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FILED
San Francisco County
MAR 6 2001
GORDON PATRICK
Deputy Clerk
444888

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

10 UNLIMITED JURISDICTION

11 469 CLEMENTINA STREET
12 HOMEOWNERS ASSOCIATION,

13 Plaintiff,

14 v.

15 CASSIDY CONSTRUCTION; JOSEPH
16 CASSIDY; and DOES 1-200,

17 Defendants.

No. 317585

**DEFENDANTS CASSIDY
CONSTRUCTION AND JOSEPH
CASSIDY'S ANSWER TO
UNVERIFIED COMPLAINT**

Complaint Filed: December 20, 2000

18 Defendants Cassidy Construction and Joseph Cassidy (collectively "Defendants"),
19 answering the complaint of Plaintiff 469 Clementina Street Homeowners Association
20 (Plaintiff"), deny generally and specifically, each and every, all and singular, the allegations of
21 said complaint, and each cause of action thereof, and further deny that Plaintiff has been
22 damaged in any sum or sums or at all.

23 **AFFIRMATIVE DEFENSES**

24 As a first affirmative defense to each cause of action of the complaint, Plaintiff was
25 partially, if not wholly, negligent or otherwise at fault on its own part and should be barred from
26 recovery of that portion of the damages directly attributable to its proportionate share of the
27 negligence or fault, pursuant to the doctrine of comparative negligence.

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1 As a second affirmative defense to each cause of action of the complaint, Plaintiff, its
2 agents, employees, servants and representatives were partially, if not wholly, negligent or
3 otherwise at fault on its own part pursuant to the doctrine of comparative negligence, and should
4 be barred from recovery of that portion of the damages directly attributable to its proportionate
5 share of the negligence or fault.

6 As a third affirmative defense to each cause of action of the complaint, the damages
7 sustained by Plaintiff, if any, were caused, in whole or in part, by the negligence or fault of
8 others for which these Defendants are not liable or responsible.

9 As a fourth affirmative defense to each cause of action of the complaint, the complaint
10 does not state facts sufficient to constitute a cause of action against these Defendants.

11 As a fifth affirmative defense to each cause of action of the complaint, the complaint fails
12 to state facts sufficient to state any claim upon which an award of punitive damages can be
13 made.

14 As a sixth affirmative defense to each cause of action of the complaint, the complaint,
15 and each cause of action thereof, is barred by the statute of limitation set forth in the California
16 Civil Procedure Code beginning with section 335 and continuing through section 349.4, and
17 more particularly, but not limited to, the following: sections 337(1), 337.1, 337.15, 338, 339, 340
18 and 343; and by sections 2607(3)(a), 2725(1) and (2) of the Uniform Commercial Code of the
19 State of California.

20 As a seventh affirmative defense to each cause of action of the complaint, if Plaintiff
21 sustained injuries attributable to the use of any product manufactured by these Defendants,
22 which allegations are expressly denied, the injuries were caused in whole or in part by the
23 unreasonable, unforeseeable and inappropriate purpose and/or improper use which was made of
24 the product.

25 As an eighth affirmative defense to each cause of action of the complaint, Plaintiff's
26 complaint, and each cause of action therein, is barred by the doctrine of laches.

27 As a ninth affirmative defense to each cause of action of the complaint, Plaintiff's
28 complaint, and each cause of action therein, is barred by the doctrine of unclean hands.

1 As a tenth affirmative defense to each cause of action of the complaint, Plaintiff failed to
2 mitigate its damages.

3 As an eleventh affirmative defense to each cause of action of the complaint, prior to the
4 commencement of this action, these answering Defendants duly performed, satisfied and
5 discharged all duties and obligations they may have owed to the Plaintiff arising out of any and
6 all agreements, representations or contracts made by them or on behalf of these answering
7 Defendants and this action is therefore barred by the provisions of California Civil Code
8 section 1473.

9 As a twelfth affirmative defense to each cause of action of the complaint, Plaintiff's
10 complaint, and each cause of action thereof, fails to state a cause of action in that Plaintiff failed
11 to give timely and proper notice of breach of warranty.

12 As a thirteenth affirmative defense to each cause of action of the complaint, the injuries
13 and damages sustained by Plaintiff, if any, were solely and legally caused by the modification,
14 alteration or change of the product referred to in the complaint and said modification, alteration
15 or change was performed by persons or entities other than these answering Defendants and
16 without their knowledge or consent.

17 As a fourteenth affirmative defense to each cause of action of the complaint, Plaintiff has
18 failed to state a claim upon which attorney fees can be awarded.

19 As a fifteenth affirmative defense to each cause of action of the complaint, Defendants
20 presently have insufficient knowledge or information on which to form a belief as to whether
21 they may have additional, as yet unstated, defenses available. Defendants reserve herein the
22 right to assert additional defenses in the event discovery indicates that they would be
23 appropriate.

24 WHEREFORE, these answering Defendants pray for judgment as follows:

- 25 1. That Plaintiff take nothing by reason of the complaint on file herein;
26 2. For reasonable attorney fees;

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3. For costs of suit incurred herein; and

4. For such other and further relief as the Court deems just and proper.

DATED: March 5, 2001

BURNHAM BROWN

By James F. Blake

JAMES F. BLAKE
Attorneys for Defendant
CASSIDY CONSTRUCTION
and JOSEPH CASSIDY