

The Whitaker Law Firm
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1 **THE WHITAKER LAW FIRM**
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FILED
JAN 28 2002
FRESNO COUNTY SUPERIOR COURT
By _____ K.C. DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF FRESNO

11 ROBYN AGNEW, STEVEN & YVONNE ATHEY,
12 DOREEN AUNE, DANIEL & CARA BANDY,
13 RAUL & CARMEN CHACON, SHARON)
14 FANCIULLO, MICHAEL & MELANIE)
15 FRANKLIN, PAUL & NANCY GARNIER,)
16 DANIEL & LEANN GONCHEROFF, TONY &)
17 LUPE GRAVES, RICHARD & REBECCA)
18 JACKSON, STUART & CHERYL)
19 KAWASAKI, FARIDA MADBOULY, KURT)
20 MAES, BERTO & PATRICIA MARTINEZ,)
21 CRAIG & CYNTHIA POWELL, CLAUDIO &)
22 MARISELLA SARABIA, KURT & GLORIS)
23 STOEHR, RAYMOND & JEANNE ACKETT,)
24 JILL TAKAHASHI)

25 PLAINTIFFS,

26 VS.

27 U.S. HOMES, INC., A CALIFORNIA)
28 CORPORATION, AND DOES 1 THROUGH)
1000,)

DEFENDANTS.

CASE NO.: 02 CE CG 00293

COMPLAINT FOR DAMAGES:

- 1. STRICT PRODUCTS LIABILITY;
- 2. BREACH OF IMPLIED WARRANTY (FITNESS FOR INTENDED USE)
- 3. BREACH OF IMPLIED WARRANTY (MERCHANTABILITY)
- 4. NEGLIGENCE

\$198.00
CVCG
2/8/03

COME NOW THE PLAINTIFFS who complain and allege as follows:

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1. Plaintiffs are individuals residing in the County of Fresno, State of California.

2. The subjects of this action are the land with single family dwellings and other improvements thereon, owned by Plaintiffs respectively, (hereinafter collectively referred to as the "PROPERTY") located in the County of Fresno, State of California, described as follows:
 1. ROBYN AGNEW, 1113 N. HALIFAX, CLOVIS, CA., 93961
 2. STEVEN & YVONNE ATHEY, 242 W. GOSHEN, CLOVIS, CA., 93611
 3. DOREEN AUNE, 1162 N. HALIFAX, CLOVIS, CA., 93611
 4. DANIEL & CARA BANDY, 1163 N. HALIFAX, CLOVIS, CA., 93611
 5. RAUL & CARMEN CHACON, 1173 N. HALIFAX, CLOVIS, CA., 93611
 6. SHARON FANCIULLO, 1073 N. HALIFAX, CLOVIS, CA., 93611
 7. MICHAEL & MELANIE FRANKLIN, 292 W. GOSHEN, CLOVIS, CA., 93611
 8. PAUL & NANCY GARNIER, 1083 N. HALIFAX, CLOVIS, CA., 93611
 9. DANIEL & LEANN GONCHEROFF, 1042 N. HALIFAX, CLOVIS, CA., 93611
 10. TONY & LUPE GRAVES, 272 W. GOSHEN, CLOVIS, CA., 93611
 11. RICHARD & REBECCA JACKSON, 1023 N. HALIFAX, CLOVIS, CA., 93611
 12. STUART & CHERYL KAWASAKI, 1023 N. HALIFAX, CLOVIS, CA., 93611
 13. FARIDA MADBOULY, 1112 N. HALIFAX, CLOVIS, CA., 93611
 14. KURT MAES, 1092 N. HALIFAX, CLOVIS, CA., 93611
 15. BERTO & PATRICIA MARTINEZ, 263 W. JORDAN, CLOVIS, CA., 93611
 16. CRAIG & CYNTHIA POWELL, 1170 N. HOLMSY, CLOVIS, CA., 93611
 17. CLAUDIO & MARISELLA SARABIA, 262 W. GOSHEN, CLOVIS, CA., 93611
 18. KURT & GLORIS STOEHR, 1192 N. HALIFAX, CLOVIS, CA., 93611
 19. RAYMOND & JEANNE TACKETT, 1081 N. HOLMSY, CLOVIS, CA., 93611
 20. JILL TAKAHASHI, 1192 N. HALIFAX, CLOVIS, CA., 93611

1 3. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned
2 and material hereto that U.S. HOMES CORPORATION, was and is a corporation duly authorized
3 to conduct business in the state of California and was and is engaged in business in the County of
4 Fresno, State of California and was a developer of the PROPERTY.
5

6 4. The names and capacities, whether individual, corporate, associate or otherwise of
7 certain developers, builders, general contractors, subdividers and/or their alter egos sued herein as
8 DOES 1 through 100 inclusive, are presently unknown, and Plaintiffs will amend the complaint to
9 insert the same when ascertained. Plaintiffs are informed and believe and based thereon allege that
10 each of these Defendants was a resident of said County and State and/or have principal offices or
11 were doing business in said County and State and were and are responsible in some way for the
12 happenings and damages alleged in this complaint. Said Defendants, along with the Defendants
13 named in paragraph 3 above, will hereinafter be referred to as the "DEVELOPER DEFENDANTS."
14

15 5. In order to build and construct said project the DEVELOPER DEFENDANTS hired,
16 retained, employed, or contracted for the services of certain persons or entities to plan, design, and
17 prepare drawings and specifications for the building of the project. The identities of said persons or
18 entities, whether individual, corporate or otherwise, sued herein as Does 101 through 200, are
19 presently unknown to plaintiff who therefore sues such persons by their fictitious names. Plaintiffs
20 are informed and believe and thereupon allege that said persons or entities are wholly or in some
21 part responsible for the occurrences set forth in the complaint. These Defendants will hereinafter be
22 referred to as the "DESIGN DEFENDANTS."
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1 6. In order to build and construct said project the DEVELOPER DEFENDANTS hired,
2 retained, employed, or contracted for persons or entities to provide for labor and materials in the
3 construction of the project. The identities of said persons or entities, whether individual, corporate,
4 or otherwise, sued herein as Does 201 through 300 are presently unknown to Plaintiffs who
5 therefore sue such persons by their fictitious names. Plaintiffs are informed and believe and
6 thereupon allege that said persons or entities are wholly or in some part responsible for the
7 occurrences set for in the complaint. These Defendants will hereinafter be referred to as the
8 "CONTRACTOR DEFENDANTS."
9

10 7. Plaintiffs are informed and believe and based thereon allege that at all times herein
11 mentioned Defendants and each of them were the agents, servants, employees, assistants and
12 consultants of their co-Defendants and were as such acting within the course and scope of their
13 agency and authority of such agency and employment.
14

15 **FIRST CAUSE OF ACTION**

16 **(FOR STRICT PRODUCTS LIABILITY AGAINST THE DEVELOPER DEFENDANTS)**
17

18 8. Plaintiffs repeat and re-allege Paragraphs 1 through 7, inclusive, and incorporate the
19 same as if set forth herein at length.
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21 9. DEVELOPER DEFENDANTS, and each of them, at all times herein mentioned
22 were in the business of developing and mass producing homes in the within County and State, and
23 selling them to members of the public at large.
24

25 10. DEVELOPER DEFENDANTS and each of them, developed and mass produced the
26 PROPERTY.
27

1 11. At all times herein mentioned and material hereto, DEVELOPER DEFENDANTS
2 knew and intended that the PROPERTY would be purchased by members of the public at large, and
3 used by them without further inspection for defects.

4
5 12. Plaintiffs purchased the PROPERTY from said DEVELOPER DEFENDANTS and
6 moved into it with their families.

7
8 13. At the time of the purchase by Plaintiffs, the PROPERTY was defective and unfit for
9 its intended purposes because Defendants did not construct the PROPERTY in a workmanlike
10 manner as manifested by, but not limited to, the following defects:

- 11 A. Soil subsidence and movement;
- 12 B. Sinking and cracking of concrete slabs in sidewalks,
13 driveways, patios, building slabs, and garages;
- 14 C. Cracking of the exterior stucco;
- 15 D. Inadequate site drainage systems resulting in pooling of water
16 around buildings;
- 17 E. Cracking of interior ceilings and walls;
- 18 F. Misalignment of windows and doors;
- 19 G. Leaking roofs and windows;
- 20 H. Inadequate heating and cooling of homes;
- 21 I. Leaking and rattling water pipes;
- 22 J. Warped and mis-aligned doors;
- 23 K. Moisture intrusion through concrete foundation slabs.

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14. As a direct and proximate result of the foregoing defects, the PROPERTY has experienced resultant and consequential damage in the form of breaking, cracking, separations, excessive moisture, leaking, seepage, unsanitary conditions, movement and other structural distress, damage, failure, and defective component parts. This resultant and consequential damage includes, but is not limited to, excessive cracking and breaking of concrete foundation slabs, walls, roofs and windows, excessive moisture intrusion through concrete slabs damaging floor coverings, furnishings and personal effects, cracking and separation of exterior siding, chimneys and cement flatwork, soil movement and subsidence, insect infestation, roof leakage, cracking exterior walls, faulty plumbing fixtures and systems, resultant mold, mildew and bio-organic growth, separating and sagging cabinets and molding, poor framing resulting in excessive stucco cracking, roof sagging and damage to the roof systems, faulty or non-existent lot drainage, defective drywall installation, painting, flooring and other workmanship damaging other components of the PROPERTY, all of which have rendered the PROPERTY incapable of withstanding normal and reasonably foreseeable use and environmental forces, and damaged as a result.

15. Within the last 3 years Plaintiffs became aware of the defects and deficiencies. The Plaintiffs thereafter gave DEVELOPER DEFENDANTS due and timely notice of the defective quality of the above mentioned items.

16. The defects alleged hereinabove are defects that were not apparent by reasonable inspection of the PROPERTY at the time of the purchase. The defects thereafter manifested.

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1 17. Because of the defective conditions of the PROPERTY as hereinabove alleged,
2 Plaintiffs have been specifically damaged in the following ways, as well as others that will be
3 inserted with leave of court when ascertained:

4 A. Plaintiffs will be forced to incur expenses for the restoration and repairs of the
5 PROPERTY to cure the defects and/or deficiencies. The exact amount of the
6 damages is presently unknown, except that the costs will exceed the sum of the
7 jurisdictional minimum of this Court, according to proof.

8 B. The Plaintiffs have been damaged through the diminution in value of the
9 PROPERTY. Plaintiffs are unaware of the precise amount of such damage but will
10 establish such amount at time of trial.

11 C. The Plaintiffs have been forced to retain expert consultants to analyze and determine
12 the method of repairing the aforementioned defects, as well as to prosecute the
13 instant litigation after DEVELOPER DEFENDANTS wrongfully refused to repair
14 the defective conditions specified above. Plaintiffs are unaware of the precise
15 amount of such damage but will establish such amount at time of trial.

16 18. Defendants, and each of them, as developers, mass producers, builders and sellers of
17 residential dwelling units are strictly liable and responsible to Plaintiffs for all
18 damage suffered as a result of the above described defects and deficiencies in the
19 PROPERTY.
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SECOND CAUSE OF ACTION

(FOR BREACH OF IMPLIED WARRANTY OF FITNESS

FOR INTENDED USE AGAINST THE DEVELOPER DEFENDANTS)

19. Plaintiffs repeat and re-allege Paragraphs 1 through 18 inclusive, and incorporate the same as if set forth herein at length.

20. At all times herein mentioned and material hereto the DEVELOPER DEFENDANTS were and now are the merchants and sellers of newly constructed housing, the type of merchandise sold to Plaintiffs as hereinabove alleged and described.

21. DEVELOPER DEFENDANTS, and each of them, at the time and place of the sale of the PROPERTY, impliedly warranted that it was properly constructed and fit for use as homes.

22. The PROPERTY was not properly constructed, and not fit for its intended use, and was defective as previously alleged hereinabove in paragraphs 13 and 14.

23. Within the last 3 years Plaintiffs discovered the defective quality of the PROPERTY. Plaintiffs thereafter gave the DEVELOPER DEFENDANTS, and each of them, due and timely notice of the defective quality of the above mentioned items.

24. The defects described hereinabove caused by the breaches of warranty by the DEVELOPER DEFENDANTS, and each of them, were defects not apparent by reasonable inspection of the PROPERTY at the time of purchase. The defects and damages were latent and were not reasonably apparent to Plaintiffs until on or about the time of notification to the DEVELOPER DEFENDANTS.

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30. Within the last 3 years Plaintiffs discovered the defective quality of the PROPERTY. Plaintiffs thereafter gave the DEVELOPER DEFENDANTS, and each of them, due and timely notice of the defective quality of the above mentioned items.

31. The defects described hereinabove caused by the breaches of warranty by DEVELOPER DEFENDANTS, and each of them, were defects not apparent by reasonable inspection of the PROPERTY at the time of purchase. The defects and damages were latent and were not reasonably apparent to Plaintiffs until on or about the time of notification to the DEVELOPER DEFENDANTS.

32. Because of the foregoing breaches of implied warranties by DEVELOPER DEFENDANTS, and each of them, Plaintiffs have been specifically damaged as hereinabove alleged.

FOURTH CAUSE OF ACTION
**(FOR NEGLIGENCE AGAINST THE DEVELOPER DEFENDANTS,
DESIGN DEFENDANTS AND CONTRACTOR DEFENDANTS)**

33. Plaintiffs repeat and re-allege paragraphs 1 through 32 inclusive, and incorporate the same as if set forth herein at length.

34. The aforementioned Defendants so carelessly and negligently planned, constructed, modified, inspected, and/or performed work and services at the PROPERTY so as to proximately cause damages to the systems, buildings, and improvements as hereinabove alleged in paragraphs 13 and 14.

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1 25. Because of the foregoing breaches of implied warranties by the DEVELOPER
2 DEFENDANTS, and each of them, Plaintiffs have been specifically damaged as
3 hereinabove alleged in paragraph 17.
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7 **THIRD CAUSE OF ACTION**

8 **(FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
9 **AGAINST THE DEVELOPER DEFENDANTS)**
10

11 26. Plaintiffs repeat and reallege Paragraphs 1 through 25 inclusive, and incorporate the
12 same as if set forth herein at length.

13 27. At all times herein mentioned and material hereto the DEVELOPER
14 DEFENDANTS were and now are the merchants and sellers of newly constructed housing, the type
15 of merchandise sold to Plaintiffs as hereinabove alleged and described.
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17 28. The DEVELOPER DEFENDANTS, and each of them, at the time and place of the
18 sale of the PROPERTY, impliedly warranted that they it was properly constructed and of
19 merchantable quality.
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21 29. The PROPERTY was not properly constructed, and not of merchantable quality in
22 that it was defective as previously alleged hereinabove in paragraphs 13 and 14.
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35. Because of the carelessness and negligence of each of the Defendants, and as a proximate result thereof, Plaintiffs have been damaged as previously alleged hereinabove.

36. Within the last 3 years Plaintiffs discovered the defective quality of the PROPERTY.

37. The damages described hereinabove was caused by the negligently and carelessly performed work of the Defendants, and each of them, were defects not apparent by reasonable inspection of the PROPERTY at the time of purchase.

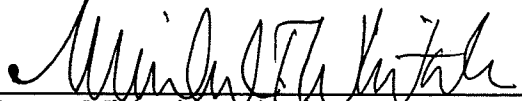
WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

ON THE FIRST, SECOND, THIRD, AND FOURTH CAUSES OF ACTION:

1. For costs of hiring engineers and other experts to investigate and analyze the damages according to proof at the time of trial;
2. For costs of restoration and repairs to the PROPERTY in excess of the jurisdictional minimum of the Court, according to proof;
3. For diminution of value of the PROPERTY according to proof at time of trial;
4. For costs of suit;
5. For such other and further relief as the Court deems just and proper.

DATED: January 17, 2002

THE WHITAKER LAW FIRM


By: Michael T. Whitaker
Attorneys for Plaintiffs