

ROBERT L. MEZZETTI II, 114282
 MAUREEN PETTIBONE RYAN, 245438
 CHRISTOPHER R. MEZZETTI, 282287
 MEZZETTI LAW FIRM, INC.
 31 East Julian Street
 San Jose, CA 95112
 Tel. (408) 279-8400
 Fax (408) 279-8448

Attorneys for Plaintiffs
 Joseph Clifford Montana Jr.
 and Jennifer S. Montana,
 Individually and as Trustees
 of the Montana 1990 Family Trust

FILED
 San Francisco County Superior Court
 MAY 04 2017
 CLERK OF THE COURT
 BY: *[Signature]*
 Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO

CGC 17-558649

JOSEPH CLIFFORD MONTANA JR. AND
 JENNIFER S. MONTANA, Individually and
 as Trustees of the Montana 1990 Family Trust,

Plaintiffs,

v.

MISSION STREET DEVELOPMENT LLC, a
 Delaware Limited Liability Company;
 MILLENNIUM PARTNERS I, INC., a New
 York Corporation; MISSION STREET
 HOLDINGS LLC, a New York Limited
 Liability Company; TRANSBAY JOINT
 POWERS AUTHORITY, a public entity; SAN
 FRANCISCO DEPARTMENT OF
 BUILDING INSPECTION, a public entity;
 CHRISTOPHER M. JEFFRIES, an individual;
 SEAN JEFFRIES, an individual; RICHARD
 BAUMERT, an individual; PHILIP E.
 AARONS, an individual; PHILIP H.
 LOVETT, an individual; STEPHANIE KAY,
 an individual; and DOES 1 through 50

Defendants.

Case No.:

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;
- (3) NEGLIGENCE;
- (4) REAL ESTATE SELLER'S NONDISCLOSURE OF MATERIAL FACT, (Cal. Civ. Code § 1102 et seq.);
- (5) NEGLIGENT MISREPRESENTATION;
- (6) INTENTIONAL MISREPRESENTATION;
- (7) CONCEALMENT;
- (8) INVERSE CONDEMNATION;
- (9) NUISANCE
- (10) RESCISSION

1 Plaintiffs JOSEPH CLIFFORD MONTANA JR. AND JENNIFER S. MONTANA, individually
2 and as TRUSTEES OF THE MONTANA 1990 FAMILY TRUST (collectively referred to hereinafter as
3 "Plaintiffs" or the "Montanas") allege as follows:

4 INTRODUCTION

5 1. The present claim largely surrounds the unprecedented and unanticipated total and
6 differential settlement of the 58-floor high rise residential building known as the Millennium Tower (the
7 "Tower"). The Tower is located at 301 Mission Street, San Francisco, California, 94105. The Montana
8 1990 Family Trust (the "Trust") owns unit 41C and the Montanas reside therein. The Tower was
9 completed in 2008 and has since experienced total settlement of at least 16 inches and differential
10 settlement to the northwest a minimum of 2 inches at its base and 15 inches at its top. The Tower's
11 developers and the City and County of San Francisco (and its sub-entities) knew that the Tower had
12 experienced greater than anticipated settlement as early as 2008. This important information, however,
13 was not relayed to the prospective purchasers and owners of units at the Tower until approximately May
14 of 2016.

15 2. The Millennium Tower continues to experience total settlement at a rate of approximately
16 one inch per year. The building is anticipated to further settle an additional 8 to 15 inches into the
17 landfill on which its foundation lies. It is also likely that the Tower's differential settlement will worsen
18 over time. The interior surfaces of the Montanas' unit are off-level and the fit and finish of the unit are
19 in disrepair due to the total and differential settlement of the Tower.

20 3. In addition to owning unit 41C at the Tower, the Montanas entered into a promotional
21 agreement with the Tower's developer, Mission Street Development LLC ("Mission Street"). Mission
22 Street failed to disclose the settlement issue to the Montanas at the time of contracting.

23 THE PARTIES

24 4. Plaintiffs Joseph Clifford Montana Jr. and Jennifer S. Montana are residents of the City
25 and County of San Francisco. They are also the Trustees of the Montana 1990 Family Trust, which trust
26 owns unit 41C at the Tower.
27
28

1 5. Defendant Mission Street Development LLC is a limited liability company formed and
2 existing under the laws of the State of Delaware. Mission Street does business in the City and County of
3 San Francisco; including the development, construction, marketing, management, and sale of the Tower.

4 6. Defendant Millennium Partners I, Inc. ("Millennium Partners") is a corporation formed
5 and existing under the laws of the State of New York. Millennium Partners does business in the City
6 and County of San Francisco, as SF Millennium Partners, I, Inc., including the development,
7 construction, marketing, management, and sale of the Tower.

8 7. Defendant Mission Street Holdings LLC ("Mission Holdings") is a limited liability
9 company formed and existing under the laws of the State of New York. Mission Holdings is the
10 manager of Mission Street and does business in the City and County of San Francisco, including the
11 development, construction, marketing, management, and sale of the Tower.

12 8. Plaintiffs are informed, and believe, and thereon allege that Defendant Christopher M.
13 Jeffries was, at all times relevant to this complaint, a founding partner and controlling shareholder of
14 Millennium Partners. Defendant Christopher M. Jeffries was involved in the development,
15 management, and sale of the Tower and its units, in the City and County of San Francisco. Defendant
16 Christopher M. Jeffries' contacts with the State of California are sufficient that he has purposefully
17 availed himself to the laws of this forum. Furthermore, the instant action arises out of his contacts with
18 the State of California.

19 9. Plaintiffs are informed, and believe, and thereon allege that Defendant Sean Jeffries was,
20 at all times relevant to this complaint, a Vice President of Millennium Partners and the sole member of
21 Mission Street. Defendant Sean Jeffries was involved in the development, management, and sale of the
22 Tower and its units, in the City and County of San Francisco. On information and belief, he is a resident
23 of the City and County of San Francisco.

24 10. Plaintiffs are informed, and believe, and thereon allege that Defendant Richard Baumert
25 was, at all times relevant to this complaint, the Vice President of Mission Street. Defendant Richard
26 Baumert was involved in the development, management, and sale of the Tower and its units, in the City
27 and County of San Francisco. Defendant Richard Baumert's contacts with the State of California are
28

1 sufficient that he has purposefully availed himself to the laws of this forum. Furthermore, the instant
2 action arises out of his contacts with the State of California.

3 11. Plaintiffs are informed, and believe, and thereon allege that Defendant Philip E. Aarons
4 was, at all times relevant to this complaint, a principal of Millennium Partners. Defendant Philip E.
5 Aarons was involved in the development, management, and sale of the Tower and its units, in the City
6 and County of San Francisco. Defendant Philip E. Aarons' contacts with the State of California are
7 sufficient that he has purposefully availed himself to the laws of this forum. Furthermore, the instant
8 action arises out of his contacts with the State of California.

9 12. Plaintiffs are informed, and believe, and thereon allege that Defendant Philip H. Lovett
10 was, at all times relevant to this complaint, a principal of Millennium Partners. Defendant Philip H.
11 Lovett was involved in the development, management, and sale of the Tower and its units, in the City
12 and County of San Francisco. Defendant Philip H. Lovett's contacts with the State of California are
13 sufficient that he has purposefully availed himself to the laws of this forum. Furthermore, the instant
14 action arises out of his contacts with the State of California.

15 13. Plaintiffs are informed, and believe, and thereon allege that Defendant Stephanie Kay
16 was, at all times relevant to this complaint, the General Manager of Millennium Tower. Defendant
17 Stephanie Kay was involved in the development, management, and sale of the Tower and its units, in the
18 City and County of San Francisco. On information and belief, she is a resident of the City and County
19 of San Francisco.

20 14. Defendants Mission Street Development LLC, Millennium Partners I, Inc., Mission
21 Street Holdings LLC, Christopher M. Jeffries, Sean Jeffries, Richard Baumert, Philip E. Aarons, Philip
22 H. Lovett, and Stephanie Kay will be collectively referred to hereinafter as the "Millennium Parties."

23 15. Defendant Transbay Joint Powers Authority ("TJPA") is a governmental agency pursuant
24 to Cal. Gov. Code § 6500 *et seq.* The TJPA was tasked to design, build, operate, and maintain the
25 Transbay Transit Center, immediately adjacent to the Tower. Plaintiffs are informed, believe, and
26 thereon allege that the TJPA's construction activities caused and/or contributed to the settlement issues
27 at the Tower. Plaintiffs first became aware of TJPA's actions as a potential cause for the settlement of
28 the Tower on or about May 3, 2016, at the earliest. Plaintiffs served a Claim for Damages on the TJPA

1 on or about October 25, 2016, pursuant to Cal. Gov. Code § 910 *et seq.* The TJPA returned the claim on
2 or about December 13, 2016.

3 16. Defendant San Francisco Department of Building Inspection (“SFDBI”) is a
4 governmental agency pursuant to Cal. Gov. Code § 6500 *et seq.* SFDBI is the regulatory building safety
5 agency responsible for overseeing the effective, efficient, fair, and safe enforcement of the City and
6 County of San Francisco’s more than 200,000 commercial and residential buildings. Despite knowledge
7 that the Tower was experiencing greater than anticipated total and differential settlement, in as early as
8 2009, SFDBI failed to notify residents and owners of units at the Tower (including Plaintiffs), and the
9 public in general, of the potentially dangerous condition and failed to take steps to ensure that the Tower
10 remained safe and habitable, despite owing said owners a duty to do so. SFDBI, in fact, took steps to
11 conceal said knowledge from the Tower’s owners and residents. Plaintiffs first became aware of
12 SFDBI’s actions in or about May of 2016, at the earliest. Plaintiffs served a Claim for Damages on
13 SFDBI on or about October 25, 2016, pursuant to Cal. Gov. Code § 910 *et seq.* SFDBI effectively
14 rejected the claim by failing to render a decision within 45 days of the filing of the Claim for Damages.

15 17. The true names and capacities, whether individual, corporate, associate, or otherwise, of
16 defendants named herein as DOES 1 through 50, inclusive, are unknown to Plaintiffs who therefore sue
17 said defendants by such fictitious names. Plaintiffs pray leave to amend this complaint when their true
18 names and capacities have been ascertained.

19 18. At all times herein mentioned, each of the defendants, including the DOE defendants,
20 was the agent, servant, and employee of the other defendants and was acting at all times within the scope
21 of his/her agency and employment, and with the knowledge and consent of his/her employer.
22 Defendants, and each of them, at all times herein mentioned acted jointly and in concert and conspired
23 and agreed to do the things hereinafter specified; and each and all of the things hereinafter alleged to
24 have been done by defendants or any of them, were done as co-conspirators and thus, as agents for each
25 other, as well as in their respective individual capacities, to advance their own individual interests.

26 19. On information and belief, Plaintiffs allege that Defendants Mission Street, Millennium
27 Towers, and Mission Holdings were, at all times, herein mentioned, operated as a single enterprise,
28 and/or at all times operated as an alter ego of Millennium Towers, and/or Christopher M. Jeffries, Sean

1 Jeffries, Richard Baumert, Philip E. Aarons, Philip H. Lovett, and/or Stephanie Kay. Plaintiffs are
2 informed, and believe, and thereon allege that the unity of interest and ownership between the entities
3 and the individuals is so pervasive that adhering to the fiction of separate corporate existence would
4 sanction fraud and promote injustice.

5 JURISDICTION AND VENUE

6 20. Jurisdiction over this action is proper in the Superior Court of the State of California in
7 and for the County of San Francisco pursuant to Cal. Code Civ. Proc. § 410.10, as all Defendants have
8 sufficient minimum contacts with the State of California to support the exercise of jurisdiction.

9 21. Venue is proper in the Superior Court of the State of California in and for the County of
10 San Francisco as: 1) pursuant to Cal. Code Civ. Proc. § 392, the real property which is the subject of this
11 litigation is located in the City and County of San Francisco; 2) pursuant to Cal. Code Civ. Proc. §
12 395.5, many of the Defendants reside in the City and County of San Francisco; and 3) pursuant to Cal.
13 Code Civ. Proc. § 395.5, all relevant contracts were entered into and performed in the City and County
14 of San Francisco.

15 RELEVANT FACTUAL ALLEGATIONS

16 22. Plaintiffs are informed, and believe, and thereon allege the following: 1) that the
17 Millennium Parties caused construction drawings for the Tower to be developed in the early 2000's and
18 eventually submitted to SFDBI in approximately 2002, for approval; 2) that SFDBI expressed some
19 concerns regarding the fact that the fifty-eight (58) story, concrete-framed building was to be built on
20 mud fill and sand, and not anchored to bedrock; 3) that in 2004 construction drawings were submitted
21 for a fifty-two (52) story, concrete-framed high rise, not anchored in bedrock (similar to the Tower), at
22 80 Natoma Street in San Francisco, California; 4) that the Natoma project construction drawings, which
23 were strikingly similar to those submitted for the Tower, were subjected to third party peer review, by
24 mandate of SFDBI; and 5) that eventually the 80 Natoma construction drawings were rejected by SFDBI
25 due to concerns over adequacy of the foundation system's ability to support the weight of the proposed
26 building.

27 23. Plaintiffs are informed, and believe, and thereon allege that engineers and architects hired
28 by the Millennium Parties expected building settlement in the range of four (4) to six (6) inches to occur

1 over the life of the building. Plaintiffs are further informed, and believe, and thereon allege that in 2009,
2 prior to a single unit being sold, settlement had already reached nearly nine (9) inches. This information
3 as unknown to Plaintiffs at the time.

4 24. Plaintiffs are informed, and believe, and thereon allege that: 1) at present, the Tower has
5 experienced total settlement of approximately sixteen (16) inches, with another fourteen (14) to sixteen
6 (16) inches anticipated; 2) the Tower has also experienced differential settlement of approximately two
7 (2) inches to the north-west at its base and nearly six (6) inches at its peak; 3) the differential settlement
8 was never anticipated or pondered by any engineer connected with the Tower project.

9 25. Plaintiffs are informed, and believe, and thereon allege that the Millennium Parties were
10 aware of the excessive total and differential settlement of the Tower in as early as 2009. Despite this
11 knowledge, the Millennium Parties failed to disclose the issue to potential buyers, owners, and residents
12 of the Tower (including Plaintiffs) until on or about May 10, 2016.

13 26. Plaintiffs Joseph Clifford Montana and Jennifer S. Montana are well known in the San
14 Francisco Bay Area. In addition to Mr. Montana's status as a sports icon, the duo has also gained
15 extensive experience and earned nationwide recognition as developers of both commercial and
16 residential properties.

17 27. Mission Street approached Plaintiffs regarding possible promotion of the Tower due to
18 slow initial sales in or around 2009. Plaintiffs and Mission Street then entered into at least two (2)
19 separate oral and written agreements, which can be summarized as follows: 1) a 2010
20 tenancy/promotional agreement for unit 41C at the Tower (and two (2) subsequent one (1) year options
21 to extend the lease); and 2) a purchase agreement for the same unit in 2013, which also included a
22 promotional component. As set forth more fully above, despite the Millennium Parties' knowledge in
23 2009 that the building was experiencing greater than anticipated total settlement and unanticipated
24 differential settlement, the Millennium Parties failed to notify Plaintiffs of the issue at the time of
25 contracting in 2010 and again in 2013.

26 28. Between 2010 and 2015, the Montanas engaged in extensive promotional work for the
27 Tower, and other Millennium Parties' projects, on behalf of the Millennium Parties, and pursuant to
28 their contracts. Plaintiffs are informed, and believe, and thereon allege that their promotional work

1 resulted in increased sales at the Tower, and the Millennium Parties' other projects, all to the
2 Millennium Parties' benefit. Plaintiffs did not learn of the excessive total and differential settlement
3 until on or about the Spring or Summer of 2016, after the HOA disclosed the excessive total and
4 differential settlement at a meeting on or about May 10, 2016. Prior to that time, Plaintiffs had no actual
5 knowledge, and no reason to know, that unit 41C was unmarketable, uninhabitable, and not of the
6 quality that was represented to the Montanas prior to their lease and purchase of unit 41C.

7 29. Construction of the Transbay Transit Center by the TJPA began in 2011, and continues to
8 this day. Included in its construction was/is the excavation and digging of a 60-foot hole immediately
9 adjacent to the Tower, which has removed lateral and subjacent support from the Tower. In addition,
10 construction of the Transit Center required extensive dewatering of the soils surrounding the Tower.
11 Plaintiffs are informed, and believe, and thereon allege that the TJPA's construction activities,
12 including, but not limited to, the excavation and dewatering, contributed to or caused the total and
13 differential settlement more fully detailed above. Plaintiffs are informed, and believe, and thereon
14 allege that the settlement has rendered, or will render, the Tower uninhabitable and unmarketable, and/or
15 has caused their property to experience extremely diminished value, resulting in the taking of Plaintiffs'
16 property under both the United States and California Constitutions.

17 30. On or about October 10, 2008, and prior to the start of construction on the Transbay
18 Transit Center, the TJPA and Mission Street entered into an easement agreement at no cost to the TJPA.
19 The terms of the easement agreement required that the TJPA monitor the Tower for any adverse effects
20 resulting from the Transit Center's construction. Additionally, the TJPA agreed to indemnify Mission
21 Street for any damage caused to the Tower by the construction of the Transit Center.

22 31. On or about February 26, 2010, again prior to the start of construction on the Transbay
23 Transit Center, the Millennium Parties and the TJPA entered into a Confidentiality Agreement. Said
24 agreement was superseded and replaced by a March 17, 2010, Confidentiality Agreement. Pursuant to
25 the agreement, the parties agreed that all "[d]ocuments and information" exchanged about the Tower
26 and the Transit Center were proprietary and confidential. Plaintiffs are informed, and believe, and
27 thereon allege that the TJPA and the Millennium Parties understood that transparency on the subject
28

1 would reveal: 1) that the Tower had already experienced greater than anticipated settlement; and 2) that
2 the parties knew that the construction of the Transit Center would have an adverse effect on the Tower.

3 32. SFDBI was also aware of the Tower's settlement issues as early as February of 2009, yet
4 failed to notify residents and owners of units at the Tower (including Plaintiffs), and the public in
5 general, of the issue, despite a duty that it do so. At that time SFDBI issued a letter to the Tower's
6 architects and engineers, inquiring about the greater than anticipated/planned settlement. SFDBI
7 received cursory responses and failed to further inquire as to the potential impact and associated safety
8 issues.

9 FIRST CAUSE OF ACTION

10 Breach of Contract

11 (Against the Millennium Parties)

12 33. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 32 above as though
13 fully set forth herein.

14 34. On or about January 20, 2010, the Montanas and Mission Street entered into an oral and
15 written Residential Lease Agreement for unit 41C at the Tower. According to the terms of the lease,
16 Mission Street agreed to lease unit 41C to the Montanas for one (1) year. As consideration, the
17 Montanas granted Mission Street their permission to utilize the Montanas' names and likenesses for
18 promotional purposes for the Tower, and other Millennium Parties' projects. The Montanas further
19 agreed to make three (3) two (2) hour appearances for promotional purposes for the Tower over the
20 course of the lease term.

21 35. In or about February 5, 2011, the Montanas exercised a one (1) year option on the
22 January 2010 lease. The Montanas then exercised a subsequent one (1) year option in early 2012, under
23 the same terms and conditions of the original lease.

24 36. On or about May 3, 2013, the Montanas, in their capacities as trustees of the Trust, and
25 Mission Street entered into an oral and written Purchase Agreement for unit 41C at the Tower. As
26 partial consideration, and in exchange for a reduced purchase price, the Montanas granted Mission Street
27 their authorization to utilize the Montanas' names and likenesses for promotional purposes for the
28 Tower, and other Millennium Parties' projects.

37. Plaintiffs performed all, or substantially all, of the significant things that were required of them under the lease agreement, options, and purchase contract.

38. All conditions required by the lease agreement, options, and purchase agreement for Mission Street's performance have occurred.

39. Plaintiffs allege that Mission Street owed Plaintiffs a contractual duty to inform Plaintiffs of any known material defects in the Tower at the time they entered into the lease agreement, options, and purchase contract. Mission Street breached the contracts by withholding facts about the Tower that were material terms of the contract to wit: that the Tower was experiencing greater than anticipated total settlement and unanticipated differential settlement, though said knowledge was known to Mission Street at the time, and that if these conditions were made public, they would render the Tower and the units therein, including the Montanas' unit, 41C, unmarketable and valueless. Further, the Montanas entered into said contract, *inter alia*, to promote, purchase, and reside in what they understood to be a marketable, safe, and conforming project, and which is a material term of the purchase and rental agreements.

40. Mission Street's breach was a substantial factor in causing Plaintiff to suffer, and continue suffering, substantial damage, including, but not limited to, economic damages, special damages, general damages, lost profits, and attorney's fees and costs pursuant to contract, in an amount presently unknown, the precise amount of which will be proven at trial.

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CAUSE OF ACTION

Breach of the Covenant of Good Faith and Fair Dealing

(Against the Millennium Parties)

41. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 40 above as though fully set forth herein.

42. On or about January 20, 2010, the Montanas and Mission Street entered into an oral and written Residential Lease Agreement for unit 41C at the Tower. According to the terms of the lease, Mission Street agreed to lease unit 41C to the Montanas for one (1) year. As consideration, the Montanas granted Mission Street their permission to utilize the Montanas' names and likenesses for

1 promotional purposes for the Tower, and other Millennium Parties' projects. The Montanas further
2 agreed to make three (3) two (2) hour appearances for promotional purposes of the Tower of the course
3 of the lease term.

4 43. On or about February 5, 2011, the Montanas exercised a one (1) year option on the
5 January 2010 lease. The Montanas then exercised a subsequent one (1) year option in early 2012, under
6 the same terms and conditions of the original lease.

7 44. On or about May 3, 2013, the Montanas, in their capacities as trustees of the Trust, and
8 Mission Street entered into an oral and written Purchase Agreement for unit 41C at the Tower. As
9 partial consideration, and in exchange for a reduced purchase price, the Montanas granted Mission Street
10 their authorization to utilize the Montanas' names and likenesses for promotional purposes for the
11 Tower, and other Millennium Parties' projects.

12 45. Plaintiffs performed all, or substantially all, of the significant things that were required of
13 them under the lease agreement, options, and purchase contract.

14 46. All conditions required by the lease agreement, options, and purchase contract for
15 Mission Street's performance have occurred.

16 47. Mission Street breached the covenant of good faith and fair dealing by withholding from
17 and misrepresenting to Plaintiffs certain material facts about the Tower, to wit: that the Tower was
18 experiencing greater than anticipated total settlement and unanticipated differential settlement, though
19 said knowledge was known to Mission Street at the time, and that if these conditions were made public,
20 they would render the Tower and the units therein, including the Montanas' unit, 41C, unmarketable and
21 valueless. This conduct unfairly interfered with the Montanas' right to receive the benefits of the
22 contracts, *inter alia*, to promote, purchase, and reside in what they understood to be a marketable, safe,
23 and conforming project.

24 48. Mission Street's breach was a substantial factor in causing Plaintiff to suffer, and
25 continue suffering, substantial damage, including, but not limited to, economic damages, special
26 damages, general damages, lost profits, and attorney's fees and costs pursuant to contract, in an amount
27 presently unknown, the precise amount of which will be proven at trial.

28 WHEREFORE, Plaintiffs pray for relief as set forth below.

1

2

3

4

6

8

11

17

22

25

27

1 damages, general damages, lost profits, and attorney's fees and costs pursuant to contract, in an amount
2 presently unknown, the precise amount of which will be proven at trial.

3 FOURTH CAUSE OF ACTION

4 Negligence

5 (Against the Millennium Parties)

6 57. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 56 above as though
7 fully set forth herein.

8 58. The Millennium Parties developed, marketed, constructed, owned, sold, and operated the
9 Tower. The Montanas are owners of unit 41C at the Tower and have resided there since 2010.

10 59. The Millennium Parties owed a duty to Plaintiffs to exercise ordinary care in performing
11 their functions, duties and responsibilities in the development, marketing, construction, owning, selling,
12 and operating the Tower and unit 41C. The Millennium Parties knew or should have known with
13 reasonable certainty that Plaintiffs would suffer monetary loss and damage if Defendants failed to
14 perform their duties to develop, market, construct, own, sell, and operate the Tower and unit 41C in a
15 proper manner and fashion as was the reasonable standard at or about the time they performed their
16 functions, duties and responsibilities. The Millennium Parties negligently failed to disclose that the
17 Tower, including unit 41C, was unmarketable, uninhabitable, and valueless.

18 60. The Millennium Parties breached their duty to Plaintiffs by negligently developing,
19 marketing, constructing, owning, selling, and operating the Tower so as to cause it to experience
20 unanticipated and dangerous total and differential settlement, and by failing to notify Plaintiffs of said
21 issue, which caused the Tower and unit 41C to be unmarketable, uninhabitable, and valueless, until May
22 of 2016. The Millennium Parties again breached their duty to Plaintiffs by failing to inform Plaintiffs of
23 the unanticipated and dangerous total and differential settlement, until May of 2016.

24 61. The total and differential settlement of the Tower have rendered the Montanas' property
25 unmarketable, valueless, and uninhabitable; causing them harm. In addition, the suspect habitability,
26 safety, and condition of the Tower and unit 41C have caused the Montanas serious and considerable
27 emotional distress while residing in the Tower, and an absence of assurance regarding safety thereof,
28 have caused them to fear for their safety while living in their home.

62. Mission Street's breaches were substantial factor in causing Plaintiff to suffer, and continue suffering, substantial damage, including, but not limited to, economic damages, special damages, general damages, lost profits, in an amount presently unknown, the precise amount of which will be proven at trial.

WHEREFORE, Plaintiffs pray for relief as set forth below.

FIFTH CAUSE OF ACTION

Negligent Misrepresentation

(Against the Millennium Parties)

63. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 62 above as though fully set forth herein.

64. The Millennium Parties developed, marketed, constructed, owned, sold, and operated the Tower. The Montanas are owners of unit 41C at the Tower and have resided there since 2010.

65. The Montanas' lease agreement with the Millennium Parties included a promotional component, wherein the Montanas agreed to promote the Tower, and other Millennium Parties' projects, through the use of their names and likenesses. The Montanas also agreed to make certain appearances at the Tower, to promote it and otherwise bolster sales of the units therein and the Millennium Parties, themselves.

66. Plaintiffs are informed, and believe, and thereon allege that prior to entering into, and during negotiations of, the promotional/lease agreement (in or about January of 2010) and purchase contract for unit 41C (in or about May 2013), Stephanie Kay, a Manager of the Tower, Sean Jeffries, Vice President of Millennium Partners and the sole member of Mission Street, and Richard Baumert, Vice President of Mission, and other agents and employees of the Millennium Parties made certain representations to Plaintiffs on behalf of the Millennium Parties regarding the Tower's fitness for habitability, quality of construction, marketability and value. These representations included the following:

- a. The foundation for the Tower is much deeper than required, and is one hundred and fifty feet deep;
- b. The Tower and the individual units are secure;

- 1 c. The Tower and the individual units were well-built and properly anchored, and in fact,
2 that the design is cutting edge and overengineered;
3 d. The Tower and the individual units are habitable and safe;
4 e. Unit 41C will maintain its value or increase in value;
5 f. The Tower is up to code, built well, and is "in great shape";
6 g. If the Montanas were to be safe anywhere in San Francisco, it was in unit 41C of the
7 Tower;
8 h. The Tower has a state-of-the-art foundation;
9 i. The Tower and the individual units are structurally sound; and
10 j. Nothing was wrong with the Tower that would negatively affect the value and
11 marketability of the Tower or unit 41C.

12 67. Said representations were untrue, and Stephanie Kay, Sean Jeffries, Richard Baumert,
13 and other agents and employees of the Millennium Parties did not have reasonable grounds for believing
14 them to be true when made. At the time the representations were made, the Millennium Parties knew or
15 should have known that the Tower had experienced greater than anticipated total settlement and
16 unanticipated differential settlement and that the representations they made to Plaintiffs regarding
17 habitability and quality were untrue, and that if these conditions were made public, they would render
18 the Tower and the units therein, including the Montanas' unit, 41C, unmarketable and valueless.

19 68. Plaintiffs are informed, and believe, and thereon allege that the Millennium Parties, and
20 their agents and employees, intended that Plaintiffs would rely on said misrepresentations.

21 69. Plaintiffs reasonably relied on those representations, when they agreed to rent and
22 ultimately purchase unit 41C, and promote the Millennium Tower and other Millennium Parties
23 projects, and were harmed as a result, and the Millennium Parties' actions were a substantial factor in
24 causing said harm.

25 70. The Millennium Parties' misrepresentations were a substantial factor in causing Plaintiff
26 to suffer, and continue suffering, substantial damage, including, but not limited to, economic damages,
27 special damages, general damages, lost profits, in an amount presently unknown, the precise amount of
28 which will be proven at trial.

1 WHEREFORE, Plaintiffs pray for relief as set forth below.

2 SIXTH CAUSE OF ACTION

3 Intentional Misrepresentation

4 (Against Millennium Parties)

5 71. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 70 above as though
6 fully set forth herein.

7 72. The Millennium Parties developed, marketed, constructed, owned, sold, and operated the
8 Tower. The Montanas are owners of unit 41C at the Tower and have resided there since 2010.

9 73. The Montanas' lease agreement with the Millennium Parties included a promotional
10 component, wherein the Montanas agreed to promote the Tower, and other Millennium Parties' projects,
11 through the use of their names and likenesses. The Montanas also agreed to make certain appearances at
12 the Tower, to promote it and otherwise bolster sales of the units therein and the Millennium Parties,
13 themselves.

14 74. Plaintiffs are informed, and believe, and thereon allege that prior to entering into, and
15 during negotiations of, the promotional/lease agreement (in or about January of 2010) and purchase
16 contract for unit 41C (in or about May 2013), Stephanie Kay, a Manager of the Tower, Sean Jeffries,
17 Vice President of Millennium Partners and the sole member of Mission Street, Richard Baumert, Vice
18 President of Mission, and other agents and employees of the Millennium Parties, made certain
19 representations to Plaintiffs on behalf of the Millennium Parties regarding the Tower's fitness for
20 habitability, quality of construction, marketability, and value. These representations included the
21 following:

- 22 a. The foundation for the Tower is much deeper than required, and is one hundred and fifty
23 feet deep;
- 24 b. The Tower and the individual units are secure;
- 25 c. The Tower and the individual units were well-built and properly anchored, and in fact,
26 that the design is cutting edge and overengineered;
- 27 d. The Tower and the individual units are habitable and safe;
- 28 e. Unit 41C will maintain its value or increase in value;

- 1 f. The Tower is up to code, built well, and is "in great shape";
2 g. If the Montanas were to be safe anywhere in San Francisco, it was in unit 41C of the
3 Tower;
4 h. The Tower has a state-of-the-art foundation;
5 i. The Tower and the individual units are structurally sound; and
6 j. Nothing was wrong with the Tower that would negatively affect the value and
7 marketability of the Tower or unit 41C.

8 75. Said representations were untrue, and at the time that they were made, Stephanie Kay,
9 Sean Jeffries, Richard Baumert, and other agents and employees of the Millennium Parties knew the
10 Tower had experienced greater than anticipated total settlement and unanticipated differential settlement
11 and knew that the representations they made to Plaintiffs regarding habitability, quality, marketability
12 and value were untrue.

13 76. Plaintiffs are informed, and believe, and thereon allege that the Millennium Parties
14 intended that Plaintiffs would rely on said misrepresentations.

15 77. Plaintiffs reasonably relied on those representations, when they agreed to rent and
16 ultimately purchase unit 41C, and promote the Millennium Tower and other Millennium Parties
17 projects, and were harmed as a result, and Defendants actions were a substantial factor in causing said
18 harm.

19 78. Further, Plaintiffs are informed, and believe, and thereon allege that in performing the
20 acts alleged herein, that the Millennium Parties acted with oppression, fraud, and malice, by engaging in
21 despicable conduct in failing to disclose and intentionally misrepresenting to Plaintiffs the dangers
22 associated with and true nature of the Tower's habitability and quality, in conscious disregard of
23 Plaintiffs' rights, thereby entitling Plaintiffs to punitive damages.

24 79. The Millennium Parties' misrepresentations were a substantial factor in causing Plaintiff
25 to suffer, and continue suffering, substantial damage, including, but not limited to, economic damages,
26 special damages, general damages, lost profits, in an amount presently unknown, the precise amount of
27 which will be proven at trial.

28 WHEREFORE, Plaintiffs pray for relief as set forth below.

1 the Tower, marketability, and value of unit 41C, and to induce Plaintiffs to lease and purchase unit 41C
2 and promote the Tower and the Millennium Parties.

3 86. Plaintiffs allege that had the omitted information been disclosed to them, that they
4 reasonably would not have leased unit 41C, purchased unit 41C, or promoted the Tower and
5 Defendants' other enterprises.

6 87. Plaintiff were harmed as a result of the Millennium Parties' concealment of these facts,
7 and the Millennium Parties' actions were a substantial factor in causing said harm.

8 88. Further, Plaintiffs are informed, and believe, and thereon allege that in performing the
9 acts alleged herein, that the Millennium Parties acted with oppression, fraud, and malice, by engaging in
10 despicable conduct by concealing from Plaintiffs the dangers associated with and true nature of the
11 Tower's habitability and quality, in conscious disregard of Plaintiffs' rights, thereby entitling Plaintiffs
12 to punitive damages.

13 89. The Millennium Parties' concealments were a substantial factor in causing Plaintiff to
14 suffer, and continue suffering, substantial damage, including, but not limited to, economic damages,
15 special damages, general damages, lost profits, in an amount presently unknown, the precise amount of
16 which will be proven at trial.

17 WHEREFORE, Plaintiffs pray for relief as set forth below.

18 EIGHTH CAUSE OF ACTION

19 Inverse Condemnation

20 (Against TJPA and SFDBI)

21 90. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 89 above as though
22 fully set forth herein.

23 91. The Montana 1990 Family Trust, are the owners of the real property commonly known as
24 301 Mission Street, Unit 41C, San Francisco, California, 94105. The Montanas are the trustees of said
25 trust and reside in unit 41C.

26 92. Defendant TJPA is a public entity organized and existing under the laws of the State of
27 California.

1 93. Defendant SFDBI is also a public entity organized and existing under the laws of the
2 State of California.

3 94. The TJPA owns and is currently designing, constructing, managing, directing, and
4 developing the Transbay Transit Center, which is located South of Mission Street from Second to Beale
5 Streets, in San Francisco, California. The Transit Center is adjacent to and immediately south of the
6 Tower. Construction of the Transit Center began in 2008 and required the excavation and digging of a
7 sixty (60) foot hole immediately adjacent to the Tower and, to some extent, on the Tower property itself
8 (as the result of an easement agreement between the TJPA and Mission Street). Construction of the
9 Transit Center also required extensive dewatering of the soils surrounding the tower. Plaintiffs are
10 informed, and believe, and thereon allege that a direct and necessary result of the TJPA's design,
11 development, management, direction, and construction activities, including, but not limited to,
12 dewatering, from 2008 to the present, that serious physical damage to unit 41C and damages to the value
13 and marketability of unit 41C have occurred as a result of the accelerated total settlement and
14 unanticipated differential settlement of the Tower.

15 95. SFDBI is the regulatory building safety agency responsible for overseeing the effective,
16 efficient, fair, and safe enforcement of the City and County of San Francisco's more than 200,000
17 commercial and residential buildings. SFDBI approved the construction drawings for both the Tower
18 and the Transit Center. Plaintiffs are informed, and believe, and thereon allege that as a direct and
19 necessary result of SFDBI's review, direction, study, management, supervision, and approval of the
20 Tower and Transit Center plans, that physical damage to unit 41C and damage to the value and
21 marketability of unit 41C has occurred as a result of accelerated total settlement and unanticipated
22 differential settlement of the Tower.

23 96. The above-described damage to Plaintiffs' property was proximately and substantially
24 caused by the TJPA's failure to properly design, construct, manage, direct, and develop the Transit
25 Center, and SFDBI's failure to properly review, direct, study, manage, supervise, and approve the
26 Transit Center and Tower construction drawings and construction activities. Plaintiffs did not discover
27 this injury until on or about the Spring or Summer of 2016, after it was disclosed by the HOA on or
28 about May 10, 2016 during a HOA meeting.

103. The TJPA's activities are an obstruction to the free use and enjoyment of Plaintiffs' property, so as to cause Plaintiffs nervousness, anxiety, emotional distress, and an inability to comfortably enjoy their property.

104. Plaintiffs did not consent to the TJPA's conduct;

105. An ordinary person would be reasonably annoyed or disturbed by the TJPA's conduct;

106. Plaintiffs were harmed, and continue to be harmed, by TJPA's conduct and the TJPA's conduct was a substantial factor in causing Plaintiffs' harm; and

107. The seriousness of the harm outweighs the public benefit of the TJPA's conduct.

WHEREFORE, Plaintiffs pray for relief as set forth below.

TENTH CAUSE OF ACTION

Rescission

(Against Mission Street Development LLC)

108. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 107 above as though fully set forth herein.

109. On or about January 20, 2010, the Montanas and Mission Street entered into an oral and written Residential Lease Agreement for unit 41C at the Tower. Under the terms of the lease, the Montanas granted Mission Street their permission to utilize the Montanas' names and likenesses for promotional purposes for the Tower, and other Millennium Parties' projects. The Montanas further agreed to make three (3) two (2) hour appearances for promotional purposes of the Tower of the course of the lease term. On or about February 5, 2011, and in early 2012, the Montanas exercised two one year options on the lease, and agreed to make additional appearances for promotional purposes of the tower.

110. On or about May 3, 2013, the Montanas, in their capacities as trustees of the Trust, and Mission Street entered into an oral and written Purchase Agreement for unit 41C at the Tower. As partial consideration, and in exchange for a reduced purchase price, the Montanas granted Mission Street their authorization to utilize the Montanas' names and likenesses for promotional purposes for the Tower, and other Millennium Parties' projects.

1 111. Plaintiffs are informed, and believe, and thereon allege that prior to entering into, and
2 during negotiations of, the purchase contract for unit 41C (in or about May 2013), Stephanie Kay, a
3 Manager of the Tower, Sean Jeffries, Vice President of Millennium Partners and the sole member of
4 Mission Street, Richard Baumert, Vice President of Mission, and other agents and employees of the
5 Millennium Parties, made certain representations to Plaintiffs on behalf of the Millennium Parties
6 regarding the Tower's fitness for habitability, quality of construction, marketability, and value. These
7 representations included the following:

- 8 a. The foundation for the Tower is much deeper than required, and is one hundred and fifty
9 feet deep;
- 10 b. The Tower and the individual units are secure;
- 11 c. The Tower and the individual units were well-built and properly anchored, and in fact,
12 that the design is cutting edge and overengineered;
- 13 d. The Tower and the individual units are habitable and safe;
- 14 e. Unit 41C will maintain its value or increase in value;
- 15 f. The Tower is up to code, built well, and is "in great shape";
- 16 g. If the Montanas were to be safe anywhere in San Francisco, it was in unit 41C of the
17 Tower;
- 18 h. The Tower has a state-of-the-art foundation;
- 19 i. The Tower and the individual units are structurally sound; and
- 20 j. Nothing was wrong with the Tower that would negatively affect the value and
21 marketability of the Tower or unit 41C.

22 112. Said representations were untrue, and at the time that they were made, Stephanie Kay,
23 Sean Jeffries, Richard Baumert, and other agents and employees of the Millennium Parties knew that the
24 Tower had experienced greater than anticipated total settlement and unanticipated differential settlement
25 and knew that the representations they made to Plaintiffs regarding habitability, quality, marketability
26 and value were untrue.

27 113. Plaintiffs are informed, and believe, and thereon allege that the Millennium Parties
28 intended that Plaintiffs would rely on said misrepresentations.

1 114. Plaintiffs reasonably relied on those representations in agreeing to purchase unit 41C and
2 agreeing to promote the Tower and other Millennium Parties' projects, and were harmed as a result, and
3 Defendants actions were a substantial factor in causing said harm.

4 115. Thereafter, on or about the Spring or Summer of 2016, after an HOA meeting that was
5 held on or about May 10, 2016, Plaintiffs discovered that the Tower had experienced greater than
6 anticipated total settlement and unanticipated differential settlement and that the representations the
7 Millennium Parties and their employees and agents made to Plaintiffs regarding habitability and quality
8 were untrue. Ultimately, the Montanas learned that unit 41C was unmarketable and uninhabitable.

9 116. In the alternative to paragraphs 111-115, the consent of Plaintiffs to the contract referred
10 to above was not real, mutual, or free in that it was obtained solely through mistake as herein alleged.

11 117. Plaintiffs entered into the above-described contract under a mistake of fact material to the
12 contract in that Plaintiffs believed that unit 41C was habitable, marketable, had good quality of
13 construction, and had significant value, \$1 million beyond the purchase price of \$2.7 million. This
14 mistake was either unilateral, in that only Plaintiffs made this mistake, or it was mutual, in that Mission
15 Street was also unaware that unit 41C was not habitable, marketable, had good quality of construction,
16 and had significant value.

17 118. Defendant Mission Street either was or should have been aware of the Plaintiffs' mistake,
18 and unfairly used that mistake to take advantage of Plaintiffs, or both parties were similarly mistaken, in
19 that Plaintiffs would not have rented or purchased unit 41C, or consented to promote the Tower and
20 other Millennium Parties' projects but for the mistake.

21 119. Plaintiffs will suffer substantial harm and injury under the contract if it is not rescinded in
22 that as a result of Mission Street's conduct, Plaintiffs will be deprived of the benefit of their bargain and
23 will own a condominium that is unmarketable, uninhabitable, and unsafe.

24 120. Plaintiffs intend service of the summons and complaint in this action to serve as notice of
25 rescission of the contract, and hereby demand that Mission Street restore to them the consideration
26 furnished by Plaintiffs, specifically \$2.7 million, plus the \$1 million in consequential damages that were
27 incurred as a result of the Plaintiffs providing promotional services for an uninhabitable and
28 unmarketable real estate project essentially for free. Plaintiffs contend they are entitled to refund of the

1 purchase price of unit 41C, plus the sum of at least \$1 million in restitution for the promotional services
2 that they performed but were not paid for.

3 121. Further, Plaintiffs are informed, and believe, and thereon allege that in performing the
4 acts alleged herein, that the Millennium Parties acted with oppression, fraud, and malice, by engaging in
5 despicable conduct in failing to disclose and intentionally misrepresenting to Plaintiffs the dangers
6 associated with and true nature of the Tower's habitability and quality, in conscious disregard of
7 Plaintiffs' rights, thereby entitling Plaintiffs to punitive damages.

8 122. The Millennium Parties' misrepresentations were a substantial factor in causing Plaintiff
9 to enter into the oral and written contract to purchase unit 41C, and the oral and written promotional
10 contracts, and caused Plaintiffs to suffer, and continue suffering, substantial damage, including, but not
11 limited to, economic damages, special damages, general damages, lost profits, in an amount presently
12 unknown, the precise amount of which will be proven at trial.

13 WHEREFORE, Plaintiffs pray for relief as set forth below.

14 PRAYER FOR RELIEF

15 Against Defendants Mission Street Development LLC, Millennium Partners I, Inc., Mission
16 Street Holdings LLC, Christopher M. Jeffries, Sean Jeffries, and Richard Baumert:

- 17 1. For general, special damages, and economic in an amount to be proven at trial;
- 18 2. For punitive damages;
- 19 3. For interest on damages pursuant to Civil Code §§ 3287-3291;
- 20 4. For attorney's fees and costs incurred pursuant to contract;
- 21 5. For rescission of the oral and written contract for the sale of unit 41C, and the oral and
22 written contracts to provide promotional services;
- 23 6. For costs of suit herein; and
- 24 7. For such other and further relief as the Court deems just and proper.

25 Against Transbay Joint Powers Authority and San Francisco Department of Building
26 Inspections:

- 27 1. For general, special, and economic damages in an amount to be proven at trial;
- 28 2. For interest on damages pursuant to Civil Code §§ 3287-3291;

- 1 3. For attorneys' fees and costs pursuant to statute;
2 4. For costs of suit herein; and
3 5. For such other and further relief as the Court deems just and proper.

4
5 DATED: May 4, 2017

MEZZETTI LAW FIRM, INC.

6
7 BY _____
8 ROBERT L. MEZZETTI II
9 MAUREEN PETTIBONE RYAN
10 CHRISTOPHER R. MEZZETTI,
11 Attorneys for Plaintiffs Joseph Clifford
12 Montana and Jennifer S. Montana
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28