

LAW OFFICES OF
ANDREW L. PACKARD
319 PLEASANT STREET PETALUMA CALIFORNIA 94952
707-763-7227 FAX 707-763-9227

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ANDREW L. PACKARD (State Bar No. 168690)
MICHAEL P. LYNES (State Bar No. 230462)
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Email

MICHAEL R. LOZEAU (Bar No. 142893)
DOUGLAS J. CHERMAK (Bar No. 233382)
Law Office of Michael R. Lozeau
1516 Oak Street, Suite 216
Alameda, CA. 94501
Tel: (510) 749-9102
Fax: (510) 749-9103
E-mail: mrlozeau@lozeaulaw.com

Attorneys for Plaintiff
CENTER FOR SELF-IMPROVEMENT
AND COMMUNITY DEVELOPMENT

ENDORSED
FILED
San Francisco County Superior Court

AUG 2 2007

GORDON PARK-LI, Clerk
BY: CRISTINA E. BALTISTA
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JAN 25 2008 - 9:00 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

CENTER FOR SELF-IMPROVEMENT
AND COMMUNITY DEVELOPMENT, a non-
profit corporation, individually and on behalf of
the general public,

Plaintiff,

vs.

LENNAR CORPORATION; LENNAR HOMES
OF CALIFORNIA, INC.; LENNAR
COMMUNITIES, INC.; LENNAR-BVHP, LLC;
LENNAR ASSOCIATES MANAGEMENT,
LLC; and GORDON N. BALL, INC.

Defendants.

CASE NO. 08007-465738

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

Health & Safety Code §25249.6, *et seq.*
(Proposition 65, Environmental and
Occupational Exposures)

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

1 Plaintiff CENTER FOR SELF-IMPROVEMENT AND COMMUNITY
2 DEVELOPMENT brings this action on behalf of the general public and, on information and
3 belief, hereby alleges:

4 INTRODUCTION

5 1. This action is brought in the public interest to redress Defendants' construction
6 activities in San Francisco's Bayview-Hunter's Point community, which have caused and are
7 continuing to cause unlawful exposures to asbestos, a substance known to the State of California
8 to cause cancer. Defendants' ongoing failure to provide prior "clear and reasonable" warnings
9 concerning these exposures have caused and are causing thousands of Californians to be
10 involuntarily and unwittingly exposed to asbestos on a daily basis in the Bayview-Hunter's Point
11 community.

12 2. This action is brought under California's Safe Drinking Water & Toxic
13 Enforcement Act of 1986, codified at Health & Safety Code §25249.5, *et seq.* (commonly known
14 and referred to herein as "Proposition 65").

15 3. Defendants' have engaged in construction site preparation and development
16 activities associated with the Hunter's Point Shipyard Parcel A' Redevelopment Project (the
17 "Site"). These activities have included grading and other site preparation work, including but not
18 limited to scraping and excavation of materials containing asbestos at the Site, as well as the
19 storage and transportation of such materials off site (the "Construction Activities"). The
20 Construction Activities have been and continue to be undertaken without Defendants' first
21 providing the adjacent community and persons working at the Site with the toxic health hazard
22 warnings required under California's "right-to-know" law. The Construction Activities have
23 therefore violated and continue to violate both the environmental and occupational requirements
24 of Proposition 65 on a daily basis.

25 4. By this action Plaintiff seeks the following appropriate relief:

- 26 a. prohibiting Defendants from engaging in the Construction Activities or
27 any other work at the Site without first providing clear and reasonable
warnings to each exposed person residing, working, or visiting the

1 adjacent community and to workers at the Site regarding the asbestos
2 exposures described herein, within the meaning of Proposition 65 and its
3 implementing regulations; and,

4 b. assessing civil penalties in the amount of \$2,500 per day per exposed
5 person for each statutory violation, to remedy Defendants' failure to
6 provide clear and reasonable warnings to the thousands of individuals
7 exposed to asbestos at or near the Site.

8 **JURISDICTION AND VENUE**

9 5. This Court has jurisdiction over this action pursuant to California Constitution
10 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except
11 those given by statute to other trial courts." The statutes under which this action is brought do not
12 specify any other basis for jurisdiction.

13 6. This Court has jurisdiction over Defendants because, based on information and
14 belief, each of the Defendants is a corporation or association organized under the laws of the State
15 of California or doing sufficient business in, and having sufficient minimum contacts with,
16 California, or otherwise intentionally availing itself of the California market to render the exercise
17 of jurisdiction over it by the California courts consistent with traditional notions of fair play and
18 substantial justice.

19 7. Venue in this action is proper in the San Francisco Superior Court because each of
20 the Defendants has violated one or more of the California laws specified herein in the City and
21 County of San Francisco and/or has its principal place of business in San Francisco.

22 **PARTIES**

23 8. Plaintiff CENTER FOR SELF-IMPROVEMENT AND COMMUNITY
24 DEVELOPMENT (hereafter "the CENTER") is an IRS Code Section 501(c) (3) non-profit
25 organization based in San Francisco, California. The CENTER operates an educational and
26 training center focusing on early as well as adult education and is located adjacent to, and
27 downwind of, the Site. The CENTER brings this action in the public interest pursuant to Health
& Safety Code §25246.7(d).

1 65's regulatory scheme. On February 27, 1987, the State of California officially determined that
2 asbestos is "known to cause cancer." Asbestos therefore became subject to the "clear and
3 reasonable" warning requirements of Proposition 65 one year later, beginning on February 27,
4 1988. (22 CCR §12000, *et seq.*; H&S Code §25249.6, *et seq.*)

5 **FACTUAL BACKGROUND**

6 17. Plaintiff is informed and believes, and based on such information and belief
7 alleges, that Defendants' Construction Activities at the Site over the past several years have been
8 undertaken without providing clear and reasonable warnings to each exposed person residing,
9 working, or visiting the adjacent community or to workers at the Site. Defendants' Construction
10 Activities therefore violate the community's and the workers' "right-to-know" that they are being
11 exposed to asbestos, a known carcinogen.

12 18. As a proximate result of acts by Defendants, as persons in the course of doing
13 business within the meaning of Health & Safety Code §25249.11, individuals in the County of
14 San Francisco have been exposed to asbestos without prior clear and reasonable warning. The
15 individuals subject to unwarned exposures include each exposed person residing, working in, or
16 visiting the adjacent community and all workers at or entering the Site, as well as all other
17 persons exposed to asbestos as a proximate result of Defendants' Construction Activities.

18 19. At all times relevant to this action, Defendants have, in the course of doing
19 business, knowingly and intentionally exposed these individuals to asbestos without first
20 providing a clear and reasonable warning to each such individual regarding these exposures.

21 20. The residents in the Bayview-Hunter's Point community, workers at the Site, and
22 all other persons exposed in the area, have been and continue to be exposed to asbestos in excess
23 of the level determined to cause "no significant risk" within the meaning of H&S Code
24 §25249.10(c).

25 21. Plaintiff is informed and believes, and based on such information and belief
26 alleges, that the Construction Activities continue without the provision of clear and reasonable
27 health hazard warnings as required by California law.

22. Beginning on May 23, 2007, as to each of the Defendants herein, Plaintiff gave

1 notice of that Defendant's Proposition 65 violations to each of the requisite public enforcement
2 agencies and to that Defendant. Each of said notices was given pursuant to and in compliance
3 with Health & Safety Code §25249.7(d) as well as associated implementing regulations.

4 23. The appropriate public enforcement agencies have failed to commence and
5 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants
6 based on the allegations herein, therefore necessitating this private enforcement action in the
7 public interest pursuant to Health & Safety Code §25249.7(d).

8 **FIRST CAUSE OF ACTION**
9 **(Proposition 65 Environmental Violations;**
10 **Health & Safety Code §25249.6, *et seq.*)**

11 24. Plaintiff incorporates Paragraphs 1 through 23 above by reference as if fully set
12 forth herein.

13 25. Defendants' Construction Activities release asbestos into the air at the Site,
14 causing person residing, working, or visiting the adjacent community, workers at the Site, persons
15 entering the Site, as well as the areas adjacent to, and in the vicinity of, the Site, to inhale airborne
16 asbestos.

17 26. Each of these exposures has occurred, continues to occur, and threatens to occur in
18 the future, beyond the property owned or controlled by Defendants.

19 27. Each of these exposures has been caused, at all relevant times herein, "knowingly"
20 and "intentionally" by Defendants, and each of them, within the meaning of Proposition 65.

21 28. Each of the Defendants herein is a "person in the course of doing business" within
22 the meaning of Proposition 65.

23 29. As a proximate result of Defendants' Construction Activities, each of Defendants
24 has violated and continues to violate Health & Safety Code §25249.6's warning requirements
25 applicable to each of the environmental exposures. The exact number of such exposures
26 committed by each of Defendants is unknown to Plaintiff at this time and shall be ascertained at
27 trial according to proof.

WHEREFORE, Plaintiff prays for judgment against Defendants and relief as set forth
below.

SECOND CAUSE OF ACTION
**(Proposition 65 Occupational Violations;
Health & Safety Code §25249.6, et seq.)**

30. Plaintiff incorporates Paragraphs 1 through 29 above by reference as if fully set forth herein.

31. Defendants' Construction Activities release asbestos into the air at the Site, causing Defendants' employees, subcontractors and consultants, as well as all persons entering the Site, to inhale airborne asbestos.

32. Each of these exposures has occurred, continues to occur, and threatens to occur in the future, beyond the property owned or controlled by Defendants.

33. Each of these exposures has been caused, at all relevant times herein, "knowingly" and "intentionally" by Defendants, and each of them, within the meaning of Proposition 65.

34. Each of the Defendants herein is a "person in the course of doing business" within the meaning of Proposition 65.

35. As a proximate result of Defendants' Construction Activities, each of Defendants has violated and continues to violate Health & Safety Code §25249.6's warning requirements applicable to occupational exposures. The exact number of such exposures committed by each of Defendants is unknown to Plaintiff at this time and shall be ascertained at trial according to proof.

WHEREFORE, Plaintiff prays for judgment against Defendants and relief as set forth below.

AUTHORITY AND NECESSITY FOR INJUNCTIVE RELIEF

36. Plaintiff incorporates paragraphs 1 through 35 above by reference as if fully set forth herein.

37. Proposition 65 specifically authorizes injunctive relief against any Defendant that "violates or threatens to violate" Health & Safety Code §25249.6. H&S Code §25249.7.

38. Each of Defendants has violated, is violating and/or threatens to violate Health & Safety Code §25249.6 through their involvement in the Construction Activities.

39. By committing the acts alleged herein, the Defendants, and each of them, have caused irreparable harm for which there is no plain, speedy, or adequate remedy at law. In the

LAW OFFICES OF
ANDREW L. PACKARD
319 PLEASANT STREET PETALUMA CALIFORNIA 94952
707-763-7227 FAX 707-763-9227

1 absence of equitable relief, Defendants will continue to cause person residing, working, or
2 visiting the adjacent community and workers at the Site to be exposed to asbestos involuntarily
3 and unwittingly, creating the substantial risk of irreparable harm and physical injury.

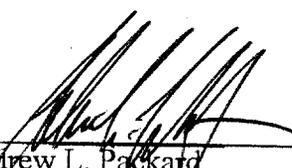
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief as follows:

- 6 A. That the Court grant a preliminary and permanent injunction enjoining Defendants,
7 their subsidiaries, agents, employees, assigns, consignees and all persons acting in concert or
8 participating with them, from further engaging in the Construction Activities or any other work at
9 the Site without first providing clear and reasonable warnings to the exposed community and to
10 workers at the Site regarding the risks of cancer posed by asbestos exposure, within the meaning
11 of Proposition 65 and its implementing regulations;
- 12 B. That the Court assess and award statutory civil penalties against each Defendant in
13 the amount of \$2,500 per day for each violation of Proposition 65 committed by Defendants;
- 14 C. That the Court award to Plaintiff its reasonable attorneys fees and costs of suit
15 pursuant to California Code of Civil Procedure §1021.5, as Plaintiff shall specify in further
16 application to the Court; and,
- 17 D. That the Court grant such further relief as may be just and proper.

18 Dated: July 31, 2007

LAW OFFICES OF ANDREW L. PACKARD
LAW OFFICE OF MICHAEL R. LOZEAU

21
22
23 By 
24 Andrew L. Packard
25 Attorneys for Plaintiff
26 CENTER FOR SELF-IMPROVEMENT AND
27 COMMUNITY DEVELOPMENT