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9

**SUPERIOR COURT OF CALIFORNIA**

10

**COUNTY OF RIVERSIDE - RIVERSIDE COURT**

11

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

Case No. RIC 10014729

Assigned to Hon. Mac R. Fisher  
Department RV 06

15

Plaintiffs,

**CLASS ACTION**

16

v.

**FIRST AMENDED COMPLAINT FOR  
DAMAGES**

17

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

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

26

**JURY TRIAL DEMANDED**

27

Defendants.

**UNLIMITED CIVIL CASE**

28

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

#### 4 INTRODUCTION

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

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

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

#### 23 THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the plumbing lines in Plaintiffs' HOMES.

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

#### 7 **JURISDICTION AND VENUE**

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

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

#### 14 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **DEMAND FOR TRIAL BY JURY**

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

4 **FACTUAL ALLEGATIONS**

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

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

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

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

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

1 HOMES at the time of original construction.

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

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

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

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

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

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

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

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

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

1 of dezincification.

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **PRAYER FOR RELIEF**

3 Wherefore:

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

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

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

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

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

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

13  
14 DATED: January 11, 2011

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

15  
16 By: 

17 Kenneth S. Kasdan  
18 Michael D. Turner  
19 Joseph A. Mahoney  
20 Attorneys for Plaintiffs  
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**PROOF OF SERVICE BY ELECTRONIC SERVICE/MAIL/FACSIMILE/PERSONAL**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

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

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

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

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

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

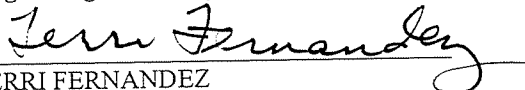
(X) **BY FACSIMILE SERVICE** - On the date shown, during the regular course of business, from facsimile machine telephone number (949) 833-9455, I caused the above-listed document(s) to be transmitted by facsimile to the person(s) and numbers(s) indicated on the attached Service List.

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

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

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

*Original signed subsequent to service*

  
TERRI FERNANDEZ

SERVICE LIST

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