

MAR 16 2007

Angela Alioto, Esq. SBN 130328  
Joshua D. Boxer, Esq. SBN 226712

**LAW OFFICES OF MAYOR JOSEPH L. SARTORIUS & ANGELA ALIOTO**  
700 Montgomery Street  
San Francisco, CA 94111  
Telephone: (415) 434-8700  
Facsimile: (415) 438-4638

Attorneys for Plaintiffs

AUG 17 2007 - 9<sup>00</sup>AM

DEPARTMENT 212

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN FRANCISCO**

**GARY MCINTYRE, CLEMENTINE  
CLARKE, CEOLA RICHARDSON**

Plaintiffs,

v.

**LENNAR CORPORATION, LENNAR  
HOMES OF CALIFORNIA INC.,  
LENNAR ASSOCIATES  
MANAGEMENT, LLC, LENNAR  
COMMUNITIES INC., LENNAR-BVHP  
LLC, PAUL MENAKER, and DOES 1-100  
INCLUSIVE.**

Defendants.

CASE NO.

99007-461414

**COMPLAINT FOR DAMAGES**

1. Racial Discrimination;
2. Racial Harassment;
3. Retaliation in Violation of Public Policy (Whistle Blowing);
4. Retaliation in Violation of FEHA;
5. Failure to Prevent Discrimination/ Harassment;
6. Intentional Infliction of Emotional Distress.

**DEMAND FOR JURY TRIAL**

## **PARTIES AND JURISDICTION**

1. At all pertinent times mentioned in this complaint, all Plaintiffs were residents of the State of California working within the City and County of San Francisco.
2. Defendant Lennar Corporation is a Delaware Corporation doing business in California and is the employer of Plaintiffs.
3. Defendant Lennar Homes of California is a California Corporation doing business in California and is the employer of Plaintiffs.
4. Defendant Lennar Associates Management LLC is a California Limited Liability Corporation doing business in California and is the employer of Plaintiffs.
5. Defendant Lennar Communities Inc. is a California Corporation doing business in California and is the employer of Plaintiffs.
6. Defendant Lennar-BVHP LLC is a California Limited Liability Corporation doing business in California and is the employer of Plaintiffs.
7. Defendant Paul Menaker is Lennar's Senior Vice President and supervisor of each of the Plaintiffs in this action. Menaker is a citizen of the State of California.
8. At all times mentioned in the causes of action into which this paragraph is incorporated by reference, each and every defendant was the agent or employee of each and every other defendant. In doing the things alleged in the causes of action into which this paragraph is incorporated by reference, each and every defendant was acting within the course and scope of this agency or employment and was acting with the consent, permission, and authorization of each remaining defendant. All actions of each defendant alleged in the causes of action into which this paragraph is incorporated by reference were ratified and approved by the officers or managing agents of every other defendants.
9. Plaintiffs are ignorant of the true names or capacities of the defendants sued here under the fictitious names DOE ONE through DOE ONE HUNDRED, inclusive. Plaintiffs are informed and believe that each DOE defendant was responsible in some manner for the occurrences and injuries alleged in this complaint.

1                   **EXHAUSTION OF ADMINISTRATIVE REMEDIES UNDER FEHA**

- 2   10.   Plaintiffs have filed administrative complaints with the California Department of  
3       Fair Employment and Housing.

4                   **FACTS**

5                   **Plaintiff Gary McIntyre**

- 6   11.   Plaintiff Gary McIntyre has over thirty years of experience in the construction  
7       field. McIntyre was the Project Manager on the Port of Oakland, the San  
8       Francisco International Airport and numerous other high profile projects.
- 9   12.   McIntyre was hired by Lennar Coporation, Lennar Communities Inc., Lennar  
10       Homes of California Inc. Lennar Associates Management, LLC and Lennar-  
11       BVHP, LLC (hereinafter "Lennar" or the "Corporate Defendants") on December  
12       6, 2004 as a Project Manager.
- 13   13.   As the Project Manager, McIntyre was responsible for all aspects of the Bayview  
14       Hunters Point Shipyard Project, as well as ensuring that the subcontractors  
15       comply with the contract and all applicable laws.
- 16   14.   The first stage of the project involved the grading and paving of Parcel A of the  
17       Shipyard. Lennar awarded a \$20 million contract Gordon N. Ball Inc.-Yerba  
18       Buena Engineering & Construction Inc. (Hereinafter "Gordon Ball") to perform  
19       the grading and build a retaining wall.
- 20   15.   As part of this contract, Gordon Ball was responsible for leveling off  
21       approximately forty acres of land by digging down approximately 30 feet  
22       through the rock in order to create a level plateau upon which Lennar would  
23       build new homes.
- 24   16.   Much of this rock was Serpentine rock, which contains high levels of naturally  
25       occurring asbestos that becomes airborne during the digging process.
- 26   17.   Lennar knew of the danger of exposing the Bayview Hunter's Point community  
27       to toxic dust and had a responsibility to ensure that Lennar's subcontractors  
28       followed the specific requirements of the contract, as well as all applicable local,

- 1 state and federal guidelines to prevent exposing the community to toxic dust.
- 2 18. Lennar and its subcontracts were required to continually water down the areas
- 3 being excavated in order to prevent airborne asbestos from leaving the worksite
- 4 and endangering the lives of the surrounding community members. Further,
- 5 Lennar and its subcontractors were required to set up a monitoring system to
- 6 alert the workcrews when asbestos levels reached unsafe levels. Specifically, all
- 7 work was supposed to immediately stop if asbestos levels reached 16,000 TEMS
- 8 per cubic meter.
- 9 19. If the asbestos exceeded 16,000 TEMS, the work was required to stop until it
- 10 reached acceptable levels.
- 11 20. However, Lennar and its subcontractors continually refused to properly water
- 12 the job site and permitted toxic dust to cover the surrounding community.
- 13 Lennar also allowed its subcontractor's trucks to drive too fast, further kicking
- 14 up dust clouds. Lennar and its subcontractors also refused to properly water and
- 15 sweep the roads.
- 16 21. On March 3, 2006, during a large meeting with Lennar's environmental attorneys
- 17 and subcontractors, Paul Menaker, Lennar's Senior Vice President, joked that the
- 18 Shipyard was so hazardous that Plaintiff McIntyre, who is bald, had hair when
- 19 he started working there.
- 20 22. In June of 2006, the community began to complain about the toxic dust leaving
- 21 the worksite. Numerous community groups complained to Plaintiff, as well as
- 22 the San Francisco Redevelopment Agency and the San Francisco Department of
- 23 Public Health about this problem. Plaintiff McIntyre continually complained to
- 24 his supervisors, including Paul Menaker and Kofi Bonner, about this illegal and
- 25 dangerous conduct. He further repeatedly warned the subcontractor, Gordon
- 26 Ball, that it was violating the contract and endangering the community.
- 27 Plaintiff's supervisors supported Gordon Ball and refused to take appropriate
- 28 remedial action, despite their wilful breach of the contract and the danger to the

1 public health.

2 23. In July 2006, Plaintiff's doctor put him on an inhaler to help with breathing  
3 problems that he himself began having as a result of the dust on the worksite.

4 24. Later, on July 28, 2006 Lennar received a citation from the San Francisco  
5 Department of Public Health for failure to comply with the dust control plan.  
6 Plaintiff was very embarrassed that his project would receive citations and his  
7 superiors were not taking appropriate action.

8 25. Additionally, there have been approximately 15-16 work stoppages as a result of  
9 the asbestos and other times where the work has continued despite asbestos  
10 readings exceeding the guidelines mandated by the regional air quality district.  
11 Despite Plaintiff's repeated complaints to his supervisors, including Paul  
12 Menaker and Kofi Bonner, Lennar and its subcontractors have not remedied this  
13 dangerous situation.

14 26. On August 1, 2006, as a result of his complaints, Plaintiff was demoted. McIntyre  
15 lost his responsibility for the overseeing the grading and retaining walls contract  
16 and was reassigned to maintaining the porta-potties and baker tank. Plaintiff  
17 was no longer allowed to have weekly meetings with consultants and was  
18 relegated to the office doing paperwork instead of working in the field. Plaintiff  
19 was replaced by a non-African-American. After Plaintiff was demoted in August  
20 2006, he lost all of his administrative assistance. As such, Plaintiff's valuable time  
21 was expended on administrative matters.

22 27. Later, in August 2006, shortly after making his complaints, Plaintiff received an  
23 unwarranted negative performance evaluation from his supervisor, Paul  
24 Menaker. Plaintiff received a 2.4 out of 4 despite his excellent work. While  
25 Plaintiff protested his negative performance evaluation, sending a letter to his  
26 managers refuting his rating, Plaintiff's evaluation was never changed.

27 28. On August 2, 2006, Paul Menaker called a meeting with Plaintiffs McIntyre and  
28 Clarke and told them that the dust control monitoring equipment was not

1 working and in fact *he did not know whether any of the data for the past three*  
2 *or four months was accurate.* As such, unsafe levels of asbestos had entered the  
3 community and Lennar's subcontractors kept working even though levels  
4 exceeded 16,000 TEMS. Plaintiffs complained to Menaker and told him that this  
5 was wrong. Menaker responded by telling Plaintiffs that they were not allowed  
6 to tell anyone in the community about the danger and that they were to maintain  
7 a "code of silence."

8 29. In November of 2006, Minister Christopher, the dean of the Muslim University  
9 that is located right next to the shipyard, brought the schoolchildren of the  
10 Mohammed University to several San Francisco Commission meetings and  
11 community meetings because Lennar's operations had covered the school and  
12 the children with asbestos-laden dust. Minister Christopher complained that  
13 Lennar failed to notify them when asbestos in the air reached unsafe levels and  
14 that work continued even when the levels exceeded 16,000 TEMS per cubic  
15 meter. Plaintiffs McIntyre and Clarke complained to Paul Menaker that what  
16 Lennar and Gordon Ball were doing to the kids and the community was wrong  
17 and was a serious problem. However, instead of properly responding to Minister  
18 Christopher and this extraordinarily serious issue, Paul Menaker referred to  
19 Christopher as a "shakedown artist."

20 30. In December, 2006, Paul Menaker attempted to fire the African-American  
21 employees hired to monitor the dust. Plaintiff complained to Paul Menaker that  
22 this was wrong and that Lennar should hold Gordon Ball accountable for the  
23 dust issues instead of firing the African-American inspectors.

24 31. In December, 2006, Gordon Ball kept working, even though the asbestos level  
25 reached *54,000 TEMS per cubic meter.* Plaintiff McIntyre again complained to  
26 Paul Menaker about this illegal conduct but nothing was done. Plaintiff McIntyre  
27 told Menaker that he was deeply troubled by the fact that the community  
28 believes that he is still the Project Manager, even though he was stripped of his

1 duties. Menaker told Plaintiff McIntyre, in front of Plaintiff Clarke, "you're not  
2 to be f...ing telling anyone that you're no longer the project manager." Plaintiff  
3 was being made the scape goat for Lennar's failures.

4 32. In June, 2006, before his demotion, Plaintiff McIntyre noticed severe  
5 discrepancies in the invoicing submitted by Gordon Ball. Specifically, while  
6 Gordon Ball stated that over \$1 million was going to a certain minority-owned  
7 subcontractor, only a small fraction of that money was actually going to the  
8 subcontractor.

9 33. In order to make sure that the minority-owned subcontractor was being paid  
10 according to what Gordon Ball stated, Plaintiff issued joint checks to Gordon Ball  
11 and minority-owned subcontractor.

12 34. Paul Menaker responded by telling Plaintiff that what he was doing was improper  
13 and that he should stay out of Gordon Ball's business. However, Plaintiff has the  
14 responsibility that to ensure that Gordon Ball does not illegally exclude the MBE  
15 and to make sure that both Lennar and Gordon Ball adhere to the Disposition  
16 and Development Agreement ("DDA") between Lennar and the Redevelopment  
17 Agency of the City and County of San Francisco.

18 35. As part of its agreement with Lennar and the San Francisco Redevelopment  
19 Agency, Gordon Ball, itself a non-minority contractor, is also required to meet  
20 certain goals with respect to using subcontractors that are minority-owned  
21 business enterprises (MBE) and woman-owned business enterprises (WBE).  
22 Under the agreement, 25.6% of Gordon Ball's workforce hours should be from  
23 MBEs and 6.9% of the workforce hours should be from WBEs. Additionally, 50%  
24 of the workforce hours should be for San Francisco residents with preferences  
25 given to residents of BVHP.

26 36. As part of his job, McIntyre was responsible for protecting the minority-owned  
27 businesses and making sure that Gordon Ball complied with the contract.  
28 Despite his complaints to his supervisors about what Plaintiff believed to be

- 1 illegal accounting practices and possible fraud, nothing changed.
- 2 37. In response to Plaintiff's complaints about illegal conduct, Plaintiff was demoted  
3 as described above on August 1, 2006.
- 4 38. Throughout his employment with Lennar, Plaintiff McIntyre has been singled  
5 out for disparate treatment as compared to his non-African-American colleagues.  
6 McIntyre was continually excluded from key operations meetings by his  
7 supervisor, Paul Menaker. Plaintiffs McIntyre and Clarke were the only regular  
8 attendees to be excluded and the only African-Americans who were excluded  
9 from these key meetings.
- 10 39. Attending these meetings was critical to Plaintiff's job performance because he  
11 was responsible for reporting on the project to the community and he needed to  
12 give updates to various groups, individuals and community meetings.  
13 Additionally, Plaintiff needed to know the progress on the project and keep up  
14 to date with all of Lennar's plans. Plaintiff continually found himself out of the  
15 loop on important project developments because of his prior complaints of race  
16 discrimination and his complaints about illegal conduct.
- 17 40. During his employment with Lennar, Plaintiff McIntyre heard his supervisor,  
18 Paul Menaker, make numerous offensive comments about Africa-American  
19 employees, contractors and consultants. In reference to an African-American  
20 contractor, Menaker stated "Lennar shouldn't be giving contracts to a man that  
21 can afford a Viper." Plaintiff was offended and Menaker only make offensive  
22 comments about African-American employees, contractors and consultants.  
23 Further, Menaker frequently yells at Plaintiff and other African-American  
24 employees but does not yell at non-African-Americans.
- 25 41. Additionally, during Plaintiff's entire career with Lennar, Paul Menaker would  
26 frequently delay payment to the African-American contractors and consultants  
27 but would never do so for the non-African-Americans working on the project.  
28 Menaker would frequently "lose" the invoices and change orders for the African-



American contractors and consultants, creating further delay. Plaintiffs have no knowledge of this ever happening with non-African-American contractors and consultants.

42. Further, at the request of management, Plaintiff became a member of the Rotary in December 2005/ January 2006, in order to network with community and business leaders. While Plaintiff's supervisors promised to pay his Rotary dues over a year ago, Lennar has still not paid them. Even though it was important to his job that he interact with the community, Plaintiff stopped attending Rotary meetings because it was too embarrassing that his dues have never been paid.

43. In January of 2007, Steve Moreland, a non-African-American Project Manager, was responsible for preparing a project manual with the bid specifications that was given out to potential bidders. In this booklet is a list of the minority-owned business enterprises currently working on the Bayview Shipyard project. Moreland intentionally changed the name of one of businesses working with MBEs from FERMA to FUBU, the popular African-American clothing company. Moreland changed FERMA's address from Mountain View to "Money View." Moreland also changed the amount of the contract to a billion dollars. When confronted by Plaintiffs, Moreland stated that he thought FUBU stood for "f....ed up beyond this universe."

44. All Plaintiffs were deeply offended by Moreland's comments and incredibly embarrassed that Moreland's racist joke would be disseminated to the African-American community.

45. In January, 2007, Plaintiff complained to Paul Menaker and Steve Moreland, the non-African-American Project Manager, that he was offended by this racist act. Because he is still listed as Project Manager, even though he lost his project management duties, this significantly undermined Plaintiff's credibility and standing within the community. Members of the SFRA also told Plaintiff that

1 they were offended by Lennar's publication. While the manual was on Steve  
2 Moreland's laptop, there has been no investigation into this incident and no one  
3 has been disciplined.

4 46. On January 29, 2007, after mistaking the identity of an African-American  
5 contractor, Steve Moreland, Project Manager, told Plaintiff that all African-  
6 Americans "look alike."

7 47. In February of 2007, shortly after complaining about the FUBU incident, Plaintiff  
8 McIntyre was moved from the office he occupied for two years to a smaller office  
9 behind a fire door from the rest of the central offices. There was no reason given  
10 for this move, which significantly impacted Plaintiff's job performance because  
11 he was in the middle of the largest bidding process at the time. Plaintiff had to  
12 sift through numerous boxes in order to find the documents he needed in order  
13 to meet his deadlines.

14 **Plaintiff Clementine Clarke**

15 48. Plaintiff Clementine Clarke began working for Lennar as a sub-consultant in  
16 May of 2005 and was hired as an employee of Lennar in September of 2005 as the  
17 Community Benefits Manager.

18 49. Plaintiff is a San Francisco Fire Commissioner, appointed by Mayor Gavin  
19 Newsom, and has occupied numerous leadership positions within the San  
20 Francisco community.

21 50. As part of its agreement with the San Francisco Redevelopment Agency, Lennar  
22 agreed to eleven different community benefits programs, such as a construction  
23 assistance program and a job training program. Plaintiff Clarke is in charge of  
24 overseeing these eleven community programs. A community benefits program is  
25 one that works one on one with the local community and in this case it is the  
26 Bayview Hunter's Point area.

27 51. In November, 2005, during her second month as a Lennar employee, Plaintiff  
28

1 Clarke was removed from her office and moved to a cubicle. Clarke had her  
2 office equipment, all of her personal belongings and her paycheck removed from  
3 her office while she was away over the weekend and without her knowledge or  
4 consent. This was allegedly done to make room for a new employee. However,  
5 the office remained vacant for between 6-8 months. Plaintiff Clarke is not aware  
6 of this happening to any non-African-American employee.

7 52. Later in November, 2005, Plaintiff was asked for assistance in Defendant's  
8 winning a bid to become the master developer for the San Francisco 49ers.  
9 Plaintiff was promised that she would be taken care of financially because of her  
10 assistance and would be able to work on this important project. However,  
11 Plaintiff was excluded from all meetings regarding the project and until late  
12 November/ early December 2006, there were no African-American employees  
13 working on the Candlestick project.

14 53. In February of 2006 Plaintiff Clarke began to be excluded from operations  
15 meetings by manager Paul Menaker. Plaintiff Richardson heard Paul Menaker  
16 state that "we don't want certain people involved." Plaintiffs Clarke and  
17 McIntyre were the only regular attendees to be excluded, and they were the only  
18 African-Americans who regularly attended these meetings other than Kofi  
19 Bonner, the president. At the time, there were approximately 17-18 individuals  
20 attending these meetings.

21 54. Attending these meetings was critical to Plaintiff Clarke's job performance  
22 because she was responsible for reporting on the Community Benefits Programs  
23 to the community and she needed to give updates to various groups, individuals  
24 and community meetings.

25 55. Throughout her career with Lennar, Plaintiff Clarke heard her supervisor, Paul  
26 Menaker make numerous disparaging remarks about African-American  
27 employees, subcontractors, consultants and community members.  
28

- 1 56. In March/ April, 2006, Paul Menaker stated, "why negotiate with him, he has a  
2 criminal background," in reference to an African-American subcontractor.  
3 Menaker called another African-American contractor a "G...d damned front  
4 man," and "why would we contract with him, he already drives a Viper. "  
5 Menaker never made disparaging comments about non-African-American  
6 employees, contractors and consultants. When Plaintiff told Menaker that he  
7 was mistaken about the identity of an African-American in the conference room,  
8 Menaker stated that "they all look alike. "
- 9 57. When Plaintiff Clarke complained to Menaker about his disparaging and  
10 discriminatory comments about an African-American contractor in May of 2006,  
11 she was told to never speak to him about that again.
- 12 58. In February, 2007, after Plaintiff Clarke had already complained about racism to  
13 Menaker, Menaker stated that he was not going to pay an African-American  
14 consultant the recommended fee because "I ain't paying for his new BMW."  
15 Menaker later stated that he did not want to pay the recommended fee for  
16 another African-American consulting company because, "Lennar ain't paying for  
17 her second home in Paris." Menaker never made disparaging comments about  
18 non-African-Americans.
- 19 59. In the Spring and Summer of 2006, the Shipyard project was plagued with dust  
20 control problems. Lennar's subcontractors failed to properly water the site  
21 during digging and asbestos-laden dust would frequently leave the site and  
22 cover the community. Plaintiff, in her capacity as community benefits manager,  
23 fielded complaints from community members about the dust control issues.  
24 Plaintiff passed these complaints on to her supervisor, Paul Menaker.
- 25 60. In August of 2006, Paul Menaker called a meeting with Plaintiffs McIntyre and  
26 Clarke and told them that the dust control monitoring equipment was not  
27 working and in fact *he did not know whether any of the data for the past three*  
28

1        *or four months was accurate.* As such, illegal levels of asbestos had entered the  
2        community and Lennar's subcontractors kept working even though levels  
3        exceeded 16,000 TEMS. Plaintiffs McIntyre and Clarke complained to Paul  
4        Menaker that what Lennar and Gordon Ball were doing to the kids and the  
5        community was wrong and was a serious problem. Menaker responded to  
6        Plaintiff's complaints by telling them that they were not allowed to tell anyone in  
7        the community or otherwise about the problem and that they were to maintain a  
8        "code of silence."

9        61. In October, 2006, after Plaintiff Clarke made her complaints about illegal  
10        conduct, Plaintiff received an unwarranted negative performance evaluation  
11        from Paul Menaker, criticizing her leadership.

12        62. Plaintiff complained to Paul that this was the first time in her professional career  
13        that anyone questioned her leadership. Paul had no justification for his negative  
14        evaluation.

15        63. In October, 2006, the San Francisco Health Department reported to Lennar that  
16        they needed to reign in Gordon Ball because of their failures to follow the dust  
17        control policy. Again, Lennar failed to take appropriate action.

18        64. In November 2006, Minister Christopher, the dean of the Mohammad University  
19        that is located right next to the shipyard, brought the schoolchildren of the  
20        Mohammed University to several community meetings *because Lennar's*  
21        *operations had covered the children and their school with asbestos-laden dust.*  
22        Minister Christopher complained that Lennar failed to notify them when  
23        asbestos in the air reached unsafe levels and that work continued even when the  
24        levels exceeded 16,000 TEMS per cubic meter. Plaintiffs McIntyre and Clarke  
25        complained to Paul Menaker that what Lennar and Gordon Ball were doing was  
26        wrong. However, instead of properly responding to Minister Christopher and  
27        this extraordinarily serious health issue with these children, Paul Menaker  
28

referred to Minister Christopher as a "shakedown artist."

65. In January of 2007, Steve Moreland, a non-African-American Project Manager, was responsible for preparing a project manual with the bid specifications that was given out to potential bidders. In this booklet, which is a formal company document, is a list of the minority-owned business enterprises currently working on the Bayview Hunter's Shipyard project. Moreland intentionally changed the name of one of businesses working with MBEs from FERMA to FUBU, the popular African-American clothing company. Moreland changed FERMA's address from Mountain View to "Money View." Moreland also changed the amount of the contract to a billion dollars. When confronted by Plaintiffs, Moreland stated that he thought FUBU stood for "f....ed up beyond this universe."

66. All Plaintiffs were deeply offended by Moreland's comments and incredibly embarrassed that Moreland's racist joke would be disseminated to the African-American community. Plaintiffs complained to their supervisor, Paul Menaker, that this was offensive. Menaker stated that he did not know what it meant and failed to investigate or discipline anyone.

67. In February, 2007, Plaintiff Clarke was told that she was going to have to share an office with Gary McIntyre, thereby segregating most of the African-American workforce to one specific area. Plaintiff was a nervous wreck and refused to go.

68. Later in February, 2007, Paul Menaker stated that "you will never be the operative that Kofi Bonner wants you to be."

**Plaintiff Celoa Richardson**

69. Plaintiff Celoa Richardson, an African-American woman, began working for Lennar as a temporary employee in August of 2005 and was hired as a Lennar employee as an administrative assistant on December 5, 2005.

70. At first, Plaintiff Richardson was assigned to assist Plaintiffs Gary McIntyre,

1 Clementine Clarke, Paul Menaker, Bob Hocker and the minority contractors  
2 working out of the on-site trailers. Gary McIntyre was Richardson's direct  
3 support.

4 71. Plaintiff Richardson immediately noticed that Paul Menaker, Senior Vice  
5 President, would scrutinize Gary McIntyre's expense reports but would never do  
6 so for the non-African-American employees.

7 72. Further, Richardson saw that Menaker would take an extraordinary amount of  
8 time paying the invoices and processing the change orders for the African-  
9 American businesses and consultants but would immediately pay the invoices  
10 and process the change orders for the non-African-American businesses and  
11 consultants, even though they usually involved a much larger amount of money.

12 73. In addition, Richardson was in charge of assisting the consultants working out of  
13 the trailers on the job site.

14 74. In January/ February, 2006 Richardson complained to her superior, Paul  
15 Menaker, about the disparity in copiers, telephones, computer serves and other  
16 office equipment with the trailers occupied by the minority contractors and  
17 consultants versus the non-African-American consultants and contractors.  
18 Menaker refused to rectify this disparity.

19 75. In June of 2006, however, just after Plaintiff McIntyre made his complaints about  
20 illegal asbestos levels and Plaintiff Richardson had complained about racism,  
21 Richardson was reassigned, leaving McIntyre without any administrative  
22 assistance.

23 76. Throughout her career with Lennar, Plaintiff Richardson was assigned more  
24 work and reported to many more superiors than her non-African-American  
25 coworkers. Plaintiff was responsible for assisting six individuals, while the two  
26 non-African-American employees assisted only one or two.

27 77. Additionally, Plaintiff Richardson did the work of a "project coordinator," as  
28

1 well as her administrative assistant duties, but has never been given the title, pay  
2 or self-respect that comes with that position, despite her complaints to Paul  
3 Menaker. There are currently only 6 African-American employees out of a total  
4 of 42 employees in the workplace.

5 78. In October, 2006, after she had complained of racism, Plaintiff was given a  
6 negative employee evaluation by Paul Menaker, despite Plaintiff's excellent job  
7 performance. Plaintiff was told that she had attendance issues, even though the  
8 only time she took off was for her father's heart attack and subsequent death.  
9 During this meeting, Plaintiff complained to Paul Menaker that she was being  
10 given more work than the other (non-African-American) administrative  
11 assistants. Menaker told Plaintiff that she was also given a lower evaluation  
12 because of alleged complaints. However, when Richardson asked him what  
13 kinds of complaints and by whom, Menaker refused to provide any substantive  
14 details.

15 79. In November 2006, Lennar participated in a "Focused Acts of Caring" event.  
16 During this event, Lennar employees renovated the home of a BVHP resident.  
17 Plaintiff Richardson helped out by painting the kitchen of one of the homes and  
18 in the process got light colored paint on her face. Paul Menaker noticed the paint  
19 on Plaintiff's face and said, "she can come to my neighborhood now." Plaintiff  
20 was devastated by this racist remark from her supervisor.

21 80. In February of 2007, Lennar began the process of bidding a new project and Steve  
22 Moreland, Lennar's non-African-American Project Manager, prepared the  
23 booklet with the job specifications that was given out to potential bidders. In this  
24 booklet is a list of the minority-owned business enterprises currently working on  
25 the Bayview Shipyard project. Moreland intentionally changed the name of one  
26 of businesses working with MBEs from FERMA to FUBU, the popular African-  
27 American clothing company. Moreland changed FERMA's address from  
28



Mountain View to "Money View." Moreland also changed the amount of the contract to a billion dollars. When confronted by Plaintiffs, Moreland stated that he thought FUBU stood for "f....ed up beyond this universe."

81. All Plaintiffs were deeply offended by Moreland's comments and incredibly embarrassed that Moreland's racist joke would be disseminated to the African-American community.

### **FIRST CAUSE OF ACTION**

(Racial Discrimination)

(All Plaintiffs as to all Corporate Defendants)

82. Plaintiffs incorporate by reference all of the facts set forth in paragraphs 1 through 81 with the same force and effect as if fully pleaded at length herein.

83. Jurisdiction in this court is invoked pursuant to **California Government Code §§ 12900, 12921, 12926, 12940 and 12965** [Collectively referred to as "**FEHA**"]. Defendants are not exempted from the statutes cited in this paragraph by any local, state or federal laws.

84. Plaintiffs were at all times material hereto employees governed by **FEHA**, prohibiting discrimination in employment on the basis of race.

85. Defendants regularly employ more than five employees, and are subject to suit under **FEHA** for conduct prohibited thereby.

86. The plaintiffs are members of a class protected by **FEHA**, they are African-American.

87. Through its course of conduct, Defendants subjected Plaintiffs to less favorable terms and conditions of employment than afforded other similarly situated non-African-American employees in violation of Section 12940(a) of the California Government Code. This includes, but is not limited to being subjected to demotion, denial of assistance, exclusion from key organizational meetings, loss of job responsibilities, office reassignments, and negative performance evaluations.

88. Plaintiffs further allege the occurrence of continuous tortious conduct on the part of Defendants, based on Plaintiffs' race at all relevant times, up to and

1 including the present.

2 89. The managers of Defendants were either aware of the discrimination described  
3 herein and took no action to prevent it and/or themselves actively participated in  
4 the discrimination. Plaintiffs petitioned their superiors and others on numerous  
5 occasions to rectify the discriminatory treatment described above. On each  
6 occasion, Plaintiffs' petitions were ignored and/or refused, notwithstanding the fact  
7 that Defendants had been made aware of said unjustified treatment.

8 90. The acts complained of herein were either approved, condoned or taken  
9 by one or more managing agents of Defendants, each of whom had the authority to  
10 make corporate policy and/or direct a substantial portion of the Defendants'  
11 business.

12 91. As a result of the aforesaid acts of discrimination, Plaintiffs have suffered and are  
13 continuing to suffer a loss of wages/salary, benefits and other employee  
14 compensation in an amount which is currently un-ascertained. Plaintiffs face a  
15 substantial diminution of their future earning capacity in an amount which is  
16 currently unascertained. Plaintiffs will request leave of the court to amend this  
17 Complaint to state the amount of all such damages when they have been  
18 ascertained, or upon proof at the time of trial.

19 92. As a result of the aforesaid acts of discrimination, Plaintiffs have been held up to  
20 great derision and embarrassment with fellow workers, friends, members of the  
21 community and family, and have continued to suffer emotional distress because the  
22 defendants demonstrated to the Plaintiffs that they would not recognize nor accept  
23 them as employees solely because of their race. Plaintiffs are informed and believe  
24 that the Defendants and their management acted deliberately for the purposes of  
25 injuring them. This information and belief is based, *inter alia*, on the fact that  
26 Defendant continued to discriminate against Plaintiffs after numerous complaints.  
27 Defendants, by and through their agents and employees, further acted intentionally  
28

1 and unreasonably because they knew and/or should have known that their conduct  
2 was likely to result in additional, severe mental distress. Plaintiffs therefore seek  
3 damages for such emotional distress in an amount to be proven at time of trial.

4 93. Because of the wrongful acts of Defendants as herein above alleged,  
5 Plaintiffs have been and will in the future be required to employ physicians and  
6 mental health professionals to examine, treat and care for them and will incur  
7 additional medical expenses in an amount to be proven at the time of trial.

8 94. In doing the acts set forth above, Defendants acted as herein alleged with a  
9 conscious disregard of Plaintiffs' right to be free from discrimination because of  
10 race. Defendants acted, as alleged, with the malicious intention of depriving  
11 Plaintiffs of employment opportunities and benefits that must be accorded to all  
12 employees regardless of their race.

13 95. Defendants have retained employees and managers known by it to be prejudiced  
14 against African-American employees. This conduct by Defendants was, and is,  
15 despicable, cruel and oppressive. The Plaintiffs are therefore entitled to an award  
16 of punitive damages in an amount to be proven at trial.

17 96. In bringing this action, Plaintiffs have been required to retain the services of  
18 counsel. Pursuant to **California Government Code § 12965(b)**, they are entitled to  
19 and hereby request an award of attorney fees and costs of suit.

## 20 21 **SECOND CAUSE OF ACTION**

(Harassment)

(All Plaintiffs as to all Defendants)

22 97. Plaintiffs incorporate by reference all of the facts set forth in paragraphs 1 through  
23 81 with the same force and effect as if fully pleaded at length herein.

24 98. During the course of Plaintiffs' employment, Defendants, whether personally or  
25 through management, created and allowed to exist a hostile work environment  
26 based on race and harassed Plaintiffs on the basis of their race, in violation of FEHA.

27 99. The managers of Defendants were either aware of the harassment described herein  
28

1 and took no action to prevent it and/or themselves actively participated in the  
2 discrimination. Plaintiffs petitioned their superiors and others on numerous  
3 occasions to rectify the harassing treatment described above. On each occasion,  
4 Plaintiffs' petitions were ignored and/or refused, notwithstanding the fact that  
5 Defendants had been made aware of said unjustified treatment.

6 100. The acts complained of herein were either approved, condoned or taken  
7 by one or more managing agents of Defendants, each of whom had the authority to  
8 make corporate policy and/or direct a substantial portion of the Defendants'  
9 business.

10 101. As a result of the aforesaid acts of harassment, Plaintiffs have suffered and are  
11 continuing to suffer a loss of wages/salary, benefits and other employee  
12 compensation in an amount which is currently un-ascertained. Plaintiffs face a  
13 substantial diminution of their future earning capacity in an amount which is  
14 currently unascertained. Plaintiffs will request leave of the court to amend this  
15 Complaint to state the amount of all such damages when they have been  
16 ascertained, or upon proof at the time of trial.

17 102. As a result of the aforesaid acts of harassment, Plaintiffs have been held up to great  
18 derision and embarrassment with fellow workers, friends, members of the  
19 community and family, and continue to suffer emotional distress because the  
20 Defendants demonstrated to the Plaintiffs that it would not recognize nor accept  
21 them as employees solely because of their race. Plaintiffs are informed and believe  
22 that the Defendants and their management acted deliberately for the purposes of  
23 injuring them. This information and belief is based, *inter alia*, on the fact that  
24 Defendant continued to harass Plaintiffs after numerous complaints. Defendants,  
25 by and through their agents and employees, further acted intentionally and  
26 unreasonably because they knew and/or should have known that their conduct was  
27 likely to result in additional, severe mental distress. Plaintiffs therefore seek  
28

1 damages for such emotional distress in an amount to be proven at time of trial.

2 103. Because of the wrongful acts of Defendants as herein above alleged,  
3 Plaintiffs have been and will in the future be required to employ physicians and  
4 mental health professionals to examine, treat and care for her and will incur  
5 additional medical expenses in an amount to be proven at the time of trial.

6 104. In doing the acts set forth above, Defendants acted as herein alleged with a  
7 conscious disregard of Plaintiffs' right to be free from harassment because of race.  
8 Defendants acted, as alleged, with the malicious intention of depriving Plaintiffs of  
9 employment opportunities and benefits that must be accorded to all employees  
10 regardless of their race. Defendants have retained employees and managers known  
11 by it to be prejudiced against African-American employees. This conduct by  
12 Defendants was, and is, despicable, cruel and oppressive. The Plaintiffs are  
13 therefore entitled to an award of punitive damages in an amount to be proven at  
14 trial.

15 105. In bringing this action, Plaintiffs have been required to retain the services of  
16 counsel. Pursuant to **California Government Code § 12965(b)**, they are entitled to  
17 and hereby request an award of attorney fees and costs of suit.

### 18 **THIRD CAUSE OF ACTION**

19 (Retaliation in Violation of Public Policy- Whistle Blowing)  
20 (All Plaintiffs as to All Corporate Defendants)

21 106. Plaintiffs incorporate by reference all of the facts set forth in paragraphs 1  
22 through 9 and paragraphs 11 through 81 with the same force and effect as  
23 though fully pleaded at length herein.

24 107. Jurisdiction is invoked in this court pursuant to the California Supreme Court  
25 case of **Tameny v. Atlantic Richfield Company**, (1980) 27 Cal. 3d 167.

26 108. There are fundamental public policies in this state and in this country in favor of  
27 preventing the transmission of hazardous materials, against fraud, and against  
28 racial discrimination. Said public policies are embodied, *inter alia*, in the

1 following statutes and regulations: 17 C.F.R. § 93105 (2007); Bay Area Air Quality  
2 Management District Regulations (6, 11-2, 11-14); Article 31 of the City and  
3 County of San Francisco Health Code; California Penal Code §§ 370, 372, 373a,  
4 374.8, 532, 532a, 182; California Government Code § 12900 *et seq.*, and Article I,  
5 sections 1, 8 of the California Constitution.

6 109. The Defendants' actions, if allowed to stand, would frustrate the public policies  
7 in favor of preventing the transmission of hazardous materials, policies against  
8 fraud, and against racial discrimination.

9 110. As a result of Defendants' actions, Plaintiffs have suffered, and will continue to  
10 suffer monetary and non-monetary damages. Plaintiffs will therefore request  
11 leave of the court to amend this Complaint to state the amount of all such  
12 damages when they have been ascertained, or upon proof at the time of trial.

13 111. As a result of the foregoing actions, Plaintiffs have been held up to great derision  
14 and embarrassment with the public, their community, friends and family and  
15 have suffered and continue to suffer emotional distress. Defendants, by and  
16 through their managing agents and employees, further acted intentionally and  
17 unreasonably because they knew and/or should have known that their conduct  
18 and intimidation was likely to result in severe mental distress. Plaintiffs  
19 therefore seek damages for such emotional distress in an amount to be proven at  
20 time of trial.

21 112. Because of the wrongful acts of Defendants as herein above alleged, Plaintiffs  
22 have been and will in the future be required to employ physicians and surgeons  
23 to examine, treat and care for them and will incur additional medical expenses in  
24 an amount to be proven at the time of trial.

25 113. Defendants' attempts to prevent Plaintiffs from disclosing the truth about the  
26 unsafe asbestos monitoring and fraud, and then punishing them for their reports  
27 is extreme and outrageous conduct. Defendants acted, as alleged, with the  
28

malicious intention of depriving the Plaintiffs of employment opportunities and benefits that must be accorded to all employees. This conduct by Defendants was, and is, despicable, cruel and oppressive. The Plaintiffs are therefore entitled to an award of punitive damages in an amount to be proven at trial.

114. In doing the acts set forth above, Defendants acted as herein alleged with a conscious disregard of Plaintiffs' rights as employees. The Defendants, by and through their managing agents acted deliberately to punish Plaintiffs for daring to report violations of the law. For all of these reasons, the Plaintiffs are entitled to an award of punitive damages.

**FOURTH CAUSE OF ACTION**  
(Retaliation in Violation of FEHA)  
(Plaintiffs McIntyre and Clarke as to all Defendants)

115. Plaintiffs incorporate by reference all of the facts set forth in paragraphs 1 through 81 with the same force and effect as if fully pleaded at length herein.

116. This is an action for damages arising from retaliation against the Plaintiffs for having opposed unlawful employment practices based on race. This action is brought pursuant to the California **FAIR EMPLOYMENT AND HOUSING ACT** ["FEHA"], i.e., Cal.Gov.Code § § 12900, 12921, 12926, 129240 and 12965.

117. The Plaintiffs belong to a class protected by **FEHA**. They have opposed employment practices forbidden under **FEHA**, i.e., discrimination and harassment based on race.

118. At all times herein relevant, the Plaintiffs' job performance was always at least satisfactory and was usually excellent.

119. Plaintiffs routinely complained to management that they had been subjected to disparate treatment and harassment on account of race.

120. In response to Plaintiffs' complaint, Defendant took further discriminatory and harassing action against Plaintiffs.

121. Because of the aforesaid acts of Defendants, Plaintiffs have suffered, and are

1 continuing to suffer, losses of wages/salary, benefits and other employee  
2 compensation in an amount which is currently unascertained. Plaintiffs will  
3 therefore request leave of the court to amend this Complaint to state the amount  
4 of all such damages when they have been ascertained, or upon proof at the time  
5 of trial.

6 122. This action is not preempted by the California Workers' Compensation Act  
7 because retaliation for having opposed discrimination and harassment based on  
8 race is not a condition of employment.

9 123. The Plaintiffs have been held up to great derision and embarrassment with  
10 fellow workers, customers, friends, members of the community and family, and  
11 has suffered emotional distress, because the Defendants demonstrated to the  
12 Plaintiffs that they intended to punish them for daring to object to practices  
13 made illegal under FEHA. Plaintiffs are informed and believe that the  
14 Defendants and their management acted deliberately with the intent of making  
15 an example of them so as to dissuade other employees in the work place from  
16 asserting their rights to a work place free of illegal discrimination. Defendants,  
17 by and through their management and other agents and employees, further  
18 acted intentionally and unreasonably because it knew and/or should have  
19 known that their conduct was likely to result in severe mental distress. Plaintiffs  
20 therefore seek damages for such emotional distress in an amount to be proven at  
21 time of trial.

22 124. In doing the acts set forth above, Defendants acted as herein alleged with a  
23 conscious disregard of Plaintiffs' right to oppose discrimination or harassment  
24 without reprisal by the employer. Defendants acted, as alleged, with the  
25 malicious intentions of teaching a lesson to the Plaintiffs and of making an  
26 "example" of them to deter other employees from opposing illegal discrimination  
27 or harassment in the workplace. This conduct by Defendants was despicable,  
28



1 cruel and oppressive. Defendants have retained and promoted vicious  
2 employees known by it to discriminate based on race. The Plaintiffs are  
3 therefore entitled to an award of punitive damages in an amount to be proven at  
4 trial.

5 125. In bringing this action, Plaintiffs have been required to retain the services of  
6 counsel. Pursuant to California **Government Code § 12965(b)**, they are entitled to  
7 an award of attorney fees.

8 **FIFTH CAUSE OF ACTION**

(Failure to Prevent Discrimination/ Harassment)  
9 (All Plaintiffs as to All Corporate Defendants)

10 126. Plaintiffs incorporates by reference all of the facts set forth in paragraphs 1  
11 through 81 with the same force and effect as if fully pleaded at length herein.

12 127. This is an action for damages based on the failure by Defendants to prevent  
13 discrimination and harassment. This action is brought pursuant to FEHA.

14 128. Under FEHA, it is an unlawful employment practice to fail to take all reasonable  
15 steps to prevent employment discrimination and harassment.

16 129. As described above, the Plaintiffs gave notice to the Defendants of  
17 discriminatory and harassing conduct in the work place maintained by  
18 Defendants.

19 130. Notwithstanding notice of discrimination and/or harassment in the work places,  
20 Defendants took no steps to prevent such discrimination and/or harassment  
21 from occurring. Specifically, Defendants refused to properly and timely  
22 investigate the complaints by the Plaintiffs of discrimination and harassment.  
23 These failures constitute a breach of Defendants' obligation to prevent  
24 discrimination on the basis of race.

25 131. Defendants have refused and continue to refuse to discipline, dismiss or  
26 discharge high management officials it knows, or should know, to have  
27 discriminated on the basis of race and to have condoned such discrimination and  
28 harassment.

1 132. As a result of the Defendants' breaches of its obligation to prevent discrimination  
2 and harassment, the Plaintiffs have suffered, and continue to suffer,  
3 discrimination and harassment in the work place.

4 133. Plaintiffs suffered damages legally caused by these acts.

5 **SIXTH CAUSE OF ACTION**  
6 (Intentional Infliction of Emotional Distress)  
(All Plaintiffs as to All Defendants)

7 134. Plaintiffs incorporate by reference all of the facts set forth in paragraphs 1  
8 through 9 and 11 through 81 with the same force and effect as if fully pleaded at  
9 length herein.

10 135. This is an action for damages pursuant to the common law of the State of  
11 California as mandated by the California Supreme Court in the decision of Rojo  
12 v. Kliger, (1990) 52 Cal. 3d 65.

13 136. The facts set forth above constitute extreme and outrageous conduct by the  
14 Defendants toward the Plaintiffs. This includes, but is not limited to, the  
15 following: reprimanding Plaintiffs because of their complaints of discrimination  
16 and harassment, making racial jokes and comments, and making false and  
17 defamatory statements about plaintiffs' job performance. Such extreme and  
18 outrageous acts did in fact cause Plaintiffs severe emotional distress.

19 137. As a proximate result of such extreme and outrageous acts, Plaintiffs have  
20 suffered emotional distress, humiliation and embarrassment. Plaintiffs are  
21 informed and believe that the Defendants acted deliberately for the purpose of  
22 causing them to suffer emotional distress. Defendants further acted intentionally  
23 and unreasonably because they knew and/or should have known that their  
24 conduct was likely to result in severe mental distress. Plaintiffs therefore seek  
25 damages for such emotional distress in an amount to be proven at time of trial.

26 138. Defendants committed the acts alleged herein maliciously, fraudulently and  
27 oppressively, with the wrongful intention of injuring Plaintiffs, and acted with  
28

1 an improper and evil motive amounting to malice and in conscious disregard of  
2 Plaintiffs' rights. Such wrongful and retaliatory conduct was malicious,  
3 oppressive, fraudulent and in conscious disregard of Plaintiffs' rights, such that  
4 punitive damages are warranted to punish Defendants, to deter such conduct by  
5 Defendants in the future and to make an example of Defendants, all in amounts  
6 to be proven at trial.

7 **JURY TRIAL DEMANDED**

8 180. Plaintiffs hereby request a jury trial for all claims.

9 **PRAYER**

10 181. Wherefore Plaintiffs prays for judgment against Defendants, and each of them,  
11 as follows:

- 12 a. For a money judgment representing general and compensatory damages  
13 including lost wages, earnings, retirement benefits and other employee benefits,  
14 and all other sums of money, together with interest on these amounts, according  
15 to proof;  
16 b. For a money judgment for mental pain and anguish and emotional distress,  
17 according to proof;  
18 c. For punitive damages in an amount appropriate to punish Defendants for  
19 their wrongful and malicious conduct and to set an example for others;  
20 d. For prejudgment and post-judgment interest;  
21 e. Reasonable Attorneys Fees;  
22 f. For the costs of suit incurred;  
23 g. For any other relief that is just and proper.

24 Dated: March 15, 2007

LAW OFFICES OF MAYOR JOSEPH L.  
ALITO & ANGELA ALITO

25  
26  
27 By:   
28

ANGELA ALITO