



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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Jan-06-2017 12:06 pm

Case Number: CGC-17-556292

Filing Date: Jan-06-2017 11:45

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**COMPLAINT**

**PAMELA BUTTERY VS. SEAN JEFFRIES ET AL**

001C05695203

**Instructions:**

Please place this sheet on top of the document to be scanned.

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

SEAN JEFFRIES,  
Additional Parties Attachment Form is attached

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

PAMELA BUTTERY, TRUSTEE OF THE PAMELA BUTTERY 1990  
TRUST  
Addition Parties Attachment Form is attached

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Superior Court of California  
400 McAllister Street  
San Francisco, CA 94102

CASE NUMBER:  
(Número de Caso): **CC-17-556292**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Gerald P. Dodson, 301 Mission Street, Unit 42E, San Francisco, CA 94105 (415) 658-7686

DATE: January 6, 2017  
(Fecha)

CLERK OF THE COURT

Clerk, by  
(Secretario)

*Arlene Ramos*  
**ARLENE RAMOS**

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

SHORT TITLE: Pamela Buttery, et al. v Sean Jeffries, et al.	CASE NUMBER:
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## INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

Paula B. Pretlow, Trustee of the Paula B. Pretlow Trust

Viniti Narain Mahlbubani

Helena Geng, The Helena H. Geng Living Trust

Joanne Fox

Jeffrey A. Saal and Jeannette C. Saal, Trustees of the Saal Revocable Living Trust

Elain Lum MacDonald

Eva Lum Camp

Jackson Lum, Jr.

Evonne Lum

Nina Agabian

Giovanni Colella

Vanessa Colella

Frank H. Jernigan, Trustee of the Frank H. Jernigan Family Trust

Gerald and Patricia Dodson, TTEE Living Trust Dated 2/2/95

Catherine Farrell

Theresa Strickland

Tyrone Strickland

Page \_\_\_\_\_ of \_\_\_\_\_

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Plaintiff   
  Defendant   
  Cross-Complainant   
  Cross-Defendant

PAGE 2

Andrea D. Reid, Individually and as Trustee under the James H. and Andrea D. Reid Living Trust

Herbert I. Finkelman, TTEE, Living Trust DTD 6/13/96

Stirling Spencer

Gary Demasi

Jerold Rosenberg

Phyllis Rosenberg

Seung Kimn

Joyce Ratner

Joel and Rita Choit Adler, Trustees of the Adler Trust

Page \_\_\_\_\_ of \_\_\_\_\_

<b>SHORT TITLE:</b> Pamela Buttery, et al v. Sean Jeffries, et al.	<b>CASE NUMBER:</b>
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Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

Millennium Partners, I, Inc.

Millennium Partners Management, LLC

Mission Street Development, LLC

John Luciano

Transbay Joint Powers Authority

San Francisco Department of Building Inspection

San Francisco City Attorney's Office

Page \_\_\_\_\_ of \_\_\_\_\_

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2 State Bar No. 139602  
3 301 Mission Street, Unit 42E  
4 San Francisco, CA 94105  
5 415-658-7686  
6 jerrydodson@gmail.com  
7 Attorney for Plaintiffs

**FILED**  
Superior Court of California  
County of San Francisco

JAN 06 2017

CLERK OF THE COURT  
BY: Arline Ramon  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10 PAMELA BUTTERY, TRUSTEE OF THE  
11 PAMELA BUTTERY 1990 TRUST; PAULA  
12 B. PRETLOW, TRUSTEE OF THE PAULA  
13 B. PRETLOW TRUST; VINITI NARAIN  
14 MAHLBUBANI; HELENA GENG; THE  
15 HELENA H. GENG LIVING TRUST;  
16 JOANNE FOX; JEFFREY A. SAAL AND  
17 JEANNETTE C. SAAL, TRUSTEES OF THE  
18 SAAL REVOCABLE LIVING TRUST;  
19 ELAINE LUM MACDONALD; EVA LUM  
20 CAMP; JACKSON LUM, JR., EVONNE  
21 LUM; NINA AGABIAN; GIOVANNI AND  
22 VANESSA COLELLA; FRANK H.  
23 JERNIGAN, TRUSTEE OF THE FRANK H.  
24 JERNIGAN FAMILY TRUST; GERALD  
25 AND PATRICIA DODSON, TTEE LIVING  
26 TRUST DATED 2/2/95; CATHERINE  
FARRELL; THERESA STRICKLAND;  
TYRONE STRICKLAND; ANDREA D.  
REID, INDIVIDUALLY AND AS TRUSTEE  
UNDER THE JAMES H. AND ANDREA D.  
REID LIVING TRUST; HERBERT I.  
FINKELMAN, TTEE, LIVING TRUST DTD  
6/13/96; STIRLING SPENCER; GARY  
DEMASI; JEROLD ROSENBERG; PHYLLIS  
ROSENBERG; SEUNG KIM; JOYCE  
RATNER; JOEL AND RITA CHOIT ADLER,

Case No.: **CGC-17-556292**

**COMPLAINT FOR:**

**1) VIOLATION OF CALIFORNIA CIVIL  
CODE SEC. 1102 ET SEQ; 2) UNFAIR  
BUSINESS PRACTICES; 3)  
FRAUDULENT CONCEALMENT; 4)  
FRAUDULENT MISREPRESENTATION;  
5) NEGLIGENT  
MISREPRESENTATION; 6) DAMAGES  
FOR CONSPIRACY TO COMMIT  
FRAUD BY CONCEALMENT; 7)  
CONSPIRACY TO COMMIT FRAUD BY  
CONCEALMENT AND DECEIT; 8)  
DAMAGES FOR INVERSE  
CONDEMNATION; 9) FOR NUISANCE;  
10) TRESPASS, BREACH OF  
EASEMENT AGREEMENTS; AND 11)  
BREACH OF FIDUCIARY DUTY.**

JURY TRIAL DEMANDED

1 TRUSTEES OF THE ADLER TRUST,

2 Plaintiffs,

3 vs.

4 SEAN JEFFRIES; MILLENNIUM  
5 PARTNERS I, INC.; MILLENNIUM  
6 PARTERS MANAGEMENT, LLC; MISSION  
7 STREET DEVELOPMENT, LLC; JOHN  
8 LUCIANO; TRANSBAY JOINT POWERS  
9 AUTHORITY; SAN FRANCISCO  
10 DEPARTMENT OF BUILDING  
11 INSPECTION; AND SAN FRANCISCO  
12 CITY ATTORNEY'S OFFICE

13 Defendants

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1 design.

2 8. Millennium Partners I, Inc. ("MPT") is a New York corporation doing business in  
3 California also as "New York SF Millennium Partners I, Inc." Millennium Partners I, Inc.,  
4 acting in part through its alter egos, constructed, designed, and developed the Millennium  
5 Tower and is responsible for its defective design.

6 9. Plaintiffs are informed and believe that Mission Street Development, LLC, and  
7 Millennium Partners Management, LLC, were at all times relevant alter egos of Millennium  
8 Partners I, Inc., by reason of the following allegations:

- 9 A. Among Millennium Partners I, Inc., MSD, and MPM (collectively the  
10 "Developers") there was a unity of interest in developing the Millennium Tower.
- 11 B. Developers' assets were commingled in the development of the Millennium  
12 Tower.
- 13 C. MSD and MPM are mere conduits or adjuncts for Millennium Partners I, Inc.'s  
14 interests in the Millennium Tower.
- 15 D. MSD and MPM are undercapitalized and potentially incapable of satisfying their  
16 liabilities should Plaintiffs prevail in the underlying actions.
- 17 E. Developers share employees.
- 18 F. Developers share a business address at 1995 Broadway, New York, New York.
- 19 G. Injustice to Plaintiffs would be promoted by adherence to the fiction of a separate  
20 existence of MSD and MPM from Millennium Partners I, Inc., and by treating  
21 MSD/MPM's acts with respect to the Millennium Tower as theirs alone.

22 10. TJPA is a joint powers agency and a government agency created under 27 California  
23 Government Code section 6500 *et seq.* The TJPA bears sole responsibility for developing the  
24 Transbay project, which includes construction of a five-story transit center adjacent to the  
25 Millennium Tower. TJPA is solely responsible for any adverse impacts therefrom on the  
26 Millennium Tower.

27 11. The Millennium Tower Association ("MTA") is a California nonprofit mutual benefit  
28 corporation. The MTA is the condominium association for the Millennium Tower, and its  
governing body the "Center Board" is the manager of the underlying real property at 301

1 Mission Street, including the foundation for the Millennium Tower, and is responsible for  
2 inspection, maintenance, and repair of the foundation for the Millennium Tower.

3 12. The San Francisco Department of Building Inspection is the regulatory building safety  
4 agency responsible for overseeing the City and County Building Code, and the responsible  
5 agency for the flawed inspecting and permitting of the Millennium Tower.

6 13. The City Attorney of San Francisco is the legal representative for the Department of  
7 Building Inspection, and TJPA was a signatory on confidentiality agreements among MSD,  
8 Jeffries, TJPA, and the City Attorney's Office.

9 14. Defendant Sean Jeffries, Vice President of Millennium Partners and Mission Street  
10 Development, LLC. ("Jeffries") is the lead individual who was responsible for The Millennium  
11 Tower's defective design, and was the designated contact and recipient for the Millennium  
12 Tower Association for submission of monitoring data from TJPA related to the sinking and  
13 tilting of the building. In his capacity as the contact for receipt of monitoring data from TJPA  
14 on behalf of the Millennium Tower Association, Jeffries owed a fiduciary duty to Plaintiffs to  
15 keep them informed as to the status of the building.

16 15. Defendant John Luciano, is Vice President of Millennium Partners Management, LLC  
17 ("Mr. Luciano"), was a member of the Millennium Tower Association from 2009-2012.  
18 During this period, Defendant Luciano owed a fiduciary duty to Plaintiffs to keep them  
19 informed as to the status of the building.

20 16. Plaintiffs do not know the true names or capacities of Defendants sued in this complaint  
21 as Does 1 through 5, inclusive, and who are sued by such fictitious names. Plaintiffs will  
22 amend this complaint to allege said names and capacities when the information has been  
23 ascertained. Plaintiff is informed and believes and on that basis alleges that each of the  
24 fictitiously named Defendants is legally responsible in some manner for the acts or omissions  
25 alleged and the injuries and damages claimed in this complaint.

26 17. Plaintiffs filed Notices of Claims with the San Francisco City Controller and TJPA as  
27 required under the California Tort Claims Act from mid-November through mid-December  
28 2016. Both the Office of the City Attorney and TJPA rejected as untimely the Plaintiffs claims  
in late December 2016. As more fully alleged below, Defendants acted in a concerted fashion

1 to conceal the facts from Plaintiffs for seven years. Plaintiffs did not discover and did not know  
2 of the facts that would cause a reasonable person to suspect that they had suffered harm as a  
3 result of Defendants conduct until May 10, 2016, when P. Shires, a consultant for the MTA,  
4 disclosed for the first time to Plaintiffs and other homeowners that the building had sunk 16  
5 inches, had tilted 2 inches at the base and 15 inches at the tip, and was continuing to sink and  
6 tilt at a constant rate over time.

7 18. On or about the purchase dates indicated in Exhibit A and attached hereto, Plaintiffs  
8 entered into written agreements entitled "Residential Purchase Agreements and Escrow  
9 Instructions, for Grand Residences, Residences and City Residences at Millennium Tower,"  
10 referred to in this complaint as "Agreements," under which Plaintiffs proposed to buy the units  
11 from MSD or from sellers who purchased from MSD. Said Agreements required MSD to  
12 provide copies of all pertinent property management documents, including but not limited to  
13 disclosure statements as required by law prior to the close of escrow. Specifically, Plaintiffs  
14 include so-called remote purchasers who lack privity between themselves and Defendants  
15 Jeffries, MPI, MPM, and MSD but claim liability and damages under the "indirect deception  
16 doctrine."

17 19. Plaintiffs' purchase agreements with MSD include a procedure for resolving disputes  
18 pursuant to California Civil Code §§ 910-938, but Defendant MSD is the only party that  
19 acknowledged the claims for fraud and other matters that certain Plaintiffs who purchased  
20 directly from MSD filed. Correspondence between certain Plaintiffs' attorney and Defendants'  
21 attorneys confirms that according to Defendants' attorneys, the additional defendants named  
22 here, Millennium Partners I, Inc., Millennium Partners Management, LLC, and John Luciano,  
23 are not covered by the procedure of Civil Code § 911(a) because they are not the "Developer"  
24 according to MSD's attorneys.<sup>1</sup> Since Plaintiffs believe that the other Defendants are also liable  
25 for fraud and other violations of law as well, whether they are called developers or not by MSD,  
26 including not only the Millennium Partner entities but also TJPA, the City Department of  
27  
28

---

<sup>1</sup> Two letters from P. Meier to G. Dodson (August 30, 2016) and (October 6, 2016).

1 Building Inspection and the City Attorney's office, Plaintiffs have filed this complaint with the  
2 Court. Jurisdiction is proper for purposes of resolution of complex litigation which will  
3 necessarily include extensive multiparty discovery and motion practice involving these parties.  
4 In addition, on information and belief, the one entity that Defendants' attorneys state is covered  
5 by California Civil Code §§ 910-938, MSD, does not have an agent for service in California or  
6 New York as required by § 912(e) of the Civil Code, and is not sufficiently capitalized to pay  
7 out a judgment of damages of the magnitude contemplated by this suit. On information and  
8 belief, MSD is simply a conduit for the movement of funds, including Plaintiffs' funds from the  
9 purchase of their units from it to Millennium Partners I, Inc. On information and belief, MSD  
10 has little or no assets and is judgment proof.

11 **CAUSE OF ACTION ONE: Damages for Violation of California Civil Code § 1102 et seq.**  
12 **against Defendants MPI, MPM, MSD, Jeffries, and Does 1 through 5**

13 20. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
14 1 through 18, inclusive, as if fully set forth in this cause of action.

15 21. California Civil Code Article 1.5 Disclosures upon Transfer of Residential Property §  
16 1102 et seq. applies to the Defendant MSD transfer of units to Plaintiffs at the Millennium  
17 Tower.

18 22. Section 1102.3 provides that "[t]he transferor of any real property subject to this article  
19 shall deliver to the prospective transferee the written statement required by this article . . ."

20 23. Section 1102.6 sets forth the full disclosure required by Article 1.5. That section  
21 includes disclosure of whether there is "[a]ny settling from any cause, or slipping sliding or  
22 other soil problems."

23 24. Defendants MPI, MSD, MPM, and Jeffries failed to disclose to Plaintiffs that there was  
24 settlement from any cause, or slippage, sliding or other soil problems as required by § 1102.6.  
25 Vertical and differential settlement had occurred as early as January 2009 and prior to any  
26 closing dates. Defendant MSD failed to disclose that the Millennium Tower had sunk by 8.3

1 inches by early 2009 and was tilting to the northwest prior to the issuance of a certificate of  
2 occupancy in August 2009.<sup>2</sup>

3 25. Section 1102.7 Good Faith Required mandates that each disclosure shall be made in  
4 “good faith,” which means “honesty in fact in the conduct of the transaction.”

5 By failing to disclose the sinking and tilting of the Millennium Tower to Plaintiffs, Defendants  
6 MSD, MPI, MPM, and Jeffries failed to comply with and violated § 1102.7.

7 26. Section 1102.13 states that “[a]ny person who willfully or negligently violates or fails to  
8 perform any duty prescribed by any provision of this article shall be liable in an amount of  
9 actual damages by a transferee.” The disclosure information required by the Code was not  
10 passed on to subsequent purchasers.

11 27. Plaintiffs have been damaged as a result of Defendants willfully or negligently violating  
12 their duty to disclose the sinking and tilting of the Millennium Tower prior to purchase and  
13 prior to final closing of escrow for each unit.

14 WHEREFORE, Plaintiffs pray judgment as set forth below.

15 **CAUSE OF ACTION TWO: Damages for Unfair Business Practices, Violation of**  
16 **Business & Professions Code § 17200, et seq. against Defendants MPI, MSD, MPM,**  
17 **Jeffries, and Does 1 through 5**

18 28. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
19 1 through 27, inclusive, as if fully set forth in this cause of action.

20 29. Business & Professions Code § 17200 prohibits any unfair competition, including any  
21 unlawful, unfair or fraudulent business act or practice.

22 30. The conduct of Defendants MSD, MPI, MPM, and Jeffries constitutes unlawful, unfair  
23 or fraudulent business acts or practices.

24 31. Defendants’ unlawful, unfair and fraudulent business act or practice included a pattern  
25 of violations of California Civil Code § 1102 et seq. Defendants failed to disclose the sinking

26  
27 <sup>2</sup> Letter from Treadwell & Rollo to DeSimone (February 18, 2009).

1 and tilting of the Millennium Tower to Plaintiffs when they first discovered it and prior to  
2 closing of escrow on Plaintiffs units.

3 32. Defendants' unlawful conduct includes but is not limited to violations of California  
4 Civil Code § 896 et seq. Specifically, the building code standards set forth in § 896 were  
5 violated by Defendants in the design and/or construction of the Millennium Tower foundation.

6 33. Section 896(a) (7) Foundation systems and slabs shall not allow water or vapor to enter  
7 the structure so as to cause damage to another building component.

8 34. Section 896(b) (1) Foundation, load bearing components, and slabs, shall not contain  
9 significant cracks or significant vertical displacement.

10 35. Section 896(b) (2) Foundations, load bearing components, and slabs, shall not cause the  
11 structure, in whole or part, to be structurally unsafe.

12 36. Section 896(b)(4) A structure shall be constructed so as to materially comply with the  
13 design criteria for earthquake and wind load resistance, as set forth in the applicable  
14 government building codes, regulations, and ordinances in effect at the time of the original  
15 construction.

16 37. Section 896(c) (1) Soils, and engineered retaining walls shall not cause, in whole or in  
17 part, damage to the structure built upon the soil or engineered retaining wall.

18 38. Section 896(c) (2) Soils, and engineered retaining walls shall not cause the structure, in  
19 whole or in part, to be structurally unsafe.

20 39. Section 896(g) (1) Exterior pathways, driveways, sidewalks, installed by the original  
21 builder shall not contain cracks that display significant vertical settlement or that are excessive.

22 40. As a direct and proximate result of Defendants' unlawful conduct described, Plaintiffs  
23 have suffered actual injury and economic loss in the form of diminution in value of their units  
24 and a greater risk to their safety from earthquakes as a result of faulty design and the sinking  
25 and tilting of the Millennium Tower.

26 41. Plaintiffs request the Court order that Defendants be required to disgorge the profits  
27 they have wrongfully obtained through the use of these unlawful practices, and provide  
28 restitution.



1 WHEREFORE, Plaintiffs pray judgment as set forth below.

2 **CAUSE OF ACTION THREE: Damages for Fraudulent Concealment and Deceit against**  
3 **Defendants MPI, MSD, MPM, Jeffries, and Does 1 through 5**

4 42. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
5 1 through 41, inclusive, as if fully set forth in this cause of action.

6  
7 **A. Defendants had a duty to disclose material facts to Plaintiffs**

8 43. At the time Plaintiffs entered into the Agreements to purchase their units, Defendants  
9 MSD, MPI, MPM, Jeffries, and Does 1 through 5 had a duty to disclose to Plaintiffs the  
10 conditions of the Millennium Tower and any material facts that would affect the value of  
11 purchased units.

12  
13 **B. Defendants concealed material facts**

14 44. The Defendants' "Property Disclosure and Information Statement for the Millennium  
15 Tower," dated April 2009, a 21-page document, discusses issues including but not limited to  
16 neighborhood conditions, external lighting, views, residence amenity floor, concrete, walls,  
17 window washing, parking garages, toilets, outdoor furniture, building noise, odors, construction  
18 activity, building condition, seismic potential and a host of other issues. *Nowhere do*  
19 *Defendants' Disclosure Statements disclose* that the Defendant's projection in 2005 was from  
20 4-6 inches of total vertical settlement for the life of the Millennium Tower, but it already had  
21 8.3 inches of vertical settlement by January 2009, which was prior to close of escrow for any  
22 units. Nor do Defendants disclose that their projected settlement in their foundation permit  
23 submittal to the DBI called for only 1-2 inches of settlement upon the building's completion  
24 and 4-6 inches over the lifetime of the building. A true and correct copy of the April 2009  
25 Disclosure Statement is attached as Exhibit B. None of the subsequent disclosure statements  
26 which were updated by Defendant MSD included any disclosure of the sinking and tilting of  
27 the Millennium Tower either.

1 45. As quoted in the *San Francisco Chronicle* on June 17, 2007, Defendant Sean Jeffries, a  
2 principal with MPI and MSD, said the pricing of the units at the Millennium Tower had not  
3 been finalized, but that it would represent "the highest price per square foot in the  
4 marketplace."

5 46. The Defendants pushed up their sales schedule on the Millennium Tower in 2008 seeing  
6 heavy demand at the highest echelon of the condo market, while at the same time the Tower  
7 was "sinking like a stone" and there was no disclosure of it to Plaintiffs or other owners.

8 47. While bragging publicly about the pricing of units at the Millennium Tower, Defendant  
9 Jeffries failed to disclose that the building was sinking and tilting beyond the 1-2 inches  
10 projected by Developers' engineers after completion of construction in 2008.<sup>3</sup>

11 48. From 2008 through 2010, the Defendants were accepting and publicizing awards from  
12 several engineering and architectural organizations accentuating the falsehood that the Tower  
13 was safely designed with the purpose of misleading potential buyers. At the same time the  
14 Tower was sinking and tilting beyond design standards. Upon information and belief, those  
15 awards included:

16 2008: American Concrete Institute Award, Northern California – Construction

17 2008: Concrete Industry Board – Roger H. CIB Award of Merit

18 2008: American Society of Civil Engineers, San Francisco Section – Outstanding Structural  
19 Engineering Project

20 2009: American Society of Civil Engineers, Region 9 – Structural Engineering Project of the  
21 Year

22 2009: Metal Architecture Magazine – April 2009 edition Top Honor

23 2009: California Construction – Outstanding Project Management

24 2009: California Construction – Multi-family/Residential Award of Merit

25 2010: San Francisco Business Times – Deal of the Year Award

26 2010: San Francisco Chamber of Commerce Excellence in Business Awards – Building San

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27 <sup>3</sup> DeSimone Foundation Submittal, Vol. I, Project Overview, p.2.1-1 (May 24, 2005).

1 Francisco Award.

2 49. The Defendants MSD, MPI, MSD, and Jeffries failed to disclose to Plaintiffs that  
3 Defendants had adjusted the acceptable design range for vertical settlement for the Millennium  
4 Tower in early 2009, after learning that the acceptable design range of 4-6 inches of vertical  
5 settlement for the life of the building had been exceeded shortly after completion of  
6 construction.<sup>4</sup>

7 50. The Defendants intentionally concealed the facts and information from Plaintiffs about  
8 the building's vertical settlement prior to close of escrow. The Defendants had reason to expect  
9 that their failure to disclose information about the vertical settlement and tilting would not by  
10 its nature be disclosed to subsequent purchasers.

11 51. The Defendants knew that its representations at the time of close of escrow to Plaintiffs  
12 about the Millennium Tower's construction stability were false.

13 **C. Defendants intentionally concealed true facts with intent to defraud**

14 52. The Defendants intended to induce reliance on the part of each Plaintiff on  
15 representations about Millennium Tower's construction stability to consummate the sale of  
16 units.

17 53. The Defendants intentionally changed the acceptable design range from 4-6 inches to  
18 10.3-12.3 inches in early 2009 to evade their duty to disclose that vertical settlement at the  
19 Millennium Tower had exceeded the original acceptable design range of 4-6 inches established  
20 by the Defendants for the Millennium Tower in the foundation permit in 2005.

21 54. The Defendants' concealment of the fact that the Millennium Tower had sunk by 8.3  
22 inches by January 2009 deceived unit owners into believing that the building had not sunk  
23 beyond the acceptable design range of 4-6 inches.

24  
25  
26  
27 <sup>4</sup> P. Shires, slide presentation before MTA homeowners, (May 10, 2016).

1 55. The Defendants' failure to disclose to Plaintiffs the facts of the vertical settlement  
2 beyond the acceptable range of 4-6 inches was a fraud on all successive buyers who purchased  
3 units from unit owners who re-sold their units without any disclosure from the Defendants.

4 56. Prior to Plaintiffs' close of escrow, the Defendants failed to disclose to Plaintiffs that  
5 the vertical settlement of 8.3 inches that had occurred by January 2009 may have caused or  
6 would possibly cause different parts of the building to settle at different rates, thereby causing  
7 differential settlement and further damage unit owners' property value.

8 57. Prior to Plaintiffs' close of escrow, the Defendants failed to disclose to unit buyers that  
9 differential settlement could cause the frame of the building to distort, floors to slope, walls and  
10 glass to crack, and doors and windows to malfunction.

11 58. Prior to Plaintiffs' close of escrow, the Defendants failed to disclose that differential  
12 settlement could tilt the building, thereby raising the risk of further tilting as differential  
13 settlement increased and further damaging unit owners' property value.

14 59. The Defendants have never disclosed to Plaintiffs that the building has sunk 16 inches  
15 from when it was first constructed and is tilting 2 inches at the base and 15 inches to the  
16 northwest at its highest point.<sup>5</sup>

17 60. The Defendants have never disclosed to unit owners that the building is continuing to  
18 sink at a constant or accelerated rate over time.

19 61. The original geotechnical studies for the Millennium Tower identified that strong  
20 shaking of the earth during an earthquake could result in ground failure under the Millennium  
21 Tower such as that associated with ground rupture, liquefaction and differential compaction.<sup>6</sup>

22 62. The Defendants failed to disclose to Plaintiffs the greater risk from an earthquake due to  
23 their decision not to go to bedrock.  
24

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25 <sup>5</sup> Id.

26 <sup>6</sup> Treadwell & Rollo, Geotechnical Investigation 301 Mission San Francisco, 7.2.1, Seismic Conditions, p. 8  
27 (August 4, 2001); Treadwell & Rollo Revised Geotechnical Investigation 301 Mission San Francisco, 7.2.1, p. 12  
28 (January 13, 2005).

1 63. The failure to disclose to Plaintiffs that the Defendants had ignored the original  
2 settlement assessment of the design engineers has resulted in a diminution of property values  
3 and may result in irreparable harm to Plaintiffs should there be an earthquake of moderate to  
4 strong magnitude.

5 64. Said Defendants, and each of them, had knowledge of the true facts as set forth above  
6 and deliberately concealed and failed to disclose said facts.

7 **D. Plaintiffs were unaware of the facts and would not have acted if the facts were**  
8 **disclosed**

9 65. The Defendants' failure to disclose the vertical settlement of the building prior to close  
10 of escrow lulled the unit buyers into a false sense of security.

11 66. The Plaintiffs would have been alerted that something was wrong with the Millennium  
12 Tower if the Defendants had informed them that the Tower had sunk in excess of the original  
13 acceptable design range of 4-6 inches by January 2009, and was continuing to sink and tilt over  
14 time at a constant or accelerated rate.

15 67. Plaintiffs would not have purchased their units if they had known that the Millennium  
16 Tower was sinking in excess of the original design parameters of 4-6 inches.

17 **E. Plaintiffs have been damaged as a result of concealment**

18 68. The Defendants' failure to disclose that vertical settlement had exceeded the acceptable  
19 design range of 4-6 inches and had in fact vertically settled 8.3 inches by January 2009 has  
20 damaged unit owners.

21 69. Plaintiffs have been damaged as a result of the Defendants' intentional concealment and  
22 failure to disclose the vertical and differential settlement that occurred prior to each unit  
23 owner's close of escrow.

24 WHEREFORE, Plaintiffs pray judgment as set forth below.

25 **CAUSE OF ACTION FOUR: Damages for Fraudulent Misrepresentation against**  
26 **Defendants MPI, MSD, MPM, Jeffries, and Does 1 through 5**

1 70. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
2 1 through 69, inclusive, as if fully set forth in this cause of action.

3 71. The Defendants intentionally changed the acceptable design range from 4-6 inches to  
4 10.3-12.3 inches in early 2009 to evade their duty to disclose that vertical settlement at  
5 Millennium Tower had exceeded the original acceptable design range of 4-6 inches established  
6 by the Defendants for the Millennium Tower in 2005.

7 72. The Defendants' intentional change of the acceptable design range from 4-6 inches to  
8 10.3-12.3 inches was intended to deceive unit owners into believing that the Millennium Tower  
9 was not sinking beyond its original design range.

10 73. The Plaintiffs would have been alerted that something was wrong with the Millennium  
11 Tower if the Defendants had informed them that the Tower had already sunk in excess of the  
12 original acceptable design range of 1-2 inches by January 2009.

13 74. Defendants had knowledge of the true facts. The intentional misrepresentations  
14 described above were made by Defendants with the intent to induce Plaintiffs to enter into the  
15 Agreements to purchase the units, and to take other acts described herein, ultimately closing  
16 escrow to complete the transaction, and in many cases making substantial improvements to the  
17 units after the escrow closing date.

18 75. Plaintiffs, at the time of Defendants' misrepresentations and failure to disclose the true  
19 facts, and at the time Plaintiffs took the actions alleged herein, were ignorant of the existence of  
20 those facts that said Defendants, and each of them, suppressed and failed to disclose. Had  
21 Plaintiffs known the true facts, they would not have entered into the Agreements to purchase  
22 the units. Plaintiffs' reliance was justified in that Plaintiffs were misled by false  
23 misrepresentations and even after reasonable inquiry did not have knowledge of those facts that  
24 were suppressed.

25 76. As a proximate result of the misrepresentations and the failure to disclose the true facts,  
26 Plaintiffs have been damaged in that the values of their units are far less than the sales price.  
27 The exact amount by which Plaintiffs have been damaged is unknown at this time, but it is at  
28 least the difference between what Plaintiffs paid for the units and its true value, or other  
damages, according to proof at trial.

1 77. In doing the things alleged in this complaint, said Defendants, MSD, MPM, Jeffries,  
2 and Does 1-5 acted with oppression, fraud, and malice, and said acts were approved and/or  
3 ratified by Defendant Millennium Partners I Inc. Plaintiff is therefore entitled to punitive  
4 damages in a sum according to proof.

5 WHEREFORE, Plaintiffs pray judgment as set forth below.  
6

7 **CAUSE OF ACTION FIVE: In the Alternative, Damages for Negligent**  
8 **Misrepresentation against Defendants MPI, MSD, MPM, Jeffries, DBI, and Does 1**  
9 **through 5**

10 78. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
11 1 through 77, inclusive, as if fully set forth herein, except for Paragraphs 50, 52, 53, and 72  
12 alleging intent.

13 79. At the time Defendants failed to disclose relevant information and made the  
14 misrepresentations to the Plaintiffs as set forth above, Defendants should have known that the  
15 nondisclosure of relevant information and misrepresentations was negligence. Defendants  
16 further should have discovered the true facts by a reasonable inquiry and diligence, even if said  
17 facts were not known to Defendants at the time of making the misrepresentations and  
18 nondisclosure of relevant information. Said Defendants intended for Plaintiffs to rely on the  
19 representations and nondisclosure of relevant information when they were made.

20 80. The above-described acts of said Defendants constitute negligent misrepresentation to  
21 the Plaintiffs, and these misrepresentations and nondisclosures were intended to and did induce  
22 the Plaintiffs to act in the manner as alleged in Paragraph 17 and were a substantial cause of the  
23 damage and injury to the Plaintiffs.

24 81. As a proximate result of said negligence, Plaintiffs have been damaged as alleged in  
25 Paragraphs 26, 39, 69, and 76 which is hereby incorporated by reference and for purposes of  
26 this Fifth Cause of Action shall refer to acts that constitute negligent misrepresentation.

27 WHEREFORE, Plaintiffs pray judgment as set forth below.  
28

1 **CAUSE OF ACTION SIX: Damages for Conspiracy to Commit Fraud by Concealment**  
2 **against Defendants MPI, MSD, MPM, Jeffries, TJPA, City Attorney, and Does 1 through**  
3 **5**

4 82. Plaintiffs reallege and incorporate by reference each and every allegation of Paragraphs  
5 1 through 80, inclusive, as if fully set forth in this cause of action, except for Paragraphs 79-81.

6 83. MSD, MPM, MPI, and Jeffries had a duty pursuant to § 1102 et seq. of the California  
7 Civil Code to disclose construction defects to Plaintiffs including the sinking and tilting of the  
8 Millennium Tower immediately after completion of construction in early 2009 or even earlier if  
9 they had knowledge that the Tower was sinking and tilting after the pouring of the foundation.  
10 MSD, MPI, MPM, and Jeffries were marketing units in 2008 and should have disclosed the  
11 sinking and tilting of the Tower to potential purchasers then if they were in possession of such  
12 information which on information and belief they knew as a result of their monitoring activities  
13 in 2008 and early 2009.<sup>7</sup>

14 84. At all relevant times, MPI, MSD, MPM, and Jeffries failed to disclose the sinking and  
15 tilting of the Tower to Plaintiffs and purchasers as required by state law. This failure to  
16 disclose was willful and intentional to deceive Plaintiffs to purchase their units without  
17 knowing about the construction defects including the sinking and tilting of the Tower.

18 85. The purchase agreements for the units, including disclosure statements, did not disclose  
19 certain material facts, all known to MSD, MPI, MPM, and Jeffries, including that: (a) the  
20 Millennium Tower had sunk by 8.3 inches by early 2009 when the Tower was designed to sink  
21 only 1 to 2 inches by the end of construction in early 2009; (b) having sunk by 8.3 inches in  
22 early 2009, the Tower had already sunk beyond the design standard of 4-6 inches for the 40  
23 year life of the building; (c) the Millennium Tower had differential settlement by early 2009;  
24 (d) the Millennium Tower was continuing to sink and differentially settle during 2009; and (e)  
25 throughout the MSD sales of every unit which ended in 2013, the Millennium Tower had  
26 differential settlement of 5.6 inches from southeast to northwest at Basement 1 of the Tower by

27 <sup>7</sup> Letter from R. Golesorkhi, Treadwell & Rollo, to D. Roorda, DeSimone Consulting Engineers, Tower  
28 Settlement, p. 3 (February 18, 2009).



1 November 2009.<sup>8</sup> MSD, MPI, MPM, and Jeffries had no knowledge as to when the Tower was  
2 going to stop sinking or no longer differentially settle in early 2009 and do not have that  
3 knowledge even today. None of these material facts were disclosed to Plaintiffs in any  
4 documents provided to Plaintiffs prior to close of escrow.

5 86. MSD, MPI, MPM, and Jeffries, who had clear statutory duties to disclose the  
6 construction defects, including the sinking and tilting of the building, conspired with TJPA and  
7 the City Attorney to conceal and not disclose to Plaintiffs the construction defects including the  
8 sinking and tilting of the Tower and the fact that it was continuing to sink and tilt from  
9 completion of construction.

10 87. The California Supreme Court has stated, “[c]onspiracy is not a cause of action, but a  
11 legal doctrine that imposes liability on persons who, although not actually committing a tort  
12 themselves, share with the immediate tortfeasors a common plan or design in its perpetration.  
13 By participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the  
14 torts of other coconspirators within the ambit of the conspiracy. In this way, a coconspirator  
15 incurs tort liability co-equal with the immediate tortfeasors.” *Applied Equipment Corp. v.*  
16 *Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 510 (1994) (internal citations omitted). MSD, MPI,  
17 MPM, Jeffries, TJPA, and the City Attorney are joint tortfeasors under this doctrine in  
18 concealing the construction defects from purchasers and Plaintiffs.

19 88. The MSD disclosure statement to purchasers stated that MSD had entered into an  
20 underground easement agreement with TJPA to provide both a permanent and temporary  
21 easement on the property. MSD’s disclosure statement mentioned that there was to be a  
22 permanent easement to allow for a 5-foot encroachment onto MSD’s property to construct a  
23 shoring wall to be installed for TJPA’s new terminal. It mentioned that the temporary easement  
24 may affect traffic in the driveway and the Millennium Tower’s porte cochere and an assortment  
25 of other effects designed to conceal the damage that was likely to occur from construction of  
26 the shoring wall. There was no mention that the construction of the shoring wall could cause

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27 <sup>8</sup> Memorandum from B. Dykes, Transbay, to S. Hood, Plate 2 (March 15, 2010).

1 the Tower to settle 3 inches and the podium to settle 1/2 inch, thereby causing differential  
2 settlement between them.<sup>9</sup> The disclosure statement was intended as a “head fake” to deceive  
3 buyers into believing that the easement was a typical easement and not one that was going to  
4 result in vertical and differential settlement of the Tower. At the same time that MSD provided  
5 this disclosure statement to purchasers, it knew that the Tower had already sunk and tilted  
6 beyond design standards for the life of the building. MPI, MSD, MPM, and Jeffries  
7 deliberately concealed the potential impact of the Transit Center construction by informing  
8 Plaintiffs in the April 2009 Property Disclosure Statement that Plaintiffs should expect  
9 increased congestion, traffic and noise level in the neighborhood that may have a negative  
10 impact on available parking. Plaintiffs were also alerted that the development could last for  
11 years and create noise, dust, fumes and odors, but there was no mention of the construction  
12 defects including the sinking and tilting of the Tower. (Exhibit B)

13 89. MSD entered into an easement agreement (“easement agreement”) on October 10,  
14 2008, with TJPA; the easement agreement was signed by Sean Jeffries as MSD’s authorized  
15 agent and Maria Ayerdi, Executive Director on behalf of TJPA and not recorded until March of  
16 2009. The easement contemplated a system to provide lateral and adjacent support for the  
17 Millennium Tower because of its proximity to the Tower and the need for TJPA to work  
18 adjacent to if not underneath the Tower. The agreement included extensive monitoring,  
19 including baseline studies. The baseline studies along with the monitoring were never shared  
20 with Plaintiffs even though they documented both vertical and differential settlement of the  
21 Millennium Tower. The easement agreement contains covenants which grandfathered the  
22 “cracking or settlement” of the Tower prior to commencement of construction of the Transit  
23 Center. On information and belief, there is photographic evidence of cracking and settling that  
24 occurred prior to TJPA’s construction activities. On information and belief, MSD, Jeffries, and  
25 TJPA knew at the time of entering the easement agreement in 2008 that the Millennium Tower  
26 had already sunk and differentially settled. MSD, TJPA, and Jeffries failed to disclose to

27 <sup>9</sup> Letter from R. Golesorkhi, Treadwell & Rollo to S. Hood, Millennium Partners re ARUP analyses of Transbay  
28 terminal effect (October 11, 2010).

1 Plaintiffs that they had entered into an easement agreement on October 10, 2008, between  
2 TJPA and MSD that acknowledged that damage to the Millennium Tower was likely to occur  
3 as a result of construction of the Transbay Transit Center. At no time did MSD or TJPA notify  
4 Plaintiffs of these material facts before the escrow closing dates on their units.

5 90. On February 26, 2010, the Millennium Partners, TJPA and the San Francisco City  
6 Attorneys signed a confidentiality agreement to prevent the Plaintiffs, potential buyers, and  
7 others, from knowing about their discussion about the Millennium Tower. On information and  
8 belief, those present discussed the 2008 easement agreement and issues related to the sinking  
9 and tilting of the Tower. On information and belief, the topics of the discussion included the  
10 October 10, 2008, easement agreement and that the sinking and tilting of the Millennium  
11 Tower were to be kept secret from Plaintiffs and potential buyers. TJPA was trying to escape  
12 the broad language in the easement agreement in which it accepted liability under the  
13 agreement for any damage that TJPA might do to the Tower during construction of the shoring  
14 wall. TJPA had offered money to MSD and Jeffries to escape the broad language in the  
15 easement agreement. As part of the negotiations, TJPA agreed to keep secret from Plaintiffs,  
16 potential buyers, and owners that the Tower which had sunk and tilted and was continuing to  
17 sink and tilt at a constant rate. The confidentiality agreement states that the parties agreed to  
18 keep any evidence of such discussion inadmissible and out of evidence in any court of law. All  
19 the parties agreed to keep this discussion confidential when two of the parties, MSD, and  
20 Jeffries, had a duty to disclose the sinking and tilting of the Tower to, among others, the  
21 Plaintiffs, other owners and potential purchasers. In particular, there were three attorneys at  
22 that meeting, Andrew Schwartz, representing TJPA, and Sheryl Bregman and George A.  
23 Wong, two attorneys representing the City Attorney's office; at least one of them should have  
24 told Jeffries that he had a duty to disclose the sinking and tilting of the building to owners and  
25 purchasers. At this point, the attorneys for the City and TJPA had that same duty to disclose  
26 the sinking and tilting because that is what the law requires. As members of the California state  
27 bar they had an obligation and duty not to knowingly and intentionally participate in a fraud.  
28 Instead, they became joint tortfeasors along with everyone else at this meeting and defrauded  
by concealment the homeowners and the eventual homeowners at the Millennium Tower.

1 Plaintiffs have been badly damaged by these attorneys' conspiracy to conceal the tilting and  
2 sinking of the Millennium Tower with Jeffries, MSD, MPM, and MPI, not only by diminution  
3 of their property value, but because failing to disclose what was required by law has  
4 jeopardized the safety and well-being of everyone in the building since subsequent reports have  
5 identified a heightened risk from an earthquake as a result of the sinking and tilting of the  
6 Millennium Tower. To date, not one of these entities or individuals has stepped forward  
7 publicly and taken responsibility for what they failed to do. A true and correct copy of the first  
8 Confidentiality Agreement is attached as Exhibit C. At no time did MSD, MPI, MPM, Jeffries,  
9 TJPA, or the City Attorney notify Plaintiffs of these material facts before the closing dates on  
their units.

10 91. On March 15, 2010, Brian Dykes, TJPA's Principal Engineer, sent confidential  
11 monitoring information expressly identified as not for public release to signatories on the  
12 confidentiality agreement that documented a differential settlement of 5.8 inches under the  
13 Tower and a settlement of 2 inches under the podium.<sup>10</sup>

14 92. There are other such confidentiality agreements between MSD, TJPA, and Jeffries. On  
15 March 17, 2010, MSD, TJPA, and Jeffries entered into another confidentiality agreement that  
16 was designed to cover up the duty to disclose the information exchanged in the first  
17 confidentiality agreement. The second confidentiality agreement required either party to give a  
18 10-day notice before any confidential information was disclosed under the first agreement.  
19 But, on information and belief, that 10-day notice was never exercised by either party. TJPA  
20 knew that MSD and Jeffries had not disclosed to owners that the Tower was sinking and tilting,  
21 and therefore TJPA was not relieved of their duty to disclose once TJPA became a participant  
22 in the fraud scheme. The 10-day notice in the second confidentiality agreement was a mere  
23 "fig leaf" to further conceal the sinking and tilting of the Tower from Plaintiffs, other owners  
24 and purchasers. Only on July 8, 2016, TJPA finally provided notice that it was going to be

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26 <sup>10</sup> Memorandum from B. Dykes, Transbay Principal Engineer, to S. Jeffries, S. Hood, R. Golesorkhi, D. Roorda,  
27 R. Beck, A. Schwartz, and S. Bregman, all signatories of the February 26, 2010, Confidentiality Agreement, Ex. C  
(March 15, 2010).

1 disclosing information on July 18, 2016 that had been discussed under the confidentiality  
2 agreement in 2010, but held secret from Plaintiffs and other purchasers for 6 years.

3 93. The TJPA buttress to be constructed on the southern border of the Millennium Tower  
4 was intended to stabilize the building from the impacts of TJPA construction activities. But, the  
5 TJPA buttress, shoring and excavation did cause ground settlement and lateral deformation  
6 adjacent to the excavation. According to ARUP, TJPA's consultant, the excavation-induced  
7 ground movements would cause settlement and lateral movement of the Tower and podium  
8 structure of about 3 inches and 1/2 inch, respectively.<sup>11</sup> None of this information was ever  
disclosed to Plaintiffs by Transbay or MPI, MSD and Jeffries.

9 94. Correspondence from MSD and Jeffries and its consultants commenting on TJPA's  
10 buttress, shoring and excavation bid package confirmed that according to TJPA's consultant,  
11 ARUP, the excavation induced ground movements would cause settlement and lateral  
12 movement at the Tower of about 3 inches and the podium structure of about 1/2 inch. In  
13 addition to the movement of the two structures separately, the seismic joint between them  
14 necessary for performance during an earthquake would also experience differential  
15 movement.<sup>12</sup> None of this information was ever disclosed to Plaintiffs by TJPA, MSD, or  
Jeffries as required by law.

16 95. On September 1, 2011, Maria Ayerdi, TJPA Executive Director, and Jeffries on behalf  
17 of the Millennium Tower Association as "owner," entered into an amendment to the first  
18 easement agreement dated October 8, 2008. In the amended agreement, TJPA agreed to  
19 provide to authorized representatives of MSD and MTA the real-time data from the monitoring  
20 that had confirmed that the Tower had sunk and tilted and was continuing to sink and tilt.  
21 Although Jeffries had a fiduciary duty to Plaintiffs and other owners, Jeffries never provided  
22 the monitoring data to the MTA which would have disclosed that the Tower was sinking and  
23 tilting. TJPA knew that Jeffries had failed to disclose the sinking and tilting of the Millennium  
24 Tower but pursuant to the confidentiality agreements it had entered, it kept that information

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26 <sup>11</sup> Letter from Treadwell & Rollo to S. Hood, Millennium Partners (October 11, 2010).

27 <sup>12</sup> Letter from D. Gibbons and K. Klein, Simpson Gumpertz & Hager, to S. Hood, MSD (October 14, 2010).

1 secret from Plaintiffs and other owners even though they had a duty to disclose it as a matter of  
2 law.

3 96. Once TJPA participated in the tortious fraud scheme to mislead homeowners and  
4 purchasers along with MSD and Jeffries, all of them had the ongoing duty to disclose that the  
5 building was sinking and tilting and all of them were participating in an ongoing tort of fraud.  
6 TJPA, MSD, and Jeffries participated in a fraud by concealment to keep homeowners and  
7 potential purchasers in the dark about the sinking and tilting of the building, which they were  
8 required to disclose as a matter of law.

9 97. Sean Jeffries, Vice President of Millennium Partners acted as the contact for the MTA  
10 with TJPA for purposes of receiving monitoring data and information about the stability of the  
11 building as related to the easement through October of 2016. Jeffries' role on behalf of the  
12 MTA continued after the ownership of the Millennium Tower was conveyed to the MTA. In  
13 his position as recipient of monitoring data from TJPA, Sean Jeffries had a fiduciary duty to  
14 disclose this information to Plaintiffs because of their right to know about their safety and  
15 property value. At no time did Jeffries disclose this information to Plaintiffs.

16 98. The Plaintiffs have been badly damaged as a result of the failure to disclose the nature  
17 and scope of the easement between MSD and TJPA prior to Plaintiffs' close of escrow.  
18 Plaintiffs are informed and believe and on that basis allege that each of them did the acts herein  
19 alleged with the intent to deceive and defraud Plaintiffs.

20 99. Plaintiffs in fact placed confidence in TJPA, particularly as a public agency with a  
21 mission of safety, and were not aware of any facts challenging the veracity of representations  
22 by them or the danger to Plaintiffs' interests until or about May 10, 2016, when Plaintiffs were  
23 informed in a special meeting of the homeowners' association that MSD, Jeffries, and TJPA  
24 had failed to disclose material facts concerning the Millennium Tower, had asserted their own  
25 and others' pecuniary interests above those of Plaintiffs, and had failed to properly represent  
26 Plaintiffs in the manner alleged.

27 100. If Plaintiffs would have known that MSD and Jeffries had entered into an easement  
28 agreement with TJPA that anticipated damage of an unknown degree to be determined only