

FIRST CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

Tadashi Mitsuoka and Victoria Mitsuoka; Individually and in Their Representative Capacities, on Behalf of Themselves and all Others Similarly Situated,

Plaintiffs,

vs.

HASEKO HOMES, INC., a Hawaii corporation, HASEKO CONSTRUCTION, INC. a Hawaii corporation; KE NOHO KAI DEVELOPMENT, LLC, a Hawaii corporation; SPINNAKER PLACE DEVELOPMENT, LLC, a Hawaii corporation; FAIRWAY'S EDGE DEVELOPMENT, LLC, a Hawaii corporation; COASTAL CONSTRUCTION, INC., a Hawaii corporation; and DOES 1-10,

Defendants.

CIVIL NO. 12-1-3020-11 VLC
(Construction Defects)

FIRST AMENDED CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL; SUMMONS

**SUMMONS
DENIED**
LEGAL DOCUMENTS BR

FIRST AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Tadashi Mitsuoka and Victoria Mitsuoka (“Plaintiffs”), in their individual and representative capacities and on behalf of the class of all persons similarly situated, by their undersigned attorneys allege as follows.

INTRODUCTORY STATEMENT

2. Each year, Hawaii is at risk of being struck by deadly hurricanes. An average of four to five hurricanes threaten Hawaii annually. These hurricanes can destroy homes and take lives. In 1992, Hurricane Iniki caused roughly \$2 billion in property damage and killed six people on Kauai. Hurricanes, of course, can be even more destructive. Hurricane Katrina and its aftermath claimed the lives of more than 1,800 people and caused over \$100 billion in property damage.

3. Because of the ever present threat of destruction from hurricanes and other high-wind events, the Honolulu Building Code requires homes sold in Honolulu to be built with high-wind protection systems. Specifically, the Honolulu Building Code requires homes be built with sufficient protection systems to withstand specific wind speeds over a certain period of time.

4. High-wind protection systems work by tying the structure of a home together, which dramatically improves wind resistance. A Federal Emergency Management Agency (“FEMA”) study of Hurricane Iniki found “almost without exception, successful performance [of buildings in hurricanes] resulted from clearly defined and continuous ‘load transfer paths’ from the roof to the foundation . . . Where connections, such as hurricane straps and metal straps on wood-framed structures, were adequately sized and correctly applied, buildings performed well.”

5. Because a high-wind protection system must maintain a continuous load transfer path (both vertical and lateral load paths), a weak point in one or more components of the wind protection system will significantly reduce the effectiveness of the overall system.

6. Beginning in 1998—prior to developing and constructing the homes at issue—Defendants Haseko Homes and Haseko Construction (along with other related entities) designed and built other portions of the Ocean Pointe development with anchor straps embedded into the concrete foundations of these homes. These anchor straps were used to connect the vertical and lateral load paths (described below) to the concrete foundations of these homes. However, Haseko Homes discovered these embedded anchor straps were rusting and failed or failing (the homes containing anchor straps are the subject of a related class action complaint, entitled Alvarez et. al. vs. Haseko Homes, Inc., et. al., Case Number 09-1-2697-11, which was filed in the Circuit Court for the First Circuit of Hawai'i on November 18, 2009). Consequently, on July 4, 2005, Haseko Construction and other Defendants switched to anchor bolts and connectors in the new construction of homes in the Ocean Pointe development.

7. On information and belief, Defendants Haseko Homes, Inc. (“Haseko Homes”), Haseko Construction, Inc. (“Haseko Construction”), Ke Noho Kai Development, LLC (“Ke Noho Kai”), Spinnaker Place Development, LLC (“Spinnaker”), and Fairway’s Edge Development, LLC (“Fairway’s Edge”) (collectively referred to as the “Developer Defendants”) developed and built the approximately 600 homes in sub-development Areas 2E and 3B-3E of the Ocean Pointe development, located at Ewa Beach, in Honolulu, Hawaii (the “Ocean Pointe Homes”), using anchor bolts and connectors to tie the wind-resisting systems (the lateral load paths) of these homes to their foundations (referred to herein as “Bolt Homes”).

8. Though required by the Honolulu Building Code to ensure that the homes were adequately protected from high winds, the Developer Defendants failed to install adequate and complete wind-resisting systems, with continuous and adequately strong vertical and lateral load paths (vertical load paths are absent from these Ocean Pointe homes) . The Developer Defendants also installed corrosion-prone tie-straps within the exterior walls of these homes, did not place the tie-straps in the correct locations (at the corners and every 32 inches on center between the corners at the first and second floors of two-story homes) to adequately tie the floors of the homes together, and did not anchor a vertical load path to the foundation of the home. The Developer Defendants then sold the Ocean Pointe houses and condominiums to Plaintiffs or to Plaintiffs' predecessors from whom Plaintiffs purchased their homes.

9. Because the inadequate high-wind protection systems do not provide complete vertical and sufficiently strong and stable lateral load paths as required by the Uniform Building Code adopted by the City and County of Honolulu, Plaintiffs—the current owners of the Ocean Pointe Homes—face a substantial risk that their homes will be unable to withstand the next hurricane that strikes Oahu and will suffer significant structural damage and even be completely destroyed. The damaged homes will, in turn, become a source for flying debris and cause additional harm to neighboring homes, and this will increase the risk that Plaintiffs, their families, and their neighbors could be seriously injured or even killed by flying debris. Because the high-wind protection systems installed in Plaintiffs' homes do not meet the building code requirements, Plaintiffs' homes have diminished in value in an amount needed to replace the inadequate wind protection systems and fix related cosmetic damage to the homes.

PARTIES

10. Plaintiffs Tadashi and Victoria Mitsuoka were and are residents of the City and County of Honolulu, State of Hawai'i, and are the owners of an Ocean Pointe Home located at 91-1026 Kaimoana Street. The Mitsuokas purchased their house in 2006, and their home was substantially completed in or about 2005. They bring these claims individually and on behalf of a class of all others similarly situated pursuant to HRCP Rule 23.

11. The above-listed Plaintiffs, both individually and as a class, were members of a larger class of Ocean Pointe homeowners that the First Circuit of Hawaii certified on April 27, 2011. That class action complaint, entitled Alvarez, et. al. vs. Haseko Homes, Inc., et. al., Case Number 09-1-2697-11, was filed in the Circuit Court for the First Circuit of Hawai'i on November 18, 2009. On August 9, 2012, the First Circuit of Hawaii ruled that owners of homes with anchor bolts in their foundations could no longer proceed as members of the Alvarez class, therefore requiring this separate action. Thus, the present action relates back to the Alvarez Complaint, initially filed on or around November 18, 2009.

12. Plaintiffs are informed and believe that Defendant Haseko Homes is a Hawaii corporation with its principal place of business located in the City and County of Honolulu, State of Hawaii. Plaintiffs are further informed and believe that Haseko Homes is and was the developer and seller, or the managing member of the developer and seller, of these Ocean Pointe Homes currently owned by Plaintiffs.

13. Plaintiffs are informed and believe that Defendant Haseko Construction is a Hawai'i corporation with its principal place of business located in the City and County of Honolulu, State of Hawaii, and a contractor licensed in the State of Hawaii. On information and belief, Haseko Construction was the general contractor and/or construction manager for Haseko

Homes, Ke Noho Kai, Spinnaker, and Fairway's Edge and was responsible for the construction of the Ocean Pointe Homes currently owned by Plaintiffs.

14. Plaintiffs are informed and believe that Defendant Ke Noho Kai was and is a Hawaii limited liability company with its principal place of business located in the City and County of Honolulu, State of Hawaii. Plaintiffs are further informed and believe that Ke Noho Kai is and was the developer and seller of the homes in the subdivision of Ocean Pointe designated as Area III, also known as Ke'Alohi Kai. This development consists of over 500 single-family homes.

15. Plaintiffs are informed and believe that Defendant Spinnaker was and is a Hawaii corporation with its principal place of business located in the City and County of Honolulu, State of Hawai'i. Plaintiffs are further informed and believe that Spinnaker is and was the developer and seller of the homes in the subdivision of Ocean Pointe Homes designated as Area IID, also known as Spinnaker Place. This development consists of over 300 townhomes.

16. Plaintiffs are informed and believe that Defendant Fairway's Edge was and is a Hawaii domestic Limited Liability Company with its principal place of business located in the City and County of Honolulu, State of Hawaii. Plaintiffs are further informed and believe that Fairway's Edge is and was a developer of a portion of the Ocean Pointe Development, specifically, Area IIE, also known as Fairway's Edge. This development consists of over 200 townhomes.

17. Plaintiffs are informed and believe that Defendant Coastal Construction, Inc. ("Coastal") was and is a Hawaii corporation with its principal place of business in the City and County of Honolulu, State of Hawaii. Coastal was Haseko's subcontractor for Areas II and III of

Ocean Pointe and, at a minimum, constructed the framing of the Bolt Homes at issue in this matter.

18. On or around November 14, 2011, Haseko Homes, Haseko Construction, Ke Noho Kai, Spinnaker, Fairway's Edge, and Coastal Construction were given notice of potential claims related to inadequate high-wind protection on behalf of Plaintiffs and all similarly-situated owners of Ocean Pointe Homes as provided by HRS Chapter 672E. After brief correspondence, Haseko Homes, Haseko Construction, Ke Noho Kai, Spinnaker, Fairway's Edge, and Coastal Construction failed to take any action pursuant to 672E and thereby "rejected" the notice and exhausted the procedures set forth under the statute.

19. Plaintiffs have reviewed public and other records available to Plaintiffs in order to ascertain the true and full names and identities of all defendants in this action, but Plaintiffs have no further knowledge or information at this time regarding all responsible parties and are unable to ascertain the identity of defendants in this action designated as Does 1-10 (the "Doe Defendants"). The Doe Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiffs, except that they may be connected in some manner with the named defendants, such as being agents, servants, employees, employers, representatives, co-venturers, associates or independent contractors of the named Defendants and/or were in some manner presently unknown to the Plaintiffs engaged in activities such as designing, manufacturing, selling, distributing, installing and/or providing materials and/or services for the building of residential projects which may be identified herein. No claim against a contractor as defined under Haw. Rev. Stat. Chapter 372E will be made in this action unless and until requirements of Haw. Rev. Chapter 672E have been fulfilled or excused due to the potential operation of a statue of repose. Similarly, no tort claim against any design professional

will be made in this action unless and until the requirements of Haw. Rev. Stat. Chapter 672B have been fulfilled. The Doe Defendants' true names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiffs or their attorneys.

VENUE

20. All incidents described herein took place in Honolulu, Hawaii, within the jurisdiction of the Circuit Court of the First Circuit, State of Hawaii, and the amount in controversy meets or exceeds the jurisdictional limit of this Court pursuant to HRS § 603-36.

GENERAL ALLEGATIONS

21. Plaintiffs make the following general allegations on information and belief.

22. The Developer Defendants developed, constructed and sold the Ocean Pointe community of single family homes and condominiums at Ewa Beach. Ocean Pointe is located near a beach and golf course and caters to families and retirees. The approximately 600 homes that are subject of this action are located in Areas 2 and 3 of the Ocean Pointe community and generally consist of the homes in Ocean Pointe built during and after 2006. The unifying characteristic of the homes at issue in this action is that they are built with anchor bolts and connectors that fasten the lateral load paths of such homes (tension-only bracing) to their foundations but otherwise fail to provide the high-wind protection—specifically, vertical load paths and impact-resistant windows—required under the applicable building codes. All other homes in the Ocean Pointe development employ tie-down straps rather than anchor bolts, and are subject to another currently pending action entitled Charles, et. al. vs. Haseko Homes, Inc., et. al., Civil No. 09-1-2697-11 (RAN).

THE DEVELOPER DEFENDANTS HAVE VIOLATED APPLICABLE BUILDING CODES BY FAILING TO PROVIDE ADEQUATE WIND PROTECTION IN THE OCEAN POINTE HOMES.

23. The Revised Ordinances of Honolulu (“ROH”), as amended from time to time, includes the Honolulu Building Code and, accordingly, governs the construction of all buildings in the City & County of Honolulu. Accordingly, the Developer Defendants were obligated to follow the Building Code and other rules implemented by the ROH. Specifically, the Developer Defendants were required to conform to the 1997 UBC, which applied to Honolulu construction from June 28, 2000 through September 17, 2007. The Developer Defendants were further required to conform to the 2003 International Building Code (“IBC”), were adopted by and in effect within the City and County of Honolulu, State of Hawaii (“City”) effective September 18, 2007 through April 16, 2012. These dates cover the entire time period in which Defendants designed and built the subject homes. The 1997 UBC, as well as the 2003 IBC, are herein collectively referred to as the “Building Codes.” The purpose of the Building Codes are, among other things, “to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, maintenance of all buildings and structures within this jurisdiction . . .”

24. To this end, the Building Codes required all residential structures in Honolulu to be designed and constructed to withstand vertical and lateral wind loads based upon the basic wind speed for the area in which the residences are built.

25. The vertical load path is necessary to keep the roof—and each floor—attached to the foundations of the home during a high-wind event. The lateral load path protects the home from sliding off its foundation or overturning in the event of a high-wind event, and prevents the wall studs from leaning over and collapsing. To accomplish the requirements of the Building

Codes with respect to a residence's vertical load path, the roof structure should be tied together, and tied on both sides of the roof to the roof's trusses. The trusses should also be tied to the walls' studs, and at specific intervals in the exterior walls of these homes, the first and second floor studs should be tied together with the bottom of the first floor stud, and the floors should be anchored to the foundation.

26. To withstand vertical and lateral wind loads, the wind-resisting systems are contained in the exterior walls of these Bolt Homes. Under the Building Codes, the wind-resisting systems are supposed to be composed of separate and independent vertical and lateral load paths.

27. The Building Codes require residential structures in Honolulu to be designed and constructed to withstand the vertical and lateral wind loads associated with a particular wind speed. The American Society of Civil Engineers ("ASCE"), which publishes wind design criteria (based upon three-second gusts) for Hawaii. The criteria are based on wind and building performance data generated from Hurricane Iniki. The wind design criteria, which are contained in the standard entitled "ASCE 7-95," are referenced in the 1997 UBC and required to be used in Hawaii construction subject to that Building Code. Likewise, the wind design criteria in ASCE 7-2002 are required to be used by the 2003 IBC.

28. From a review of the building plans obtained from the City and Developer Defendants, all of the Bolt Homes built in Ocean Pointe contain design and construction defects that violate the ROH by failing to provide adequate high-wind protection (also known as having a "complete load path"). For example, the homes in Ocean Pointe contain the following defects:

- a. The high-wind protection systems anchoring the homes to their foundations do not adequately protect the house from uplift and lateral forces;
- b. The homes were designed using the wrong design forces, resulting in vertical and horizontal load paths of inadequate strength—in violation of the Building Codes, all of which were adopted by the City and County of Honolulu.
- c. The Building Codes require sheathed walls using either plywood or oriented strand board or tension-only bracing for lateral load paths in these residences. However, these braces on the front elevation of the two story homes are not structurally stable under lateral wind loads. Since these braces are structurally unstable, their designs violate the Building Codes. The wall systems of the homes are not permissible equivalents to the shear-wall systems mandated to protect the homes from high-wind forces;
- d. The anchor bolts used to tie the homes to their foundations are of insufficient size (which corresponds with the strength) and number to protect the homes from high-wind forces (with the anchor bolts anchoring the lateral but not a vertical load path); and
- e. The Building Codes require tie straps contained in the load paths to meet the general durability requirement in the Allowed Stress Design (“ASD”) criteria incorporated into the Building Codes. For example, the tie straps must meet the corrosion resistance requirements in Appendix to Chapter 23 of the UBC. Such durability and corrosion resistance requirements

were not met because the tie straps found between the floors and between the floors and roof are coated with less than the required 1.5 ounces of zinc. The Developer Defendants' failure to comply with these requirements violates the City's Building Codes, and code-compliant tie straps must be installed to replace the non-compliant tie traps.

- f. These homes do not have tie straps at each corner and every 32 inches at the center at the first- and second-floor levels of all two-story homes. Further, these homes do not have anchor bolts and connectors at the foundations, every 32 inches, to compose a vertical load path required by the applicable building codes.

A. Because the Developer Defendants Used an Inappropriate Wind Speed Co-Efficient, the Wind Protection Systems Fail to Meet the Basic Wind Speed Requirements.

29. The required wind protection components (load paths) of the structures in Ocean Pointe is set forth under the requirements of standards promulgated by UBC and ASCE—namely, ASCE 7-95 and ASCE 7-2002—both of which specify a the basic wind for residential structures in Hawaii. However, the homes at issue in this action were not built to the required minimum wind speed.

30. In designing the wind protection system for Ocean Pointe Homes, the Developer Defendants used the co-efficient for an enclosed structure, rather than a partially enclosed structure. To be enclosed, the glass windows and doors of these Bolt Homes must be impact resistant, which they are not. That is, the designers of these residences used the co-efficient for buildings with Impact Proof Glazing (glass) for windows and doors, when in fact the homes do not have this type of glass in the windows and doors. In an actual hurricane or other high-wind

event, the glass in the windows and doors will shatter, thereby letting wind into the house—thus, the houses are partially enclosed structures rather than enclosed structures. Because the windows and doors are susceptible to breaking in high wind, the homes will face higher wind load pressures. The Developer Defendants should have designed the homes to withstand the wind pressure load of a partially enclosed building, which is greater than the load for an enclosed home.

31. As a result of using the wrong co-efficient, the homes were designed to withstand internal pressures that are approximately one-half of the correct pressures for these residences. Correspondingly, the wind resisting components in these residences are of inadequate strength to resist the correct wind design loads for these structures. Given the inadequate strength of the wind resisting components in these residences, these residences will not be able to resist uplift and lateral wind forces during a high wind event, as required by the Building Codes.

B. Stronger Anchor Bolts, and More Anchor Bolts, Are Necessary to Provide Adequate Wind Protection.

32. Because the Developer Defendants used the wrong wind co-efficient when designing and constructing the home, the wind resisting components are inadequate in strength, including the anchors bolts used to secure the lateral load path to the foundations of these residences (a vertical load path does not exist in these homes). The use of the incorrect co-efficient in the design of the existing wind resisting components in these residences is a violation of the required wind design requirements in the Building Codes. The wind resisting components must be replaced and supplemented with tie straps and additional anchor bolts to secure vertical and lateral load paths to foundations of these homes.

33. In addition, the tension-only straps used to resist lateral wind loads are unstable because their aspect ratio exceeds a maximum of 2:1. Additional tension-only straps need to be installed or replaced with shear walls in order for the homes to meet the requirements of the Building Codes.

34. Further, the Building Codes require that these Bolt Homes have separate vertical and lateral load paths. However, the Bolt Homes do not have a separate vertical load path. For example, in the two-story Bolt Homes, the first and second story studs are not tied together because there are no tie straps the corners and every 32 inches between the corners at the first- and second-story floors, and the second story studs are tied to a box beam rather than directly to the stud below for anchoring the second floor (tension-only bracing). For both the one-story and two-story Bolt Homes, the vertical and lateral load are anchored at the ends of tension-only straps that are only intended to be used for lateral loads, not vertical loads. Given the lack of a separate vertical load path, the Bolt Homes do not have an adequate vertical load path, in violation of the Building Codes governing their design and construction.

C. The Wind Protection Systems Do Not Meet Minimum Stress Requirements Because the Tie Straps Are Corrosion Prone.

35. The tie straps that connect the floors on Plaintiffs' homes and connect the top floor to the roof do not comply with the Honolulu Building Code because they lack the required corrosion resistance.

36. The tie straps' non-compliance with the Building Code has been confirmed by the Developer Defendants' own pleadings. On or about June 30, 2009, Haseko, Ke Noho Kai, Spinnaker, and Fairway's Edge, along with their insurance carrier, filed a complaint against Simpson, the manufacturer of many of the tie straps installed in Ocean Pointe. That action,

entitled *Ke Noho Kai Development, LLC, et al. v. Simpson Strong-Tie Company Inc., et al.*, Case No. 09-1-1491-06 SSM, admitted that the tie straps installed in Plaintiffs' homes do not comply with the Honolulu Building Code because the tie straps lack sufficient corrosion resistance. Although the homes at issue in this matter have anchor bolts securing the foundation, similar galvanized tie straps at issue in the Developer Defendants' case against Simpson Strong-Tie Company, Inc. are installed between the floors, and between the roof and the top floor, in the homes at issue here.

D. The Sum Deficiencies in the Wind Protection Systems Render the Homes Unsafe and Non-Compliant with Governing Building Codes.

37. Not only are these failures impermissible under the ROH (as they do not comply with the Building Code and are not approved equivalents thereof), but each of these failures subjects the Ocean Pointe homes to failure in the event of high winds or seismic events to which the area is prone.

38. The failure to anchor the load paths to the foundations of these homes violates the wind resisting requirements of the Building Codes and means these homes are unsafe buildings as defined by the Building Codes. When a building is determined to be unsafe, these buildings should be immediately repaired under the current Building Code, *i.e.*, the 2003 IBC. Accordingly, the Ocean Pointe Homes must be repaired immediately because of the numerous defects and Building Code violations, subjecting the household members to catastrophic collapse and potential loss of life and limb during a wind or seismic event.

THE DEVELOPER DEFENDANTS' SALE OF HOMES WITH INADEQUATE HIGH-WIND PROTECTION SYSTEMS HAS PLACED PLAINTIFFS IN HARM'S WAY.

39. The Developer Defendants have violated the Building Code and law by selling homes with inadequate high-wind systems.

40. Plaintiffs, their families, and all of Ocean Pointe and the surrounding communities are in danger of injury, death and/or substantial property damage due to the inadequate high-wind systems. Due to the defective and inadequate high-wind protection systems, Plaintiffs' Ocean Pointe Homes cannot resist uplifting, racking, and other forces which may destroy the homes during high winds because they are not sufficiently secured to their foundations. In the event of a hurricane or tropical storm, Plaintiffs, their children, and guests will not have a secure shelter. If wind gusts rip even one house frame from its foundation, flying debris from that home could strike people and property throughout the community and in surrounding areas.

41. Given the importance of wind protection systems in preventing damage to property and injury to people in hurricane zones (as recognized by FEMA and other construction experts), all Defendants knew or should have known to install a high-wind protection system that was adequate for the location in which the homes were built and compliant with the applicable Building Code.

DEFENDANTS VIOLATED THE HONOLULU BUILDING CODE AND DEVIATED FROM INDUSTRY STANDARDS.

42. By using the tie straps with insufficient corrosion resistance, the Developer Defendants violated industry standards for construction. Likewise, by using anchor bolts of inadequate strength and number, failing to install a vertical load path in two-story homes, and by using an inadequate wind co-efficient in designing the homes, the Developer Defendants violated industry standards for construction.

DEFENDANTS WERE AWARE OF THE DEFECTS AND CONCEALED THEM FROM HOMEOWNERS.

43. Developer Defendants were aware of the presence of defective hurricane straps in Plaintiffs' homes and had discussions regarding the need to repair the homes in Areas II and III, which are the homes at issue in this action. Plaintiffs believe that Developer Defendants were aware at the time the homes were built that the wind protection systems did not comply with the Building Code and constituted a danger in the event of high winds. In fact, Developer Defendants had already commenced an investigation of earlier-built homes in the Ocean Pointe Development, which investigation revealed that the homes' wind protection system did not comply with the Building Code and constituted a danger to person and property in the event of high winds. Nevertheless, Developer Defendants knowingly built and sold Plaintiffs homes without disclosing the defects and non-Code compliance to Plaintiffs or the need to conduct necessary repairs, and in fact concealed this information from Plaintiffs. The Developer Defendants contemplated potential repairs of the homes in Ocean Pointe, and corresponded with their insurers, among others, yet continued to conceal the defects and the need for repairs from homeowners, including Plaintiffs.

THE HIGH-WIND PROTECTION SYSTEMS IN PLAINTIFFS' HOMES MUST BE REPAIRED AND/OR REPLACED.

44. As described above, the high-wind protection systems do not meet the minimum standards required under Honolulu law.

45. The lack of code-compliant high-wind protection has diminished the value of Plaintiffs' homes. Plaintiffs must replace or repair their wind protection systems.

46. Specifically, in order for the Bolt Homes to comply with the applicable Honolulu Building Codes, they must undergo the following repairs, at a minimum:

- a. Installation of a film upon the inside of all glass windows and doors to make such windows and doors impact resistant, in order to lower the design wind loads upon these homes as required by ASCE 7-95 and ASCE 7-2002;
- b. Installation of tie straps with sufficient zinc coating to connect the first and second floor studs at the required distance within the exterior walls to create a continuous vertical load path;
- c. Installation of additional anchor bolts and brackets to anchor the vertical and lateral load paths separately and independently of each other;
- d. Correcting the location of the tie straps to ensure that the homes have an adequate vertical load path;
- e. Installation of a garage door reinforcing kit to make the garage door of adequate to resist the wind design load.

47. The repair requirements stated above are not intended to be an exhaustive list, and they are stated as concepts with any repair of these Bolt Homes requiring a more detailed analysis and description of the specific repair.

CLASS ACTION ALLEGATIONS

48. Pursuant to HRCP 23(b)(2) and HRCP 23(b)(3), Plaintiffs bring this action on behalf of themselves and as representatives of all others who are similarly situated and who fall within the following class definition: "All current individual and entity homeowners who purchased homes in the development known as Ocean Pointe, located in the District of Ewa, City and County of Honolulu, Island of Oahu, State of Hawai'i, that were designed, developed, and constructed with foundation anchor bolts and an inadequate high-wind protection system, said home having been constructed after August 1, 2005."

49. Haseko sold all of the homes in this litigation with some version of the Home Builder's Limited Warranty, or a Fair Housing Act Warranty. Each of those warranties make clear that claims submitted under the Warranty may be brought in a representative capacity on behalf of a class. For example, the warranties define "HOMEOWNER"—who would have standing to make a claim under the warranty—as:

the first person(s) to whom a HOME (or a unit in a multi-unit residential structure/building is sold, or from whom such HOME is constructed, for occupancy by such person or such person's family and such person's successors in title to the HOME, or mortgagees in possession and any representative of such person(s) who has standing to make a claim on that person(s) behalf, **including** **any class representative** or HOMEOWNERS ASSOCIATION, making a claim in a representative capacity.

Id. at 11 (emphasis added). Thus, the warranties call for common problems to be resolved by way of a class action.

50. Plaintiffs bring this putative Class Action pursuant to HRCP 23(b)(2) in order to seek injunctive relief preventing Haseko from ignoring its obligations under the various warranties that cover the homes at issue in this litigation.

51. Plaintiffs also bring this putative Class Action pursuant to HRCP 23(b)(3) because the Class Members are numerous, Class Representatives are asserting claims that are typical of Class Members, Class Representatives are adequate representatives of the putative Class, common questions of fact and law predominate, and because class treatment is preferable to individual litigation.

52. The Class Members are so numerous that joinder is impracticable. Upon information and belief there are approximately 600 homes at Ocean Pointe that were built with anchor bolts in the foundation, but nevertheless do not have adequate high-wind protection system, and each of the owners of these homes is a potential Class Member.

53. The claims of the Class Representatives are typical of the claims of the Class as they each own (or jointly own with one or more other Class Members) an Ocean Pointe Home that was built with an inadequate high-wind protection system typified by, among other things, (a) anchor bolts of an insufficient size and number; (b) walls that are not sheathed with plywood or oriented strand board or tension-only bracing that is adequate under lateral wind loads, and wall systems that do not contain permissible equivalents to the shear-wall systems mandated to prevent from high-wind forces; (c) a design which used the wrong design forces, resulting in vertical and horizontal load paths of inadequate strength; (d) tie straps that do not meet the general durability requirement in ASD criteria and prescriptive corrosion resistance requirements; (e) tie straps contained in the load paths that do no meet the general durability requirement for cold-formed steel structures and the prescriptive corrosion resistance requirements of the UBC; and (f) these homes do not have tie straps at each corner and every 32 inches at the center at the first- and second-floor levels of all two-story homes. Further, these homes do not have anchor bolts and connectors at the foundations, every 32 inches, to compose a vertical load path required by the applicable building codes.

54. The class representatives will fairly, adequately, and vigorously represent the interests of the Class. Furthermore, each of the Class Representatives is highly motivated to prosecute this action. Each of the Class Representatives own an Ocean Pointe home and many of the Class Representatives have children who live with them. The safety of their homes and their families is of the utmost importance.

55. Questions of law and fact common to all potential Class Members predominate over any questions affecting only individual Class Members. Among the common questions of law and fact to the Class Members are:

- Whether the Developer Defendants have violated the ROH by failing to provide for a complete load path and/or adequate high-wind protections in the Ocean Pointe Homes;
- Whether the tie straps used in Plaintiffs' Ocean Pointe Homes have and will become corroded;
- Whether the high-wind protection systems in Plaintiffs' Ocean Pointe Homes can serve their purpose of securing the home frames from the stresses of high winds that are expected to occur in the area in which the homes are built;
- Whether Defendants complied with applicable building codes by not installing any vertical load path in the exterior walls of these homes and by causing deficiencies in the lateral load path;
- Whether Defendants designed and built Plaintiffs' homes to withstand the applicable wind force speed;
- Whether the Defendants knew or should have known that their use of inadequate high-wind protection systems (lack of a vertical load path and deficiencies in the lateral load path) created a serious risk of physical harm and property damage;
- Whether Defendants' use of inadequate high-wind protection systems deviated from industry standards;
- Whether the installation of inadequate high-wind protection systems has put the Class Members, their families, and the Ocean Pointe Community, in danger;
- Whether Class Members suffered damages due to the Developer Defendants' purchase and use of corrosion-prone hurricane straps;

- Whether Class Members suffered damages due to the Developer Defendants' use of inadequate high-wind protection systems;
- Whether the Developer Defendants' use of inadequate high-wind protection systems breached implied or express warranties, or breached contracts;
- Whether the Developer Defendants breached a duty of care to Class Members in selecting and installing inadequate high-wind protection systems;
- Whether Defendants engaged in unfair and deceptive acts when they failed to disclose that the high-wind protection systems were inadequate;
- Whether Defendants engaged in unfair and deceptive acts by refusing to comply with applicable building codes for securing homes to their foundation; and
- Whether Defendants engaged in unfair and deceptive acts when they manufactured, sold, approved and installed with inadequate high-wind protection systems.

56. These common questions predominate over all Class Members' claims, including those of the Class Representatives. Indeed, there is essentially no difference between the Class Representatives' claims and the other Class Members' claims. As a result, the Class Representatives' claims are typical of, if not identical to, the rest of the Class Members' claims.

57. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged in this First Amended Class Action Complaint. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication. Separate trials adjudicating the liability of defendants will be inefficient, and will run the risk of producing inconsistent verdicts. Consolidating the litigation of all Class Members will enhance judicial

economy and promote justice. Class treatment will also permit the adjudication of relatively small claims by many of the Class Members who could not individually afford to litigate the claims asserted in this First Amended Class Action Complaint. There are no difficulties that would preclude class action treatment of this lawsuit, and no superior alternative exists for the fair and efficient adjudication of this controversy.

58. The contemplated notice to the Class Members will be through direct mail to each Class Member's home.

COUNT I

STRICT PRODUCTS LIABILITY

59. Plaintiffs restate and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

60. The Developer Defendants each engaged in the business of developing, building, and/or selling standardized homes to the public including Plaintiffs.

61. The inadequate high-wind protection systems in the homes developed, built, and sold by the Developer Defendants at Ocean Pointe are defective and dangerous including but not limited to the following ways:

- The Developer Defendants used anchor bolts of an insufficient size and number;
- The Developer Defendants failed to sheath the walls with plywood or oriented strand board or tension-only bracing such that the walls would be adequately stable under lateral wind loads. Further, the wall systems do not contain permissible equivalents to the shear-wall systems mandated to prevent from high-wind forces;

- The Developer Defendants designed the homes using the wrong design forces, resulting in vertical and horizontal load paths of inadequate strength;
- The inadequate high-wind systems are or will be unable to secure the subject homes to their foundations and do not and will not form a complete load path that would protect the homes during a hurricane;
- The tie straps selected and used between the floors and the roof in the Areas 2 and 3 homes did not have the required minimum amount of 1.5 ounces of zinc per square foot of hurricane strap in violation of the Building Code for the City and County of Honolulu; and
- The tie straps used in the Ocean Pointe Homes are unable to withstand corrosion in the salty coastal environment in which the Ocean Pointe Homes are located.
- All two-story homes do not have tie straps at the corners and at every 32 inches at the first- and second-floor and do not have anchor bolts and connectors at the corners and every 32 inches at the foundation to compose a vertical load path as required under the applicable building codes.

62. The use of inadequate high-wind protection systems exposes Plaintiffs, their children, guests, and community to a substantial risk of serious bodily injury.

63. Additionally, the Developer Defendants each failed to warn Plaintiffs that their homes contain unreasonably dangerous and inadequate high-wind protection systems that cannot withstand the high winds that are known to occur in Hawai'i's coastal areas.

64. The Developer Defendants' selection, installation and use of inadequate high-wind protection systems in Plaintiffs' Ocean Pointe Homes violated applicable building codes

and deviated from industry standards. Moreover, the Developer Defendants knew, or should have known, that the components of the high-wind protection systems that they selected and installed were inadequate and thus created a serious risk of physical harm to Plaintiffs, their families, Ocean Pointe, and surrounding communities.

65. The Developer Defendants have also failed to install adequate high-wind protection as required by the ROH.

66. As a result of the dangerous defects in the homes the Developer Defendants developed, built, and sold, Plaintiffs, their families and their homes are in danger and Plaintiffs have suffered damages in an amount to be proven at trial.

COUNT II

BREACH OF IMPLIED WARRANTY

67. Plaintiffs restate and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

68. Haseko Homes, Ke Noho Kai, Spinnaker, and Fairway's Edge each is in the business of developing, building, and selling residential homes to the public including Plaintiffs. Haseko Construction is in the business of building those homes.

69. Plaintiffs, as homeowners, reasonably expected the Ocean Pointe Homes that they purchased from Haseko Homes, Ke Noho Kai, Spinnaker, or Fairway's Edge (or from intermediary owners who ultimately purchased their homes from Haseko Homes, Ke Noho Kai, Spinnaker, or Fairway's Edge) were properly attached to the foundations, were built with hurricane straps that were suitable to the environment and were properly installed, and would not require serious safety repairs.

70. In the development, building, and sale of the Ocean Pointe Homes to the public, the Developer Defendants, and each of them, impliedly warranted that the homes would be constructed in a reasonably workmanlike manner and would be habitable.

71. The Ocean Pointe Homes which were sold to Plaintiffs (or Plaintiffs' predecessors) were not constructed in a reasonably workmanlike manner and are not habitable because the failure of the high-wind protection systems exposes Plaintiffs, their children, guests, and communities to risk of serious bodily injury and property damage in a storm with high winds.

72. The Developer Defendants have also failed to install adequate high-wind protection as required by the ROH.

73. As a result of the Developer Defendants' breaches of the implied warranties, Plaintiffs have suffered damages in amounts to be proven at trial.

COUNT III

BREACH OF EXPRESS WARRANTY

74. Plaintiffs restate and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

75. The Developer Defendants each provided warranties to homeowners at Ocean Pointe. Those warranties included that the Ocean Pointe Homes would be free from defects in materials and workmanship that would require costly repairs to make them safe and habitable.

76. The Developer Defendants breached their warranties by providing the Plaintiffs with homes that contained defects in materials and workmanship as set forth herein requiring substantial repairs to properly connect the homes to their foundations and secure the homes in the event of high winds.

77. The Developer Defendants have also failed to install adequate high-wind protection as set forth in the ROH.

78. As a result of the breaches of these express warranties, Plaintiffs have suffered damages in amounts to be proven at trial.

79. Additionally, in light of the claims under the Developer Defendants' warranties, the homeowners seek declaratory relief that: (1) the appointed class representatives for the Warranty Subclass are authorized representatives of the homeowners who have warranties; (2) upon receiving notice of the existence of construction defects, the obligors under the warranties must inspect, investigate, and test the homes covered by the warranties to determine whether defects exist; (3) repair of such defects (and/or payment for repair of such defects) is obligatory under the warranties.

80. The Developer Defendants' failure to perform under the warranties would irreparably harm the Plaintiffs and warrant injunctive relief.

COUNT IV

BREACH OF CONTRACT AGAINST HASEKO HOMES, KE NOHO KAI, SPINNAKER AND FAIRWAY'S EDGE

81. Plaintiffs restate and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

82. Haseko Homes, Ke Noho Kai, Spinnaker, and Fairway's Edge developed and sold homes at Ocean Pointe to Plaintiffs and the public pursuant to form purchase and sale contracts containing representations, warranties, and obligations that the homes would be without material defects.

83. Haseko Homes, Ke Noho Kai, Spinnaker, and Fairway's Edge materially breached the representations, warranties, and obligations contained in the purchase and sale contracts by selling homes with inadequate high-wind protection systems as described herein, in violation of applicable Building Codes and Honolulu law.

84. Plaintiffs were either buyers, and therefore parties to those contracts, or subsequent homeowners who were intended to benefit from the contracts.

85. As a result of these material breaches of the purchase and sale contracts, Plaintiffs have suffered damages in amounts to be proven at trial.

COUNT V

BREACH OF CONTRACT AGAINST HASEKO CONSTRUCTION AND COASTAL

86. Plaintiffs restate and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein. Haseko Construction and Coastal built over 700 homes in Areas 2 and 3 at Ocean Pointe pursuant to construction contracts with Haseko Homes, Ke Noho Kai, Spinnaker, and Fairway's Edge. Plaintiffs are informed and believe that those construction contracts contain representations, warranties, and obligations that the Ocean Pointe Homes would be without material defects which were intended to benefit and protect the future homeowners.

87. Haseko Construction and Coastal materially breached the representations, warranties, and obligations contained in the construction contracts by building homes with inadequate high-wind protection systems as described herein.

88. As a result of Haseko Construction and Coastal's material breaches of construction contracts, Plaintiffs have suffered damages in amounts to be proven at trial.

COUNT VI

NEGLIGENCE

89. Plaintiffs restate and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

90. As developers and builders of homes to the public, including Plaintiffs, the Developer Defendants each owed duties of due care in designing, building, and selling the Ocean Pointe Homes.

91. The Developer Defendants each breached their duties of due care to Plaintiffs by selecting, approving, and installing high-wind protection systems that were not suitable to the coastal Hawai'i environment and did not meet industry standards, in a manner that did not meet the high-wind protection standards required by the ROH.

92. The Developer Defendants further breached their duties of due care to Plaintiffs by selecting, approving, and installing inadequate high-wind protection systems straps that did not comply with the Building Code.

93. As a result of the Developer Defendants' breaches of their duties, Plaintiffs have suffered damages in amounts to be proven at trial.

COUNT VII

UNFAIR BUSINESS PRACTICES VIOLATION OF HRS §§ 480 *et seq.*

94. Plaintiffs restate and reallege each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

95. As natural persons, Plaintiffs are consumers.

96. Defendants and each of them engaged in unfair and deceptive acts or practices when they manufactured, sold, approved, and installed inadequate high-wind protection systems;

refused to comply with applicable building codes for securing homes to their foundation; failed to disclose that the high-wind protection systems were unlikely to withstand the wind forces that commonly occur in the area in which the homes are located; failed to replace the inadequate high-wind protection systems; and failed to build the homes to meet the standards set forth in the ROH.

97. Counsel for Haseko has stated in a declaration that, since 2005, the Developer Defendants investigated the failure and inadequacy of hurricane straps at Ocean Pointe, and towards that end, have repaired 67 homes. He also stated that the Developer Defendants have negotiated with their various insurance carriers so that they would not have to pay for the replacement of the rusted and failed hurricane straps.

98. For the approximately seven years that the Developer Defendants attempted to avoid paying for the replacement of the rusted and failed hurricane straps, the Developer Defendants failed to inform—and concealed from—Plaintiffs that the wind protection that was legally required by the Building Code to protect their homes and families had failed and they, their children and neighbors were exposed to the likely risk of harm to their homes, families, neighbors and themselves during a hurricane.

99. As a result of Defendants' unfair and deceptive acts and practices, Plaintiffs have been damaged and have incurred attorneys' fees and costs in amounts to be proven at trial.

100. As a result of Defendants' unfair and deceptive acts and practices, Plaintiffs are entitled to an award of three times their damages, attorneys' fees, and costs in amounts to be proven at trial.

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

1. Confirmation that this lawsuit is properly maintainable as a class action and certification of the named plaintiffs as Class Representatives;
2. Damages according to proof, including the amounts needed to repair or replace the hurricane straps, inadequate anchor bolts, inadequate glass in the window and garage, inadequate sheer walls, and inadequate bracing of each home and any other damaged portion of each home;
3. Declaratory and injunctive relief;
4. Treble damages;
5. Prejudgment interest;
6. Attorneys' fees and costs; and
7. Such other and further relief the Court may deem just and proper.

DATED: Honolulu, Hawaii,

MAR 8 - 2013

MELVIN Y. AGENA
GLENN K. SATO
GRAHAM B. LIPPSMITH

Attorneys for Plaintiffs Tadashi Mitsuoka and Victoria Mitsuoka, Individually and in their Representative Capacities and on Behalf of a Class of All Persons Similarly Situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

Tadashi Mitsuoka and Victoria Mitsuoka;
individually, and on Behalf of Themselves and
All Others Similarly Situated,

Plaintiffs,

vs.

HASEKO HOMES, INC., a Hawaii corporation, HASEKO CONSTRUCTION, INC. a Hawaii corporation; KE NOHO KAI DEVELOPMENT, LLC, a Hawaii corporation; SPINNAKER PLACE DEVELOPMENT, LLC, a Hawaii corporation; FAIRWAY'S EDGE DEVELOPMENT, LLC, a Hawaii corporation; COASTAL CONSTRUCTION CO., INC., a Hawaii corporation; and DOES 1-10,

Defendants.

CIVIL NO. 12-1-3020-11 VLC
(Construction Defects)

DEMAND FOR A JURY TRIAL

Plaintiffs Tadashi Mitsuoka and Victoria Mitsuoka, Individually and in their Representative Capacities and on Behalf of a Class of All Persons Similarly Situated demand trial by jury on all issues so triable herein.

DATED: Honolulu, Hawaii, MAR 8 - 2013.

MELVIN Y. AGENA
GLENN K. SATO
GRAHAM B. LIPPSMITH

Attorneys for Plaintiffs Tadashi Mitsuoka and Victoria Mitsuoka, Individually and in their Representative Capacities and on Behalf of a Class of All Persons Similarly Situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

Tadashi Mitsuoka and Victoria Mitsuoka;
Individually, and on Behalf of Themselves and
All Others Similarly Situated,

Plaintiffs,

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HASEKO HOMES, INC., a Hawaii corporation, HASEKO CONSTRUCTION, INC. a Hawaii corporation; KE NOHO KAI DEVELOPMENT, LLC, a Hawaii corporation; SPINNAKER PLACE DEVELOPMENT, LLC, a Hawaii corporation; FAIRWAY'S EDGE, LLC, a Hawaii corporation; COASTAL CONSTRUCTION CO., INC., a Hawaii corporation; and DOES 1-10,

Defendants.

CIVIL NO. 12-1-3020-11 VLC
(Construction Defects)

SUMMONS

SUMMONS

TO THE DEFENDANTS:

You are hereby summoned and required to file with the Court and serve upon Plaintiffs' attorneys, the Law Offices of Melvin Y. Agena, whose address is 55 Merchant Street, Suite 2010, Honolulu, Hawaii 96813 and Law Office of Glenn K. Sato, whose address is 707 Richards St., PH7, Honolulu, Hawaii 96813, an answer to the First Amended Class Action Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the First Amended Class Action Complaint.

THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEDIING PERSON OR PARTY.

DATED: Honolulu, Hawaii, _____

**SUMMONS
DENIED**
Clerk of the Above Entitled Court
RECEIVED DOCUMENTS BR