennium Partners) (Sept. 6, 2016).

- 1 i. On information and belief, the HOA alleges that MSD, MSH, MPM, and MP
2 LLC were and are undercapitalized and potentially incapable of satisfying a
3 judgment should the HOA prevail in this action.
- 4 j. On information and belief, the HOA alleges that the Millennium Defendants
5 have benefited from the development, construction, and sale of the
6 Millennium Tower; it would be unjust if they were to escape liability for
7 obligations associated with these benefits. Modelling subsequent
8 developments on the San Francisco Millennium Tower, Millennium Partners
9 has benefited from its reputation as a national leader in luxury living. Without
10 its “impressive portfolio across the nation,” including the Millennium Tower
11 San Francisco, Millennium Partners could not have drawn on this powerful
12 branding to advertise its latest project, the Millennium Tower in Boston.³¹
13 Accolades include the San Francisco Chamber of Commerce’s “Excellence in
14 Business—Building San Francisco” Award, which was accepted by Managing
15 Director Baumert.³² But in order to draw upon the power of its national
16 brand, Millennium Partners must be required to take responsibility for the
17 flaws in its various developments.

18 39. Defendant Webcor Construction, Inc. was a corporation formed under the laws of
19 the State of California, with its principal place of business in California, and doing business as
20 “Webcor Builders.” Its exact current nature is unknown. Webcor entered into an Agreement for
21 Construction Management Services with MSD to act as the general contractor for the
22 Millennium Defendants in the construction of the Millennium Tower.

23 40. Defendant Webcor Construction LP is a limited partnership formed under the
24 laws of the State of California, with its principal place of business in California, and also doing

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26 ³¹ Upscale Living Magazine, Home/Real Estate/Millennium Boston Tower (2017),
<http://upscalelivingmag.com/millennium-boston-tower/>.

27 ³² Business Wire, *Millennium Tower Honored at Excellence in Business Awards (Dec. 8, 2010)*,
28 <http://www.businesswire.com/news/home/20101208006994/en/Millennium-Tower-Honored-Excellence-Business-Awards>.

1 business as “Webcor Builders.” Webcor Construction LP was insured under the primary
2 Contractors Controlled Insurance Policy (“CCIP”) for the 301 Mission Street project. On
3 information and belief, Webcor Construction LP also acted as the general contractor for the
4 Millennium Defendants in the construction of the Millennium Tower. Collectively, Webcor
5 Construction, Inc. and Webcor Construction LP will be referred to as “Webcor.”

6 41. Defendant Handel Architects LLP (“Handel”) is a limited liability partnership
7 doing business in the City and County of San Francisco, California. Handel was the architect of
8 record and designed the Millennium Tower and its components.

9 42. Defendant Treadwell & Rollo, Inc. (“Treadwell & Rollo”) is a corporation, the
10 exact current nature of which is unknown, that at one point had its principal place of business in
11 the City and County of San Francisco, California. Treadwell & Rollo was the geotechnical
12 engineer of record for the Millennium Tower.

13 43. Defendant T & R Consolidated, Inc. (“T & R Consolidated”) was also a
14 geotechnical engineer and the successor in interest to Treadwell & Rollo. On information and
15 belief, the HOA alleges that Treadwell & Rollo changed its name to T&R Consolidated after
16 selling its assets to Langan Engineering and Environmental Services, Inc. and before dissolving.

17 44. Defendant Langan Engineering and Environmental Services, Inc. (“Langan”) is a
18 New Jersey corporation engaged in various geotechnical, environmental, and other engineering
19 services, and is the successor in interest to Treadwell & Rollo and T & R Consolidated.

- 20 a. On information and belief, the HOA alleges that all or substantially all of
21 Treadwell & Rollo’s assets were transferred to Langan pursuant to an
22 Asset Purchase Agreement on November 1, 2010.
- 23 b. On information and belief, the HOA alleges that this asset transfer was not
24 supported by adequate consideration to meet the claims of other creditors.
- 25 c. Treadwell & Rollo legally changed its name to Treadwell & Rollo
26 Consolidated, Inc. (“T & R Consolidated”) after the asset purchase. T &
27 R Consolidated subsequently dissolved and no longer exists as an
28 operating entity.

- 1 d. Plans called for Treadwell & Rollo to maintain its name for an interim
2 period, but be branded "A Langan Company." In 2012, it would become
3 known as "Langan Engineering & Environmental Services."³³
4 e. On information and belief, the HOA alleges that one or more individuals
5 were officers, directors, or stockholders of both Treadwell & Rollo and
6 Langan. Philip Tringale was President of Treadwell & Rollo, Inc., and
7 currently is Director of Western Operations at Langan Engineering &
8 Environmental Services. He represents that the start date for both
9 positions was March 1992.³⁴
10 f. Langan assumed the obligations of Treadwell & Rollo necessary for the
11 continuation of Treadwell & Rollo's business obligations. Indeed, it
12 continued on with Treadwell & Rollo's obligations at 301 Mission Street:
13 From approximately 2012 through 2013, "Treadwell & Rollo: A Langan
14 Company" produced memoranda to Millennium Partners evaluating
15 Arup's settlement monitoring measurements. In 2014, "Langan Treadwell
16 Rollo" continued with the same evaluation memoranda using the same
17 template. And in December 2016, "Langan" continued the work
18 Treadwell & Rollo had begun, presenting the results of building survey
19 measurements in a Building Survey Report.

20 45. Defendant DeSimone Consulting Engineers LLC ("DeSimone LLC") is a limited
21 liability company organized under the laws of the State of Delaware and doing business in the
22 City and County of San Francisco, California. DeSimone LLC acted as the structural engineer
23 for the Millennium Defendants in connection with the design and construction of the Millennium
24 Tower. DeSimone LLC filed a Cross-Complaint and an Answer admitting to providing
25 structural engineering services at 301 Mission Street in the related matter, *Laura S. Lehman, et.*

26 _____
27 ³³ PR Newswire, *Langan Acquires Treadwell & Rollo* (Nov. 1, 2010),
<http://www.prnewswire.com/news-releases/langan-acquires-treadwell--rollo-106465148.html>.

28 ³⁴ Philip Tringale, LinkedIn, <https://www.linkedin.com/in/philip-tringale-85b37711/>.

1 *al. v. Transbay Joint Powers Authority, et al.*

2 46. Defendant DeSimone Consulting Engineers, PLLC (“DeSimone PLLC”) is a
3 professional limited liability company organized under the laws of the State of California and
4 doing business in the City and County of San Francisco, California. DeSimone PLLC entered an
5 Agreement for Structural Engineering Services to act as structural engineer for the Millennium
6 Defendants in connection with the design and construction of the Millennium Tower.
7 Collectively, DeSimone LLC and DeSimone PLLC will be referred to as “DeSimone.”

8 47. Collectively, Treadwell & Rollo, T & R Consolidated, Langan, and DeSimone are
9 the “Engineering Defendants.”

10 48. Defendant Transbay Joint Powers Authority (“TJPA”) is a government joint
11 powers entity created under California Government Code section 6500 *et seq.* The TJPA is the
12 entity charged with developing the Transbay Terminal, which includes construction of the five-
13 story Transit Center and underground train facility directly adjacent to the Property.

14 49. Defendant Arup North America Limited (“Arup”) is a corporation formed under
15 the laws of the United Kingdom, and on information and belief has its principal place of business
16 in California. Arup is a geotechnical engineering firm that TJPA retained to provide
17 geotechnical studies of the soil underlying, and foundation of, the Transbay Terminal Project,
18 and a below-ground buttress pile wall on and adjacent to the Property.

19 50. The HOA is ignorant of the true names and capacities of defendants sued as Does
20 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. The
21 HOA will amend this Complaint to allege the true names and capacities of these defendants
22 when ascertained. Each of the fictitiously named defendants is, or will be, responsible for the
23 occurrences alleged in this Complaint and for the HOA’s injuries, both existing and prospective.
24 Each Doe defendant legally and proximately caused damage to the HOA. Each and every Doe
25 defendant had a duty to the HOA to use reasonable care in performing the tasks related to the
26 planning, development, creation, improvement, design, construction, supervision, observation,
27 inspection, management, and/or repair of the Millennium Tower.
28

1 **IV. JURISDICTION AND VENUE**

2 51. Jurisdiction over this action in the Superior Court of the State of California in and
3 for the County of San Francisco is proper pursuant to California Code of Civil Procedure section
4 410.10 because all Defendants have sufficient minimum contacts with California to support the
5 exercise of jurisdiction.

6 52. Venue is proper in the Superior Court of the State of California pursuant to
7 California Code of Civil Procedure section 392 because the real property that is the subject of the
8 action is located in the City and County of San Francisco. Venue is also proper pursuant to
9 California Code of Civil Procedure section 395.5 because this is the county where some
10 Defendants reside, and pursuant to California Code of Civil Procedure section 395.5 because this
11 county is where the corporate defendant entities' relevant contracts were entered into and
12 performed, and where the relevant obligations and liabilities arose.

13 **V. EASEMENT AGREEMENTS**

14 53. The TJPA owns real property adjacent to the Property and is in the process of
15 building a new transit terminal that will include an above-ground bus station and a below-ground
16 rail station. It entered into an Easement Agreement with MSD on October 10, 2008, which was
17 authorized by the TJPA Board of Directors on October 17, 2008, and recorded in the official
18 records of the City and County of San Francisco on March 25, 2009, Document no. 2009-
19 I739852-00 (the "Easement Agreement").

20 54. The TJPA then entered into the First Amendment to the Easement Agreement
21 with MSD and the HOA on September 1, 2011, which was recorded in the official records of the
22 City and County of San Francisco on November 3, 2011, Document no. 2011-J296169-00 (the
23 "Amended Easement Amendment").

24 55. Under the terms of the Easement Agreement, at Section II.A.1(a), the TJPA
25 covenanted and agreed to design and construct the Support System (lateral and subjacent support
26 for the Property) and the Transit Center to stabilize the soil beneath the Millennium Tower,
27 prevent the material movement and/or settlement of the Millennium Tower, and provide for the
28 structural support, integrity, and safety of the Millennium Tower during and after the TJPA's

1 construction of the Transit Center.

2 56. The TJPA, at Section II.A.1.(b) of the Easement Agreement, agreed that it has the
3 full, complete, and exclusive responsibility for the support, integrity, and safety of the
4 Millennium Tower to the extent the Millennium Tower is affected by the construction of the
5 Transit Center and Support System.

6 57. Under Section II.B.1(h) of the Easement Agreement, the TJPA agreed to repair, at
7 its own cost and expense, or pay the reasonable cost of repairing, any damage to the Millennium
8 Tower substantially caused by the TJPA's construction activities. The TJPA specifically
9 acknowledged that its obligation to repair damage to the Millennium Tower substantially caused
10 by the TJPA's construction activities is not dependent on the existence of fault or negligence on
11 the TJPA's part. In particular, but not exclusively, the TJPA agreed to repair damage to
12 waterproofing or cracks in the foundations or walls of the Millennium Tower resulting from
13 settlement or movement substantially caused by its construction activities.

14 58. The HOA is the successor in interest to MSD under the Easement Agreement. On
15 or about August 23, 2016, the HOA gave notice to the TJPA of the HOA's claims against the
16 TJPA for damages to the extent required under Government Code section 910 *et seq.* The TJPA
17 denied the HOA's claims on or about October 7, 2016.

18 **VI. THE DEFECTS**

19 59. The Tower was constructed on an inadequate foundation system and has
20 experienced vertical displacement of over 16 inches. The Tower has settled differentially and is
21 it out of plumb by over 12 inches. The Property also suffers from other defects, including
22 inadequate garage construction and waterproofing, defective windows, curtain wall corrosion
23 and water intrusion, inter-unit odor transmission, cracks, and alignment issues.

24 60. The following list of defects as defined in the California Civil Code is preliminary
25 and nonexclusive and, therefore, is given without prejudice to the HOA's right to expand,
26 amend, modify, or augment its claims and/or list of defects at any time, and the HOA specifically
27 reserves its right to do so herein:

- 28 a. Civil Code § 896(a)(2): Water intrusion through windows and their systems

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and assemblies, including without limitation assemblies, thresholds, framing, substrate, flashings and trim, if any, or their designed or actual moisture barriers, including without limitation, internal barriers within the systems themselves. Such deficiencies have led to water intrusion into framing cavities and/or unit interiors, causing degradation of materials.

- b. Civil Code § 896(a)(7): Water intrusion through foundation system and slabs. The deficiencies have led to water intrusion into adjacent systems, including the Garage and basement areas in the Tower and Podium, causing staining and degradation of materials.
- c. Civil Code § 896(a)(14): Plumbing systems leak. These deficiencies have led to water intrusion, staining, corrosion, and efflorescence, and degradation of other building components.
- d. Civil Code § 896(b)(1): Foundations, load-bearing walls, and slabs are experiencing vertical and horizontal displacement due to underlying soil settlement and inadequate foundation support, resulting in damage to Garage walls, foundation walls, plumbing lines, sidewalks, and other component parts of the Property. The foundations of the Tower and Podium are experiencing settlement at a rate and depth well beyond the design parameters, resulting in actual or potential cracking of walls, pipes, joints, sidewalks, and other elements of the Property, water intrusion, and improper sewer pipe flows.
- e. Civil Code § 896(b)(2): Foundations, load-bearing walls, and slabs contain significant vertical and horizontal displacement that has the potential to cause the Property to be structurally unsafe. The foundations of the Tower and Podium are experiencing settlement at a rate and depth well beyond the design parameters, resulting in differential settlement of the Tower and Podium structures.
- f. Civil Code § 896(c)(1): Soils and engineered foundation walls are causing significant vertical and horizontal displacement of the Tower, Podium, and

1 Garage structures due to underlying soil settlement and/or inadequate
2 foundation support, resulting in damage to garage walls, foundation walls,
3 plumbing lines, and other component parts. The soil underlying the Property
4 is experiencing settlement at a rate and depth well beyond the design
5 parameters, resulting in cracking and water intrusion in the walls and on the
6 lower floor of the Garage, and spalling (or scaling) of the concrete therein. In
7 the Garage there is water intrusion through subgrade walls and the lower-level
8 garage floor surface, and cracking and spalling of subgrade walls. In the
9 Tower there is water intrusion through subgrade walls.

- 10 g. Civil Code § 896(c)(3): Soil settlement under the Millennium Tower is
11 causing the land to become potentially unusable for its common purpose.
- 12 h. Civil Code § 896(g)(2): Cracks and separations have developed in the exterior
13 wall finishes. The exterior curtain wall is leaking.
- 14 i. Civil Code § 896(g)(3)(A): Manufactured window components have been
15 improperly manufactured and/or installed so as to interfere with their useful
16 life. In particular, window stay arms do not operate properly and are failing.
- 17 j. Civil Code § 896(g)(6): There is unreasonable noise and odor transmission
18 between units.
- 19 j. Civil Code § 896(g)(15): The foregoing deficiencies violate the standard that
20 structures shall not be constructed in a manner that potentially impairs their
21 occupants' safety.
- 22 k. Civil Code § 897: The foregoing deficiencies violate the standard that other
23 deficiencies are actionable if they are the cause of damage.

24 61. On or about August 12, 2016, the HOA provided MSD and Webcor with Notice
25 under California Civil Code section 6000 *et seq.* and sections 896 and 910 *et seq.* of its claim for
26 damages arising out of, or related to, deficiencies in the development, design, specifications,
27 planning, supervision, testing, observation of construction, and construction of the Property. The
28 Notice tolled all applicable statutes of limitation and repose, whether in contract, statute, or

1 decisional law, by and against all potentially responsible parties, regardless of whether they were
2 named in the Notice, including claims for indemnity, consistent with California Civil Code
3 section 6000, section 895 *et seq.*, and section 910 *et seq.* (and including Civil Code section 927).
4 Since that date, the HOA, MSD, Webcor, and certain others have been engaged in the dispute
5 resolution process identified in the statutes above.

6 **VII. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violation of California Civil Code § 895 *et seq.* Against the**
9 **Millennium Defendants, Millennium Founders, Webcor, Handel, the**
10 **Engineering Defendants, and Does 1 Through 100, Inclusive**

11 62. The HOA re-alleges and incorporates by reference Paragraphs 1 through 61 above
12 as if fully set forth herein.

13 63. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants
14 were under a statutory obligation to design, develop, and/or construct the Millennium Tower in
15 conformance with all applicable building codes and standards, including but not limited to
16 California Civil Code section 895 *et seq.*

17 64. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants
18 failed to design, develop, and/or construct the Millennium Tower in conformance with the
19 standard of California Civil Code section 895 *et seq.*, specifically the functionality standard set
20 forth in California Civil Code sections 896 and 897.

21 65. On information and belief, the HOA alleges that the Millennium Founders and
22 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
23 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
24 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
25 and adherence to the fiction of a separate corporate existence would promote injustice under
26 these circumstances. In the interest of justice, each and every Millennium Defendant that
27 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
28 held ultimately liable for the HOA's damages.

1 66. The HOA seeks damages for the reasonable value of repairing any violation of the
2 standards found under California Civil Code section 895 *et seq.*; reasonable costs of repairing
3 any damages caused by repair efforts; reasonable costs of repairing and rectifying any damages
4 resulting from the failure of the Millennium Tower to meet the section 895 standards; reasonable
5 costs of removing and replacing any improper repair by Defendants; reasonable relocation and
6 storage expenses; and reasonable investigative costs for each established violation of the section
7 895 standards.

8 **SECOND CAUSE OF ACTION**

9 **Negligence Against the Millennium Defendants, Millennium Founders,**
10 **Webcor, Handel, the Engineering Defendants, ARUP,**
11 **and Does 1 Through 100, Inclusive**

12 67. The HOA re-alleges and incorporates by reference Paragraphs 1 through 66 above
13 as if fully set forth herein.

14 68. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants
15 were and are a developer, builder, contractor, general contractor, subcontractor, supplier,
16 architect, engineer, or other person, entity, or professional who participated in the process of the
17 design, engineering, manufacture, construction, and management of condominium units,
18 buildings, improvements, and structures of the Millennium Tower and who performed labor,
19 supplied materials, equipment, and/or services necessary for the building and construction of the
20 Millennium Tower with the knowledge that the condominium units would be sold to, and used
21 by, members of the public. In so doing, the Millennium Defendants, Webcor, Handel, and the
22 Engineering Defendants, in their capacity as developer, builder, contractor, general contractor,
23 subcontractor, supplier, architect, engineer, seller, manager, or otherwise, caused the Millennium
-24 Tower to be designed, engineered, constructed, and/or managed through their own works of
25 labor, their supplying of materials, equipment, and services, and through causing other
26 contractors and subcontractors to perform works of labor to supply materials, equipment, and
27 services in order to properly complete and manage the Millennium Tower and subject structures
28 so that it could be sold to and used by members of the public.

1 69. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants,
2 whether builder, contractor, general contractor, subcontractor, supplier, architect, engineer,
3 manager, or otherwise, negligently, carelessly, tortiously, and wrongfully failed to use reasonable
4 care in the analysis, preparation, design, manufacture, construction, and/or management of the
5 real property and structures of the Millennium Tower, thereby causing damages, including,
6 among other things, excessive and differential settlement of the Tower and the Podium, and
7 defects and deficiencies in the foundation, Garage, subterranean structure, curtain wall, exterior
8 wall panels, skylights, common areas, plaza and terrace decks, unit interiors (including but not
9 limited to excessive noise and odors moving between units), exterior doors, roofing, and utility
10 connections.

11 70. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants,
12 whether as developer, builder, contractor, general contractor, subcontractor, supplier, material
13 man, architect, engineer, manager, or otherwise, performed work, labor, and/or services for the
14 construction of the Millennium Tower, and each knew or should have known that if the
15 Millennium Tower was not properly or adequately designed, engineered, supervised,
16 constructed, and/or managed, the owners and users would be substantially damaged thereby, and
17 the condominium units, buildings, improvements, and structures would be defective and not of
18 merchantable quality.

19 71. The Millennium Defendants, Webcor, Handel, and the Engineering Defendants
20 were under a duty to exercise ordinary care as developer, builder, contractor, general contractor,
21 subcontractor, supplier, architect, engineer, manager, or otherwise to avoid reasonably
22 foreseeable injury to users and purchasers of the condominium units, buildings, improvements,
23 and structures, and knew or should have foreseen with reasonable certainty that purchasers
24 and/or users would suffer damages if the Millennium Defendants, Webcor, Handel, and the
25 Engineering Defendants failed to perform their duty to cause the Property and the structures of
26 the Millennium Tower to be designed, engineered, constructed, and managed in a proper
27 workmanlike manner and fashion.

28 72. In performing the works of a developer, builder, contractor, general contractor,

1 subcontractor, supplier, architect, engineer, manager, or otherwise, the Millennium Defendants,
2 Webcor, Handel, and the Engineering Defendants failed and neglected to perform the work,
3 labor, and services properly or adequately. The Millennium Defendants, Webcor, Handel, and
4 the Engineering Defendants so negligently performed their work, labor, and/or services such that
5 the premises and structures of the Millennium Tower were designed, engineered, constructed,
6 and/or managed improperly, negligently, carelessly, and/or not in a workmanlike manner.

7 73. Defendant Arup was hired by the TJPA to provide it with geotechnical
8 engineering services relating to the lateral support for the Millennium Tower made necessary by
9 the excavation for the Transit Center. Arup performed work, labor, and/or services for the soils
10 evaluation, support wall, and buttress pile wall between the Transit Center and the Millennium
11 Tower for the purpose of providing lateral and subjacent support to the Millennium Tower.

12 74. Arup was under a duty to exercise ordinary care as engineer, subcontractor,
13 manager, or otherwise to avoid reasonably foreseeable injury to users and purchasers of the
14 condominium units, buildings, improvements, and structures of and in the Millennium Tower.
15 Arup knew or should have foreseen with reasonable certainty that the HOA and its members
16 would suffer damages if the soils evaluation, support wall, and buttress pile wall were not
17 properly or adequately designed, engineered, supervised, and/or constructed.

18 75. On information and belief, the HOA alleges that Arup negligently, carelessly,
19 tortiously, and wrongfully failed to use reasonable care in the analysis, preparation, design,
20 manufacture, and/or construction of the soils evaluation, lateral support, and/or buttress pile wall,
21 thereby causing damage to the Millennium Tower, including, among other things, excessive and
22 differential settlement of the Tower and Podium, and defects and deficiencies in the Garage.

23 76. As a direct and proximate result of Defendants' breaches, the HOA has suffered
24 and will continue to suffer damages in an amount to be proved at trial.

25 On information and belief, the HOA alleges that the Millennium Founders and MPI are liable for
26 the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and MP LLC are alter
27 egos or agents of MPI and the Millennium Founders. A unity of interest and ownership existed
28 between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders, and adherence to the

1 fiction of a separate corporate existence would promote injustice under these circumstances. In
2 the interest of justice, each and every Millennium Defendant that ultimately caused or benefited
3 from the wrongful conduct alleged in the Complaint should be held ultimately liable for the
4 HOA's damages.

5 **THIRD CAUSE OF ACTION**

6 **Breach of Express Warranties Against the Millennium Defendants,**
7 **Millennium Founders, and Does 1 Through 100, Inclusive**

8 77. The HOA re-alleges and incorporates by reference Paragraphs 1 through 76 above
9 as if fully set forth herein.

10 78. On information and belief, Millennium Defendants provided prospective buyers
11 with a written statement disclaiming any knowledge of any substantial defects as required by
12 California Civil Code § 1134(b). Millennium's "Property Disclosure and Information
13 Statement," dated May 2011, failed to disclose that the building was experiencing excessive
14 vertical and differential settlement. This disclosure constituted an express warranty that no
15 substantial defects existed in the common areas, the separate interests the HOA is obligated to
16 maintain and repair, or the separate interests that are integrally related to the common areas and
17 separate interests. On information and belief, the HOA alleges that the Millennium Defendants
18 also expressly warranted through sales and advertising materials and through sales
19 representatives for the Property that the Millennium Tower was designed and constructed in a
20 commercially reasonable and habitable manner when the Millennium Defendants offered the
21 units of the Millennium Tower for sale to the general public for use as residences. For instance,
22 the Millennium Tower San Francisco Sales Manual states, "With its superior design, highest
23 quality, thoughtful service, and extraordinary amenities, we believe Millennium Tower will be
24 the best residential tower ever built in San Francisco."

25 79. On information and belief, these express warranties were made when Millennium
26 Defendants knew that the building was settling excessively and differentially.

27 80. The HOA and its members relied on the Millennium Defendants' express
28 representations that these units were marketed for sale to the general public, and thus of

1 merchantable quality suitable for their intended purpose, without major, significant defective
2 causes, effects, or conditions, unremedied or unrepaired by the Millennium Defendants.

3 81. The Millennium Defendants breached these express warranties by selling the
4 condominium units in the Millennium Tower with the above-described deficiencies in the
5 design, specification, planning, supervision, development, improvement, and repair thereof.

6 82. As a direct and proximate result of the breach of express warranties by the
7 Millennium Defendants, the HOA and its members suffered damages stemming from the failure
8 of the real property and structures thereon, including without limitation excessive and differential
9 settlement of the Tower and Podium structures, and defects and deficiencies in the foundation,
10 Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas, plaza
11 and terrace decks, unit interiors (including but not limited to noise and odors moving between
12 units), exterior doors, roofing, and utility connections as set forth herein.

13 83. As a direct and proximate result of the Millennium Defendants' breach, the HOA
14 has suffered and will continue to suffer damages in an amount to be proved at trial.

15 84. On information and belief, the HOA alleges that the Millennium Founders and
16 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
17 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
18 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
19 and adherence to the fiction of a separate corporate existence would promote injustice under
20 these circumstances. In the interest of justice, each and every Millennium Defendant that
21 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
22 held ultimately liable for the HOA's damages.

23 **FOURTH CAUSE OF ACTION**

24 **Breach of Implied Warranties Against the Millennium Defendants,**
25 **Millennium Founders, Webcor, and Does 1 Through 100, Inclusive**

26 85. The HOA re-alleges and incorporates by reference Paragraphs 1 through 83 above
27 as if fully set forth herein.

28 86. Webcor impliedly warranted that the Millennium Tower was designed and

1 constructed in a commercially reasonable and workmanlike manner.

2 87. On information and belief, the HOA alleges that the Millennium Defendants
3 impliedly warranted that the Millennium Tower was designed and constructed in a commercially
4 reasonable and workmanlike manner when the Millennium Defendants offered the condominium
5 units of the Millennium for sale to the general public and delegated the duty of maintenance and
6 repair to the HOA.

7 88. The Property was not of proper durability, reliability, and/or general quality and
8 not fit for its intended use.

9 89. As a direct and proximate result of the Millennium Defendants' and Webcor's
10 breaches, the HOA has suffered and will continue to suffer damages in an amount to be proved at
11 trial.

12 90. On information and belief, the HOA alleges that the Millennium Founders and
13 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
14 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
15 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
16 and adherence to the fiction of a separate corporate existence would promote injustice under
17 these circumstances. In the interest of justice, each and every Millennium Defendant that
18 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
19 held ultimately liable for the HOA's damages.

20 **FIFTH CAUSE OF ACTION**

21 **Strict Liability Against the Millennium Defendants, Millennium Founders,**
22 **and Does 1 Through 100, Inclusive**

23 91. The HOA re-alleges and incorporates by reference Paragraphs 1 through 89 above
24 as if fully set forth herein.

25 92. The Millennium Defendants are, and at all times relevant were, engaged in the
26 mass production of condominiums for sale and use by members of the general public.

27 93. In or about 2005–2013, the Millennium Defendants participated in the design,
28 development, construction, marketing, and sale of condominium units, buildings, structures, and

1 improvements for the Millennium Tower. In doing so, the Millennium Defendants developed
2 the Millennium Tower with individual units for use as residential dwellings.

3 94. In their capacity as a developer, builder, marketer, and seller of the Millennium
4 Tower, the Millennium Defendants knew that the condominium units, buildings, and structures
5 would be sold to, and used by, members of the general public for the purpose of residences. The
6 Millennium Defendants knew, or reasonably should have known, that the persons who would
7 purchase the condominium units would do so without inspection for the defects set forth herein.

8 95. The Millennium Defendants are, and at all times relevant were, merchants with
9 respect to the Millennium Tower. The Millennium Defendants impliedly warranted that the real
10 property and structures in the Millennium Tower, including, among other things, the foundation,
11 Garage, subterranean structure, curtain wall, exterior wall panels, skylights, common areas, plaza
12 and terrace decks, unit interiors, exterior doors, roofing, and utility connections, were of
13 merchantable quality and were erected in a reasonable workmanlike manner.

14 96. In their capacity as developers, mass-developers, mass-constructors, and mass-
15 producers of the Millennium Tower, the Millennium Defendants are strictly liable and
16 responsible to the HOA for all damages suffered as a result of the defects and deficiencies at the
17 Millennium Tower, including, among other things, excessive and differential settlement of the
18 Tower and Podium, and defects and deficiencies in the foundation, Garage, subterranean
19 structure, curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks,
20 unit interiors (including but not limited to excessive noise and odor transfers between units),
21 exterior doors, roofing, and utility connections.

22 97. Within the past year, the HOA discovered that the underlying soils and
23 component structures of the Millennium Tower are, and have been, experiencing defective
24 conditions, including, among other things, excessive and differential settlement of the Tower and
25 the Podium, and defects and deficiencies in the foundation, Garage, subterranean structure,
26 curtain wall, exterior wall panels, skylights, common areas, plaza and terrace decks, unit interiors
27 (including but not limited to odors moving between units), exterior doors, roofing, and utility
28 connections. Such defective components are not of merchantable quality, nor were they

1 designed, erected, constructed, or installed in a workmanlike manner, but instead are defective
2 and, as now known, demonstrate improper, nonexistent, and/or inadequate design, construction,
3 manufacture and/or installation. The structures may be additionally defective in ways and to an
4 extent not precisely known, but will be established at the time of trial according to proof.

5 98. The HOA properly notified the Millennium Defendants of the defective
6 conditions of the Property. Notwithstanding such notice, the Millennium Defendants have failed
7 to acknowledge responsibility for all of the defective conditions or otherwise cause the
8 appropriate restoration and/or repair to be made at their cost and expense.

9 99. The items generally referred to and particularly described herein were latent
10 deficiencies in that the above-described defects arose out of, were attributable to, and are directly
11 and proximately caused by the above-described latent deficiencies in the design, specifications,
12 planning, supervision, construction, observation of construction, development, and improvement
13 of the Millennium Tower. Before the HOA discovered them, such defects and deficiencies could
14 not have been discovered by the exercise of reasonable diligence.

15 100. At all times relevant, the HOA relied on the skill of the Millennium Defendants to
16 produce condominiums that are reasonably fit for their intended purpose.

17 101. The HOA is still not fully aware of all the causes, the full extent, and possible
18 legal significance of the results or causes of the conditions described above due to the loss being
19 continual and latent. The HOA is an organization of lay individuals who require expert
20 consultation to provide a review of the property conditions. The HOA is still not informed of
21 any causes or entire results of the full extent of these latent deficiencies, nor is the HOA fully
22 informed of the potential causes of the resultant distress due to the loss being continual and
23 latent.

24 102. Any and all repair attempts by the Millennium Defendants failed to adequately
25 correct the damages and deficiencies in the Millennium Tower thereby resulting in further
26 property damage.

27 103. Instead of causing the necessary and required construction and repair of the
28 Millennium Tower, the Millennium Defendants caused cosmetic, temporary, or ineffective

1 repairs to be made to various portions of the Millennium Tower for the purpose of leading the
2 HOA and its members to believe that the Millennium Defendants were resolving and correcting
3 all deficiencies. By virtue of such conduct, the Millennium Defendants are estopped to assert
4 that the HOA may not seek the damages herein sought.

5 104. The above-described defects arose out of, were attributed to, and are directly and
6 proximately caused by the above-described deficiencies in the design, specification, planning,
7 supervision, development, and improvement of the Millennium Tower and faulty repairs thereto,
8 and before such defects were discovered by the HOA, they could not have been discovered by
9 the exercise of reasonable diligence.

10 105. On information and belief, the HOA alleges that the Millennium Founders and
11 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
12 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
13 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
14 and adherence to the fiction of a separate corporate existence would promote injustice under
15 these circumstances. In the interest of justice, each and every Millennium Defendant that
16 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
17 held ultimately liable for the HOA's damages.

18 106. As a direct and proximate result of the conduct herein alleged, the HOA has
19 suffered damages in an amount to be proven at the time of trial.

20 **SIXTH CAUSE OF ACTION**

21 **Negligent Misrepresentation Against the Millennium Defendants,**

22 **Millennium Founders, Sean Jeffries, and Does 1 Through 100, Inclusive**

23 107. The HOA re-alleges and incorporates by reference Paragraphs 1 through 106
24 above as if fully set forth herein.

25 108. The Millennium Defendants represented on February 28, 2014 to the HOA,
26 through Sean Jeffries, that they were not "aware to date of any information that gives us concern
27 for the safety of the building or any significant impact on the structure."³⁵ This representation

28 ³⁵ Letter from Sean Jeffries to Jeff Peters re Millennium Tower (Feb. 28, 2016).

1 was demonstrably false, as the Tower had already exceeded the revised upper limit of the total
2 expected lifetime settlement.

3 109. At the time, the Millennium Defendants and Sean Jeffries did not have any
4 reasonable ground for believing their February 28, 2014 representation was true. As the
5 Millennium Defendants and Sean Jeffries were aware, the Tower was originally predicted to sink
6 no more than 4 to 6 inches over its lifetime, and that the predicted lifetime settlement of the
7 Tower was later revised to 10.3 to 12.3 inches. At the time of their representation on February
8 28, 2014, the Millennium Defendants and Sean Jeffries also knew that the Tower had already
9 exceeded its revised predicted lifetime settlement. The Millennium Defendants and Sean Jeffries
10 also knew that the TJPA's construction activities would likely cause further differential
11 settlement.

12 110. On information and belief, the HOA alleges that Sean Jeffries also made periodic
13 presentations to the HOA at the executive session board meetings where he repeatedly assured
14 the HOA that Millennium Partners was monitoring the building and was not aware of any
15 concerns regarding building settlement.³⁶ Sean Jeffries also did not have any reasonable ground
16 for believing these representations were accurate when he made them because he knew that the
17 Tower had already exceeded its revised predicted lifetime settlement and that the TJPA's
18 construction activities would likely cause further differential settlement.

19 111. In a further misrepresentation to the HOA, Sean Jeffries signed the Amended
20 Easement Amendment with the TJPA, purporting to represent the HOA but without the authority
21 to do so, which resulted in his, not the HOA's, receiving monitoring reports from the TJPA. At
22 the time, Sean Jeffries did not have any reasonable ground for believing he was authorized to
23 sign the Amended Easement Agreement with the TJPA on behalf of the HOA without the HOA's
24 authority to do so. After Sean Jeffries misrepresented that he was authorized to sign the
25 Amended Easement Amendment with the TJPA on behalf of the HOA, Sean Jeffries or an
26 employee of the Millennium defendants, and not the HOA, began receiving monitoring data

27
28 ³⁶ On information and belief, this information was communicated verbally at HOA board meeting
executive sessions including at the October 6, 2014 executive session.

1 collected by the TJPA, which further revealed that the Tower was settling vertically and
2 differentially in excess of the design specifications, including the revised expected maximum
3 settlement. Sean Jeffries and the Millennium Defendants did not disclose this data to the HOA,
4 but instead concealed it.

5 112. On information and belief, the HOA alleges that Sean Jeffries was, at all times,
6 authorized to speak on behalf of the Millennium Defendants.

7 113. The Millennium Defendants and Sean Jeffries intended that the HOA would rely
8 on these representations by failing to take action to correct the defects and damage to the
9 Millennium Tower of which it was not aware.

10 114. The HOA reasonably relied on the Millennium Defendants' and Sean Jeffries'
11 representations because the HOA reasonably believed that the Millennium Defendants would
12 fulfill their duty of disclosure.

13 115. In reliance on the Millennium Defendants' and Sean Jeffries' representations, the
14 HOA did not take corrective action to prevent continuing and future damage.

15 116. The HOA's reliance on the Millennium Defendants' and Sean Jeffries'
16 representations was a substantial factor in causing damages to the HOA, including by
17 diminishing the value of the common areas of Millennium Tower and by delaying any corrective
18 action that could reduce the extent of damage.

19 117. Because the Millennium Defendants and Sean Jeffries withheld information from
20 the HOA, the Millennium Defendants and Sean Jeffries necessarily possess full information
21 concerning the facts of their own negligent acts.

22 118. As a direct and proximate result of the Millennium Defendants' and Sean Jeffries'
23 negligent conduct, the HOA has suffered and will continue to suffer damages in an amount to be
24 proved at trial.

25 119. On information and belief, the HOA alleges that the Millennium Founders and
26 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
27 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
28 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,

1 and adherence to the fiction of a separate corporate existence would promote injustice under
2 these circumstances. In the interest of justice, each and every Millennium Defendant that
3 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
4 held ultimately liable for the HOA's damages.

5 **SEVENTH CAUSE OF ACTION**

6 **Fraudulent Misrepresentation Against the Millennium Defendants,**
7 **Millennium Founders, Sean Jeffries, and Does 1 Through 100, Inclusive**

8 120. The HOA re-alleges and incorporates by reference Paragraphs 1 through 119
9 above as if fully set forth herein.

10 121. The Millennium Defendants represented on February 28, 2014 to the HOA, —
11 through Sean Jeffries, that they were not “aware to date of any information that gives us concern
12 for the safety of the building or any significant impact on the structure.”³⁷ This representation
13 was demonstrably false, as Sean Jeffries and the Millennium Defendants knew that the Tower
14 had already exceeded the revised upper limit of the total expected lifetime settlement.

15 122. At the time, the Millennium Defendants and Sean Jeffries knew that the Tower
16 was originally predicted to sink no more than 4 to 6 inches over its lifetime, and that the
17 predicted lifetime settlement of the Tower was later revised to 10.3 to 12.3 inches. At the time
18 of their representation on February 28, 2014, the Millennium Defendants and Sean Jeffries knew
19 that the Tower had already exceeded its revised predicted lifetime settlement. The Millennium
20 Defendants and Sean Jeffries also knew that the TJPA's construction activities would likely
21 cause further differential settlement.

22 123. On information and belief, the HOA alleges that Sean Jeffries also made periodic
23 presentations to the HOA at the executive session board meetings where he repeatedly assured
24 the HOA that Millennium Partners was monitoring the building and was not aware of any
25 concerns regarding building settlement.³⁸

26 _____
27 ³⁷ Letter from Sean Jeffries to Jeff Peters re Millennium Tower (Feb. 28, 2016).

28 ³⁸ On information and belief, this information was communicated verbally at HOA board meeting
executive sessions including at the October 6, 2014 executive session.

1 124. In a further misrepresentation to the HOA, Sean Jeffries signed the Amended
2 Easement Amendment with the TJPA, purporting to represent the HOA but without the authority
3 to do so, which resulted in his, not the HOA's, receiving monitoring reports from the TJPA.
4 After Sean Jeffries misrepresented that he was authorized to sign the Amended Easement
5 Amendment with the TJPA on behalf of the HOA, Sean Jeffries or another employee of the
6 Millennium Defendants, and not the HOA, began receiving monitoring data collected by the
7 TJPA, which further revealed that the Tower was settling vertically and differentially in excess of
8 the design specifications, including the revised expected maximum settlement. Sean Jeffries and
9 the Millennium Defendants did not disclose this data to the HOA, but instead concealed it.

10 125. On information and belief, the HOA alleges that Sean Jeffries was, at all times,
11 authorized to speak on behalf of the Millennium Defendants.

12 126. The Millennium Defendants and Sean Jeffries intended that the HOA would rely
13 on this representation by failing to take action to correct the defects and damage to the
14 Millennium Tower of which it was not aware.

15 127. The HOA reasonably relied on the Millennium Defendants' and Sean Jeffries'
16 representations because the HOA reasonably believed that the Millennium Defendants would
17 fulfill their duty of disclosure.

18 128. In reliance on the Millennium Defendants' and Sean Jeffries' representations, the
19 HOA did not take corrective action to prevent continuing and future damage.

20 129. The HOA's reliance on the Millennium Defendants' and Sean Jeffries'
21 representations caused damages to the HOA, including by diminishing the value of the common
22 areas of Millennium Tower and by delaying any corrective action that could reduce the extent of
23 damage.

24 130. Because the Millennium Defendants and Sean Jeffries intentionally withheld
25 information from the HOA, the Millennium Defendants and Sean Jeffries necessarily possess full
26 information concerning the facts of their own fraudulent acts.

27 131. As a direct and proximate result of the Millennium Defendants' and Sean Jeffries'
28 fraudulent conduct, the HOA has suffered and will continue to suffer damages in an amount to

1 be proved at trial.

2 132. On information and belief, the HOA alleges that the Millennium Founders and
3 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
4 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
5 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
6 and adherence to the fiction of a separate corporate existence would promote injustice under
7 these circumstances. In the interest of justice, each and every Millennium Defendant that
8 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
9 held ultimately liable for the HOA's damages.

10 133. Because the Millennium Defendants' and Sean Jeffries' conduct was malicious,
11 oppressive, and fraudulent, and taken in knowing disregard of their legal duties, punitive
12 damages should be awarded. The Millennium Defendants knew that the construction and design
13 of the Millennium Tower was deficient and that the Millennium Tower was suffering from
14 vertical and differential settlement, and consciously and recklessly disregarded the probability of
15 injury to residents of Millennium Tower units and to the common areas of the Millennium Tower
16 by developing and marketing the Millennium Tower despite knowing that its construction
17 methods and design plans were deficient, and by continuing to market the units after they
18 received information that the building was sinking and tilting.

19 **EIGHTH CAUSE OF ACTION**

20 **Fraudulent Concealment Against the Millennium Defendants,**

21 **Millennium Founders, Sean Jeffries, John Luciano,**

22 **and Does 1 Through 100, Inclusive**

23 134. The HOA re-alleges and incorporates by reference Paragraphs 1 through 133
24 above as if fully set forth herein.

25 135. As marketers, sellers, and promoters of the Millennium Tower, the Millennium
26 Defendants, Sean Jeffries, and Luciano owed a duty of disclosure to the HOA and its members.
27 As a result, the Millennium Defendants, Sean Jeffries, and Luciano had an obligation to disclose
28 facts relating to the Millennium Tower, including its common areas. As designated contact for

1 receipt of monitoring data from the TJPA, Sean Jeffries also owed a fiduciary duty to the HOA,
2 its board, and its members. As a member of the HOA Board, Luciano owed a fiduciary duty to
3 the HOA and its members. Finally, as the persons and entities with knowledge and information
4 about the condition of the Millennium Tower not available to the HOA, including the Tower's
5 excessive vertical and differential settlement, the Millennium Defendants, Sean Jeffries, and
6 Luciano owed a duty of disclosure to the HOA and its members.

7 136. On information and belief, the HOA alleges that despite owing a duty of
8 disclosure to the HOA, the Millennium Defendants, Sean Jeffries, and Luciano intentionally
9 failed to disclose certain facts regarding the excessive vertical and differential settlement of the
10 Millennium Tower and instead actively concealed those facts for as long as possible.

11 137. The Millennium Defendants, Sean Jeffries, and Luciano knew that the Tower was
12 originally predicted to sink no more than 4 to 6 inches over its lifetime. The Millennium
13 Defendants, Sean Jeffries, and Luciano also knew that the predicted lifetime settlement of the
14 Tower was later revised to 10.3 to 12.3 inches.

15 138. On information and belief, the Millennium Defendants received monitoring data
16 on the settlement building continuously over a period of years, starting as early as 2010. Arup
17 has prepared at least 58 memoranda to the TJPA providing updates on settlement monitoring
18 through 2016. On information and belief, this same settlement data was sent by TJPA to
19 Millennium Partners, who in turn transmitted the settlement data to DeSimone for evaluation.
20 DeSimone then prepared its own analysis of the Arup data, summarized in numerous memoranda
21 that were addressed to Steven Hood of Millennium Partners.³⁹

22 139. The DeSimone memoranda, based upon the Arup monitoring data and produced
23 directly to Millennium Partners, unequivocally show excessive vertical and differential
24 settlement of the Millennium Tower. For example, a DeSimone Memorandum dated December
25

26 ³⁹ See, e.g., Memorandum from Nicolas Rodrigues to Steven Hood (Millennium Partners) re: 301
27 Mission Street - Settlement Monitoring (review of most recent settlement data provided by
28 Millennium Partners to DeSimone) (Dec. 13, 2013); Email from Brian Dykes (TJPA) to Steven
Hood Re: Instrument Monitoring (attaching June 28, 2013 Arup Memorandum Re: Manually Read
Inclinometer Update) (July 16, 2013).

1 14, 2012, demonstrates the Tower had already sunk over 11 inches.

2 140. Yet the HOA was not made aware of the true nature of the wrongful conduct and
3 the full extent to which the Tower was experiencing excessive vertical and differential settlement
4 until 2016. The Millennium Defendants, Sean Jeffries, and Luciano failed to disclose to the
5 HOA before 2016 that the Tower had exceeded the original predicted lifetime settlement range
6 of 4 to 6 inches as of January 2009, and the Millennium Defendants, Sean Jeffries, and Luciano
7 also failed to disclose to the HOA before 2016 that the Tower had already exceeded the revised
8 predicted maximum lifetime settlement of 12.3 inches.

9 141. As of the signing of the First Amendment to the Easement Amendment, the
10 Millennium Defendants, Sean Jeffries, and Luciano also knew that the TJPA's construction
11 activities at the site of the Transit Center would likely cause additional vertical and differential
12 settlement of the Tower and the Podium, and potentially other damages. As of early 2014, the
13 Millennium Defendants, Sean Jeffries, and Luciano also knew that the TJPA's construction
14 activities at the site of the Transit Center had already caused vertical and differential settlement
15 of the Tower and the Podium, damage to the Garage, water intrusion, and other damages.

16 142. On information and belief, the HOA alleges that Sean Jeffries and others,
17 including representatives of the TJPA, signed a confidentiality agreement on March 17, 2010 to
18 conceal from the HOA and others the extent of the settlement and that the TJPA's construction
19 activities at the site of the Transit Center, adjacent to the Millennium Tower, would likely cause
20 additional vertical and differential settlement of the Tower and the Podium.

21 143. On information and belief, the HOA alleges that Sean Jeffries, in a further attempt
22 to conceal from the HOA for as long as possible that the Tower was settling vertically and
23 differentially in excess of the design specifications, signed the Amended Easement Amendment
24 with the TJPA. Because Sean Jeffries signed the Amended Easement Amendment with the TJPA,
25 Sean Jeffries or other employees of the Millennium Defendants, and not the HOA, began
26 receiving monitoring data collected by the TJPA, which further revealed that the Tower was
27 settling vertically and differentially in excess of the design specifications, including the revised
28 expected maximum settlement. Sean Jeffries and the Millennium Defendants did not disclose

1 this data to the HOA, but instead concealed it.

2 144. The Millennium Defendants knew that the Millennium Tower was settling
3 differentially at least by March 15, 2010, if not earlier, when Sean Jeffries and others employees
4 of Millennium Defendants received monitoring data from Arup that discussed differential
5 settlement. Despite knowing of the differential settlement and the detrimental impact of the
6 TJPA's activities on the Millennium Tower, the Millennium Defendants, Sean Jeffries, and
7 Luciano failed to disclose to the HOA the full extent of the wrongful conduct and its effects
8 before 2016, including that the TJPA's construction activities at the site of the Transit Center had
9 contributed to the excessive vertical and differential settlement of the Tower and the Podium far
10 in excess of the design specifications, damage to the Garage, water intrusion, and other damages.

11 145. In his capacity as an executive for the Millennium Defendants, Luciano knew of
12 the vertical and differential settlement of the Tower and Podium and other ongoing damages to
13 the Property resulting from the design and construction defects and the TJPA's activities.
14 Luciano, a Vice President at MPM and a member of the HOA's Board from approximately 2009
15 through 2016, wrongfully failed to disclose to the HOA and its members all material facts
16 regarding the Tower and instead actively concealed them, in violation of his duty of disclosure to
17 the HOA.

18 146. The Millennium Defendants and Sean Jeffries further represented on February 28,
19 2014 to the HOA, that they were not "aware to date of any information that gives us concern for
20 the safety of the building or any significant impact on the structure." This representation was
21 demonstrably false, as Sean Jeffries and the Millennium Defendants knew that the Tower had
22 already exceeded the revised upper limit of the total expected lifetime settlement. In a December
23 13, 2013 Memorandum to Millennium Partners, DeSimone observed that the total measured
24 settlement was "now officially outside the maximum predicted value provided by Treadwell and
25 Rollo (Langan)."

26 147. On information and belief, the HOA alleges that Sean Jeffries and Luciano were,
27 at all times, authorized to speak on behalf of the Millennium Defendants.

28 148. In failing to disclose these material facts, the Millennium Defendants, Sean

1 Jeffries, and Luciano intended to deceive the HOA, knowing that the HOA could not and would
2 not take corrective action to address problems of which the HOA was not aware.

3 149. In reliance on the Millennium Defendants' misrepresentations and failures to
4 disclose, the HOA did not take early corrective action to prevent future damage.

5 150. The HOA's reliance on the fraudulent concealment of the Millennium
6 Defendants, Sean Jeffries, and Luciano caused damages to the HOA, including by diminishing
7 the value of the common areas of the Millennium Tower.

8 151. Because the Millennium Defendants, Sean Jeffries, and Luciano intentionally
9 withheld information from the HOA, the Millennium Defendants, Sean Jeffries, and Luciano
10 necessarily possess full information concerning the facts of their own fraudulent acts.

11 152. As a direct and proximate result of the fraudulent conduct of the Millennium
12 Defendants, Sean Jeffries, and Luciano, the HOA has suffered and will continue to suffer
13 damages in an amount to be proved at trial.

14 153. On information and belief, the HOA alleges that the Millennium Founders and
15 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
16 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
17 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
18 and adherence to the fiction of a separate corporate existence would promote injustice under
19 these circumstances. In the interest of justice, each and every Millennium Defendant that
20 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
21 held ultimately liable for the HOA's damages.

22 154. Because the conduct of the Millennium Defendants, Sean Jeffries, and Luciano
23 was malicious, oppressive, and fraudulent, and taken in knowing disregard of their legal duties,
24 punitive damages should be awarded. The Millennium Defendants knew that the construction
25 and design of the Millennium Tower was deficient and that the Millennium Tower was suffering
26 from excessive vertical and differential settlement, and consciously and recklessly disregarded
27 the probability of injury to residents of Millennium Tower units and to the common areas of the
28 Millennium Tower by developing and marketing the Millennium Tower despite knowing that its

1 construction methods and design plans were deficient, and by continuing to market the units after
2 they received information that the building was sinking and tilting.

3 **NINTH CAUSE OF ACTION**

4 **Breach of Fiduciary Duty Against the Millennium Defendants,**

5 **Millennium Founders, Sean Jeffries, Luciano,**

6 **and Does 1 Through 100, Inclusive**

7 155. The HOA re-alleges and incorporates by reference Paragraphs 1 through 154
8 above as if fully set forth herein.

9 156. As marketers, sellers, and promoters of the Millennium Tower, the Millennium
10 Defendants owed a fiduciary duty to the HOA and its members. Marketers, sellers, and
11 promoters of common-interest developments are entrusted by interested investors to bring about
12 an organization to serve a specific function, and are expected to use good judgment and good
13 faith to complete the formation of their organizations. Despite owing such a fiduciary duty, the
14 Millennium Defendants wrongfully failed to disclose to the HOA Board and its members all
15 material facts regarding the substantial construction and design defects at the Millennium Tower.

16 157. On information and belief, Millennium Defendants owed a fiduciary duty to the
17 HOA in their capacity as developers when, among other acts, they developed and approved an
18 initial operating budget for the HOA in order to obtain a Final Subdivision Public Report, as
19 required prior to initiating the sale of units by Cal. Bus. & Prof. Code § 11018 *et seq.* On
20 information and belief, this operating budget included estimated expenses for maintenance of the
21 common areas.

22 158. Despite knowing that the building was settling excessively and differentially,
23 Millennium Defendants approved an operating budget and reserve requirements that were
24 grossly inadequate to account for repairs made necessary by the excessive tilt and settlement.
25 Such approval constituted a breach of Millennium Defendants' fiduciary duties, including but not
26 limited to their duties of care and of good faith and fair dealing. This approval also constituted a
27 breach of Millennium Defendants' duty of loyalty to the HOA because Millennium Defendants
28 did not act to approve the operating budget and reserve requirements in the best interests of the

1 HOA, but instead acted in their own interests as sellers, promoters, and developers of the
2 Property.

3 159. Millennium Defendants also owed a fiduciary duty to the HOA during the initial
4 period of the HOA when they controlled and dominated its Board of Directors. For example,
5 March 30, 2010 HOA Meeting Minutes show that all five members present at the Board meeting
6 were Millennium Defendants' officers, directors, or employees.

7 160. On information and belief, Millennium Defendants knew that the building was
8 settling excessively and differentially by March 15, 2010, if not earlier. Yet Millennium
9 Defendants breached their fiduciary duties to the Board by, among other acts and omissions,
10 failing to maintain sufficient reserve and operating funds to maintain and repair the known
11 defects; failing to act in the best interests of the HOA by immediately seeking to repair known
12 defects and halt ongoing damage to the building; and by acting in the best interests of the
13 Millennium Defendants, not the HOA, through the concealment of information about the
14 excessive and differential settlement from homeowners and other Board members. In so acting,
15 Millennium Defendants breached their fiduciary duties to the Board, including but not limited to
16 their duties of care, good faith and fair dealing, and loyalty.

17 161. As designated contact for receipt of monitoring data from the TJPA, Sean Jeffries
18 owed a fiduciary duty to the HOA, its board, and its members. Despite owing this fiduciary
19 duty, Sean Jeffries wrongfully failed to disclose to the HOA and its members all material facts
20 regarding the substantial defects at the Millennium Tower. Such failure constituted a breach of
21 his fiduciary duties to the Board, including but not limited to a breach of his duties of care, good
22 faith and fair dealing, and loyalty to the HOA.

23 162. As a member of the HOA Board, Luciano owed a fiduciary duty to the HOA and
24 its members. Board members are expected to act with good judgment, in good faith, and in the
25 best interests of their organization. Despite owing such a fiduciary duty, Luciano wrongfully
26 failed to disclose to the HOA and its members all material facts regarding the substantial defects
27 at the Millennium Tower. Such failure constituted a breach of his fiduciary duties to the Board,
28 including but not limited to a breach of his duties of care, good faith and fair dealing, and loyalty

1 to the HOA.

2 163. As a direct and proximate result of Defendants' breaches, the HOA has suffered
3 and will continue to suffer damages in an amount to be proved at trial.

4 164. On information and belief, the HOA alleges that the Millennium Founders and
5 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
6 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
7 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
8 and adherence to the fiction of a separate corporate existence would promote injustice under
9 these circumstances. In the interest of justice, each and every Millennium Defendant that
10 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be
11 held ultimately liable for the HOA's damages.

12 165. The HOA also seeks punitive or exemplary damages because Defendants'
13 conduct was malicious, oppressive, and fraudulent, and taken in knowing disregard of their legal
14 duties. The Millennium Defendants knew that the construction and design of the Millennium
15 Tower was deficient and that the Millennium Tower was suffering from excessive vertical and
16 differential settlement, and consciously and recklessly disregarded the probability of injury to
17 future residents of Millennium Tower units and to the common areas of the Millennium Tower
18 by developing and marketing the Millennium Tower despite knowing that its construction
19 methods and design plans were deficient, and by continuing to market the units after they
20 received information that the building was sinking and tilting.

21 **TENTH CAUSE OF ACTION**

22 **Violation of Business and Professions Code § 17200 *et seq.* Against the Millennium**
23 **Defendants, Millennium Founders, Sean Jeffries, Luciano,**
24 **and Does 1 Through 100, Inclusive**

25 166. The HOA re-alleges and incorporates by reference Paragraphs 1 through 165
26 above as if fully set forth herein.

27 167. California Business and Professions Code section 17200 *et seq.* prohibit unfair
28 competition, including any unlawful, unfair, or fraudulent business act or practice.

1 168. The conduct of the Millennium Defendants, Sean Jeffries, and Luciano alleged
2 herein constitutes unlawful, unfair, or fraudulent business acts or practices.

3 169. The Millennium Defendants, Sean Jeffries, and Luciano's unlawful, unfair, and
4 fraudulent business acts and practices included a pattern of violations of California Civil Code
5 section 1102 *et seq.* in that they repeatedly failed to disclose the nature and extent of the vertical
6 and differential settlement of the Millennium Tower to the HOA or its members.

7 170. The unlawful conduct of the Millennium Defendants, Sean Jeffries, and Luciano
8 also includes violations of California Civil Code section 896 *et seq.*, as more specifically alleged
9 above.

10 171. Sean Jeffries' unlawful, unfair, or fraudulent business acts or practices include his
11 misrepresentations in the course of his dealings and communications with the HOA Board, and
12 his failure to disclose the differential settlement of the Millennium Tower to the HOA or its
13 members.

14 172. Luciano's unlawful, unfair, or fraudulent business acts or practices include his
15 misrepresentations in the course of his dealings and communications with the HOA Board, and
16 his failure to disclose the differential settlement of the Millennium Tower to the HOA or its
17 members.

18 173. As a direct and proximate result of the conduct of the Millennium Defendants,
19 Sean Jeffries and Luciano constituting unfair, unlawful, or fraudulent business practices, the
20 HOA has suffered and will continue to suffer damages entitling it to restitution in an amount to
21 be proved at trial.

22 174. On information and belief, the HOA alleges that the Millennium Founders and
23 MPI are liable for the acts of MSD, MSH, MPM, and MP LLC because MSD, MSH, MPM, and
24 MP LLC are alter egos or agents of MPI and the Millennium Founders. A unity of interest and
25 ownership existed between MSD, MSH, MPM, MP LLC, MPI, and the Millennium Founders,
26 and adherence to the fiction of a separate corporate existence would promote injustice under
27 these circumstances. In the interest of justice, each and every Millennium Defendant that
28 ultimately caused or benefited from the wrongful conduct alleged in the Complaint should be

1 held ultimately liable for the HOA's damages.

2 175. The HOA also seeks an order that the Millennium Defendants be required to
3 provide restitution to the HOA to restore money or property acquired by means of the
4 Millennium Defendants' unfair, unlawful, or fraudulent practices and that resulted in injury to
5 the common areas of the Millennium Tower.

6 **ELEVENTH CAUSE OF ACTION**

7 **Inverse Condemnation Against the TJPA**

8 176. The HOA re-alleges and incorporates by reference Paragraphs 1 through 175
9 above as if fully set forth herein.

10 177. Inverse condemnation claims arise under Article I, section 19, of the California
11 Constitution, which provides that "[p]rivate property may be taken or damaged for a public use
12 and only when just compensation ... has first been paid to ... the owner." Cal. Const. art. I, § 19.

13 178. The support, safety, and integrity of the Millennium Tower has been substantially
14 affected by the construction of the Transit Center and Support System. The soil beneath the
15 Millennium Tower has been destabilized by the construction of the Transit Center and Support
16 System, and the Property has suffered from material movement and/or settlement, which is
17 expected to continue for the foreseeable future. This movement and settlement is both vertical
18 and differential and has resulted, and will continue to result, in cracks in the foundations, slabs,
19 and walls of the Millennium Tower, water intrusion through foundation walls, displacement of
20 sewer and other utility connections, and other damage.

21 179. The TJPA's construction activities at the site of the Transit Center, adjacent to the
22 Millennium Tower, have caused vertical and differential settlement of the Tower and Podium,
23 damage to the Garage, water intrusion, and other damages.

24 180. Construction of the Transit Center is ongoing such that harm to the Millennium
25 Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to
26 the Millennium Tower is unknown and ongoing.

27 181. The TJPA's construction of the Transit Center is a substantial and proximate
28 cause of the vertical and differential settlement of the Tower and Podium, damage to the Garage,

1 water intrusion, and other damages.

2 182. The HOA has suffered a taking of its property by the TJPA entitling the HOA to
3 just compensation under Article I, section 19, of the California Constitution and the Fifth and
4 Fourteenth Amendments to the United States Constitution.

5 183. The HOA is also entitled to costs, disbursements, and expenses, including
6 attorney, appraisal, and engineering fees pursuant to Code of Civil Procedure Section 1036.

7 **TWELFTH CAUSE OF ACTION**

8 **Trespass Against the TJPA**

9 184. The HOA re-alleges and incorporates by reference Paragraphs 1 through 183
10 above as if fully set forth herein.

11 185. By its construction of the shoring wall, buttress wall, and related construction
12 activities, the TJPA has intentionally, recklessly, or negligently entered the Millennium Tower or
13 negligently caused construction-related objects to enter the Millennium Tower.

14 186. This entry into the Millennium Tower exceeded the TJPA's permission to enter
15 the Property.

16 187. The TJPA's conduct damaged the HOA because it was a substantial factor in
17 causing vertical and differential settlement of the Millennium Tower, as well as cracks in the
18 foundations, slabs, and walls of the Tower, Podium and Garage, water intrusion through
19 foundation walls, displacement of sewer and other plumbing pipes, and other damage.

20 188. Construction of the Transit Center is ongoing such that harm to the Millennium
21 Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to
22 the Millennium Tower is unknown and ongoing.

23 189. As a direct and proximate result of the TJPA's wrongful conduct, the HOA has
24 suffered and will continue to suffer damages in an amount to be proved at trial.

25 **THIRTEENTH CAUSE OF ACTION**

26 **Nuisance Against the TJPA**

27 190. The HOA re-alleges and incorporates by reference Paragraphs 1 through 189
28 above as if fully set forth herein.

1 191. The TJPA's construction of the Transit Center has caused or contributed to the
2 sinking and tilting of the Millennium Tower, and the other damages alleged herein.

3 192. The TJPA's use and maintenance of its property has interfered with and continues
4 to interfere with the HOA's and the HOA's members' use and enjoyment of the Millennium
5 Tower common areas and has damaged and continues to damage the Millennium Tower. The
6 excessive vertical and differential settlement is continuing and keeps adversely impacting the
7 Millennium Tower, as alleged above.

8 193. TJPA's activities in constructing the Transit Center have substantially contributed
9 to the Millennium Tower's excessive and differential settlement, as well as cracks in the
10 foundations, slabs, and walls of the Tower, Podium and Garage, water intrusion through
11 foundation walls, displacement of sewer and other plumbing pipes, and other damage and
12 thereby have resulted in a diminution in the Millennium Tower's value.

13 194. Construction of the Transit Center is ongoing such that harm to the Millennium
14 Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to
15 the Millennium Tower is unknown and ongoing.

16 195. The substantial invasion of the HOA's interest in the use and enjoyment of the
17 common areas is unreasonable.

18 196. As a result of the TJPA's construction activities, the HOA has suffered damages
19 as set forth herein.

20 197. As a direct and proximate result of the TJPA's wrongful conduct, the HOA has
21 suffered and will continue to suffer damages in an amount to be proved at trial.

22 **FOURTEENTH CAUSE OF ACTION**

23 **Violation of Statutory Duty to Provide Subjacent and Lateral Support**

24 **Pursuant to California Civil Code § 832 Against the TJPA**

25 198. The HOA re-alleges and incorporates by reference Paragraphs 1 through 197
26 above as if fully set forth herein.

27 199. The Millennium Tower receives lateral and subjacent support from the soil
28 underlying the Transit Center, which adjoins the Millennium Tower to the southwest.

1 200. The TJPA has directed excavation and dewatering work at the Transit Center, by
2 and through its agents and/or employees.

3 201. The excavation and dewatering work, and the manner in which this work was
4 undertaken, was deliberately designed and constructed for the purpose of constructing
5 improvements at the Transit Center.

6 202. The excavations at the Transit Center are deeper than the standard depth of
7 foundations as defined by statute.

8 203. On information and belief, the HOA alleges that the TJPA failed to exercise
9 ordinary care and skill and take reasonable precautions to sustain the adjoining land, as required
10 by California Civil Code Section 832.

11 204. As a direct and proximate cause of the TJPA's excavation and dewatering at the
12 Transit Center, the Millennium Tower was deprived of lateral and subjacent support. The
13 TJPA's construction, excavation, and dewatering resulted in harm to the Millennium Tower, and
14 to the Millennium Tower experiencing differential and vertical settlement beyond even the
15 revised maximum settlement prediction provided by Treadwell & Rollo in 2009 of 10.3-12.3
16 inches,⁴⁰ as well as in cracks in the foundations, slabs, and walls of the Tower, Garage and
17 Podium, water intrusion through foundation walls, displacement of sewer and other plumbing
18 pipes, and other damage.

19 205. Construction of the Transit Center is ongoing such that harm to the Millennium
20 Tower is continuous and ongoing. Accordingly, the full extent of any actual or potential harm to
21 the Millennium Tower is unknown and ongoing.

22 206. As a direct and proximate result of the TJPA's breach of duty pursuant to Section
23 832, the HOA has suffered and will continue to suffer damages in an amount to be proved at
24 trial.

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28 ⁴⁰ Letter from Treadwell & Rollo to DBI (Feb. 19, 2009).

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For compensatory and special damages, according to proof at trial but believed to exceed Two Hundred Million Dollars (\$200,000,000);
2. For interest thereon at the maximum legal rate;
3. For statutory damages as set forth in California Civil Code section 895 *et seq.*;
4. For expert fees and investigative costs regarding the nature and extent of the violations of standards, defective conditions, resulting damages, and appropriate method of repairing these damages and defective conditions in accordance with *Stearman v. Centex Homes*, 78 Cal. App. 4th 611 (2000), according to proof at trial;
5. For an order that the Millennium Defendants be required to disgorge the profits they have wrongfully obtained and provide the HOA restitution;
6. For cost of relocation, loss of use, substitute housing, and mitigation expenses;
7. For punitive and/or statutory exemplary damages;
8. For costs of suit and reasonable attorneys' fees incurred herein; and
9. For any and all other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all triable issues.

Dated: March 29, 2017

DANIEL M. PETROCELLI
VISION WINTER
O'MELVENY & MYERS LLP

By: 

Daniel M. Petrocelli
Attorneys for Plaintiff