

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
28

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLATSOP

BRIDGEPORT CONDOMINIUMS UNIT)
OWNERS ASSOCIATION, an Oregon)
non-profit corporation,)

Plaintiff,

v.

DION DUUS, LLC, an Oregon limited)
liability company; INTEGRITY)
STRUCTURES, LLC a Washington limited)
liability company; ADAM DION, an)
individual; JOSH PIKE, an individual, and)
JOHN DOE 1, and individual,)

Defendants.

Case No. 17CV46343

COMPLAINT

(NEGLIGENCE, NEGLIGENCE PER
SE, NEGLIGENT
MISREPRESENTATION, BREACH OF
FIDUCIARY DUTY, VIOLATIONS OF
THE OREGON CONDOMINIUM ACT,
BREACH OF CONTRACT)

CONSTRUCTION DEFECT

NOT SUBJECT TO MANDATORY
ARBITRATION

JURY TRIAL REQUESTED

AMOUNT OF CLAIM \$2,800,000

FEE AUTHORITY
CH. 595, SEC. 15(1)(D)

Plaintiff Bridgeport Condominiums Unit Owners Association (“Plaintiff” or
“Association”) hereby alleges as follows:

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF:

1.

Bridgeport Condominium, located in Seaside, Clatsop County, Oregon is a condominium
created pursuant to the provisions of the Oregon Condominium Act, ORS Chapter 100 (the

1 condominium is hereinafter referred to as “Bridgeport” or the “Condominium”). The
2 Condominium consists of forty-four (44) living units contained in a single four-level building.
3 The Condominium also includes storage units, general common elements, and limited common
4 elements. The Association is now, and at all material times herein has been, an Oregon non-
5 profit corporation established and organized for the mutual benefit of the Condominium’s unit
6 owners.

7
8 2.

9 The Condominium and Association were both established by the Declaration submitted
10 Bridgeport Condominiums to Condominium Ownership (“Declaration”), recorded February 11,
11 2008, as document 200801171 in the land records of Clatsop County Oregon. The Association is
12 also governed by the Bylaws of Bridgeport Condominiums Unit Owners Association, recorded
13 as Exhibit D to the Declaration.

14 3.

15 Pursuant to ORS 100.510, the Condominium’s individual unit owners own their
16 respective units. The units are bounded by the interior unfinished surfaces of their perimeter and
17 bearing walls, floors, ceilings, windows, window frames, doors and door frames, and trim. Each
18 unit includes all materials constituting any part of its interior surfaces except those portions of its
19 walls, floors, and ceilings that materially contribute to the structural or shear capacity of the
20 Condominium. The units also include all spaces, nonbearing interior partitions, windows,
21 window frames, exterior doors, door frames, all other fixtures and improvements within the
22 boundaries of the units, and all outlets of utility and communications service lines within the
23 boundaries of the units.

24 4.

25 All owners have an undivided percentage ownership interest in the common elements of
26 the Condominium. The common elements consist of all portions of the Condominium that are
27 not part of the units, including land, pathways, driveways, fences, grounds, community building,
28 carport structures, parking areas, pipes, ducts, flues, chutes, conduits, wires and other utility

1 installations, roofs, foundations, bearing and shear walls, perimeter walls, beams, columns,
2 girders, units access doors, door and window frames, stairways, landings, lobbies, elevator, and
3 other elements of the building necessary to its existence, maintenance, and safety.

4 5.

5 The cost of maintaining, repairing and replacing the common elements is a common
6 expense. The performance of all maintenance, repair and replacement of the common elements
7 is the responsibility of the Association, but all costs are assessed and apportioned among the unit
8 owners in the manner set forth in the Declaration.

9 6.

10 Pursuant to ORS 100.405(4)(e), the Association is authorized to institute this litigation on
11 its own behalf and on behalf of the unit owners because the matters alleged herein relate to and
12 affect the common elements (ORS 100.405(4)(e)(D)) and/or units or interests of unit owners
13 (ORS 100.405(4)(e)(E)). Pursuant to ORS 100.490, the Association provided a written notice to
14 each of the affected unit owners notifying them of the Association's intent to institute litigation
15 seeking damages on behalf of the unit owners.

16 7.

17 At all material times, Defendant Dion Duus, LLC (hereinafter referred to as "DDLLC,"
18 "Developer," or "Declarant") was an Oregon limited liability company and an Oregon licensed
19 contractor. DDLLC was the Declarant of the Association, as that term is defined by ORS
20 100.105(11), and sold the individual Condominium units to purchasers.

21 8.

22 At all material times, Defendant Integrity Structures, LLC ("Integrity"), was a
23 Washington limited liability company and Oregon licensed contractor. Integrity acted as the
25 general contractor for the condominium's construction.

26 //

27 //

28 //

1
2
3
4
5 9.

6 At all material times, Defendant Adam Dion (“Dion”) was an individual residing in
7 Oregon. Dion was an officer, agent, employee, or principal of Developer. Dion also served as a
8 director and officer of the Association prior to turnover

9 10.
11

12 At all material times, Defendant Josh Pike (“Pike”) was an individual residing in
13 Oregon. Pike was an officer, agent, employee, or principal of Developer. Pike also served as a
14 director and officer of the Association prior to turnover

15 11.
16

17 At all material times, Defendant John Doe 1 was an individual residing in Oregon. Doe 1
18 was an officer, agent, employee, or principal of Developer. Doe 1 also served as a director and
19 officer of the Association prior to turnover

20 12.
21

22 DDLLC and Integrity developed, built, and marketed the Condominium, formed the
23 Association and managed the Condominium and the Association for the benefit of the
24 Developer. During the period DDLLC and Integrity developed and built the Condominium, they
25 employed, and contracted with contractors and subcontractors to perform various activities and
26 functions including, without limitation, each of the following:

27 a) employing and supervising all labor for the construction, operation, and
28 maintenance of the Condominium;

b) negotiating, executing and supervising the performance of contracts for the proper
construction, operation, maintenance, and safety of the Condominium and the Association; and

c) initiating repairs and alteration of the Condominium.

29 13.
30

31 Recently, Plaintiff has begun to observe that the Condominium has experienced and
32 continues to experience multiple occurrences that include exposure to and actual repeated and/or
33 continuous and substantial water intrusion. The building siding, trim, rain gutters, downspouts,
34

1 rain drain and footing systems, roofs, roof eaves, flashing, decks and patios have been and/or
2 continue to be exposed to substantial water intrusion. Hereinafter, these portions of the building
3 are referred to collectively as the “building envelope.” The exposure and intrusion of water, as
4 described above, is hereinafter referred to as “water intrusion.” Plaintiff hired a building
5 envelope specialist to inspect the Condominium and determine the source and extent of the water
6 intrusion. During the investigation, the building envelope specialist discovered evidence of
7 several occurrences of water intrusion into the exterior siding, decks, walkways and wall
8 cavities.

9 14.

10 Water intrusion has caused and continues to cause one or more events of extensive
11 physical damage to the building envelope and underlying structure. Dry rot, water damage,
12 water staining, elevated moisture levels and building material deterioration are present
13 throughout the exterior walls. Such damage is hereinafter referred to as “water damage.”

14 15.

15 The water intrusion and water damage are the natural, direct and proximate result of the
16 following non-exhaustive list of defective and/or deficient workmanship and construction,
17 deviations from approved building plans, violations of manufacturer instructions, violations of
18 construction industry standards, and violations of building code provisions. Such damage is the
19 result of any or all of the following, which have been identified through destructive testing.
20 Plaintiff is informed and believes that the following is a non-exhaustive list of the construction
21 defects, deviations from approved building plans, violations of manufacturer instructions,
22 violations of construction industry standards, and violations of building code provisions at the
23 Condominium:

24
25
26 **Windows & Trim**

- 27 a) Window trim transitions missing proper dynamic sealant joint with backer rod.
28 b) Trims installed without proper clearances to other building components, including vinyl
window frames, metal flashings, concrete deck surfaces, and stone water tables.

- c) Unprimed and unpainted whitewood and field-cut trim ends.
- d) Unprotected voids between vinyl window assemblies and stone veneer.
- e) Inadequately flashed, unsealed, and improperly mortared transitions between vinyl window assemblies and stone veneer.

Cultured Stone Cladding

- f) Omitted dynamic sealant joints at transitions between stone and dissimilar materials.
- g) Voids in cladding.
- h) Omitted walkway to wall diverter flashings.
- i) Omitted base of wall flashings.
- j) Omitted diverter flashing at roof to wall transition.
- k) Improper clearance of the stone to the roof surface.
- l) Reverse lap of metal flashing over weather resistive barrier and drainage mat installed behind stone at water table.
- m) Louver rough opening lacks proper slope at sill plate.
- n) Omitted cap and saddle flashings at louver rough opening corner transitions.

Fiber Cement Cladding

- o) Inadequate clearance of fiber cement siding to grade and metal flashings.

Metal Flashings

- p) Flashing at window heads lacked up-turned end dams.
- q) Omitted end dams at flashing terminations.
- r) Unsealed metal flashing seams.
- s) Reverse-sloped flashing.
- t) Omitted flashing above stone wainscoting horizontal trim.
- u) Omitted flashing at door heads at deck locations.
- v) Omitted diverter flashing at deck and walkway transitions.

Concrete Walkways

- w) Isometric flashing assembly at post base missing appropriate sealed seams.
- x) Isometric flashing assembly at post base lacking overlap of waterproofing and flashing components.
- y) Horizontal penetrations at metal rail loose and penetrating all layers of waterproofing.

Concrete Decks

- z) Base of wall flashing with no sealant.
- aa) Inadequate clearance of fiber cement siding and trims at deck to wall transition.
- bb) Metal flashing at deck to wall missing proper diverters and sealed seams.
- cc) Omitted or improperly dimensioned diverter flashings at deck to wall outside corners.

Roofs

- dd) Lack of clearance of cedar shake cladding.
- ee) Lack of diverter flashing.
- ff) Omitted crickets.
- gg) Gypsum sheathing improperly installed over roof to wall step flashings.

16.

The water intrusion, water damage, construction defects, deviations from approved building plans, violations of manufacturer installation instructions, violations of construction industry standards, and building code violations have caused consequential property damage including, but not limited to, the general deterioration of the materials used in the construction of the Condominium. In subsequent paragraphs, this damage is collectively referred to as “consequential damage.”

17.

Pursuant to ORS 701.565, the Association provided a written notice of defects to DDLLC, and Integrity. This notice contained all of the information required by ORS 701.565(3). No Defendant has offered to repair or correct the defects reported by Plaintiff.

FIRST CLAIM FOR RELIEF

18.

Plaintiff re-alleges paragraphs 1-17 and incorporates them by reference herein.

Count One

(Negligence by DDLLC, Dion, Pike, and Doe 1)

19.

DDLLC, Dion, Pike, and Doe 1 developed, constructed, and supervised the construction of the Condominium; inspected the construction progress, quality, and compliance with the construction plans and state and local building codes, and managed the individual Condominium units at Bridgeport. DDLLC, Dion, Pike, and Doe 1 prepared a budget and established and maintained a level of assessments to fund the Association’s operating, maintenance, and other expenditures and to provide for adequate replacement funds and sufficient reserves. DDLLC,

1 Dion, Pike, and Doe 1 also acted as real estate managers for the Association and the property
2 until turnover.

3 20.

4 Apart from their activities as members or agents and/or employees of the Developer,
5 Dion, Pike, and Doe 1, as directors and officers of the Association and as agents or employees of
6 the Declarant, prepared, or caused to be prepared, a budget and reserve study, and established
7 and maintained a level of assessments to fund the Association's operating, maintenance, and
8 other expenditures and to provide for adequate replacement costs and sufficient reserves for the
9 Association.

10 21.

11 As directors and officers of the Association prior to turnover, Dion, Pike and Doe 1 were
12 responsible for proper maintenance and repairs at Bridgeport.

13 22.

14 As a result of their intimate association with and oversight of the development,
15 construction, construction supervision, inspection of construction progress, real estate
16 management, and sales of the Condominium units; their establishment, oversight, and operation
17 of the Association; their preparation of the Association's budget; and their establishment and
18 maintenance of assessment levels, DDLIC, Dion, Pike, and Doe 1 knew or, in the exercise of
19 reasonable care, should have known:

20 a) that the construction defects described in paragraphs **13-16** above, and elsewhere
21 herein, existed;

22 b) that there was a substantial, unreasonable, and foreseeable risk that the
23 Condominium had or, in the near future, would suffer the water intrusion, water damage, and
25 consequential damages described in paragraphs **13-16** above, and elsewhere herein;

26 c) that a failure to address and repair the construction defects and damages during
27 the activities in which they were engaged would result in such water intrusion, water damage,
28 structural damage, and consequential damage, or posed an unreasonable risk of resulting therein;

1 d) that the construction defects, damages, and risks would remain undetected by the
2 Association and its owner-members for a substantial period of time, thereby increasing the
3 damage and cost of repairing or remedying them, or that there was a substantial and
4 unreasonable risk that such would occur;

5 e) that the Association's budget had not been prepared with due care in light of the
6 construction defects, damage, and risks of water intrusion, water damage, and consequential
7 damages at the Condominium;

8 f) that the level of assessments had not been established and/or maintained at an
9 adequate level to meet the operating, maintenance, and other common expenditures and to also
10 provide for adequate replacement costs and sufficient reserves in light of the construction
11 defects, damage, and risks of water intrusion, water damage, and consequential damages being
12 suffered by the Association and owner members; and

13 g) that the Association would incur costs and expenses as a result of Defendants'
14 failure to properly construct and/or address problems at the Condominium, including inspection,
15 repair costs, and legal fees.

16 23.

17 DDLLC, Dion, Pike, and Doe 1 failed to address and repair the conditions, damages, and
18 risks described herein and they failed to disclose and/or concealed the water intrusion, water
19 damage, construction defects, and/or risks thereof from the Association and the Owners.

20 24.

21 As a direct and proximate result of the negligence of DDLLC, Dion, Pike, and Doe 1,
22 Plaintiff has suffered damages as follows:

23 a) in the approximate sum of \$2,800,000, plus pre-judgment interest, for the cost to
25 bring the Condominium to the quality represented; the physical damage to the Condominium; the
26 increased costs of repairs directly, naturally and proximately resulting from the failure to
27 investigate, report, repair, or take preventive measures when needed; or for a combination of said
28 costs;

1 b) \$2,800,000, plus pre-judgment interest, for Defendants’ share of the general and
2 special assessments because the budget created by Defendants was unreasonably low and was
3 deficient by the amount of the cost to repair the physical damage at the Condominium;

4 c) \$2,800,000, plus pre-judgment interest, for the loss of value to the Condominium,
5 which amount will increase as time passes, and which damage has occurred and will continue to
6 occur regardless of repairs.

7 **Count Two**

8 **(Negligence by DDLLC Integrity)**

9 25.

10 DDLLC and Integrity were at all material times the general contractors responsible for
11 the proper and workmanlike construction of the Condominium.

12 26.

13 DDLLC and Integrity selected sub-contractors and design professionals, entered into
14 construction contracts; supervised the construction; inspected the construction progress, quality,
15 and compliance with approved building plans, state and local building code standards,
16 manufacturer instructions, and/or construction industry standards.

17 27.

18 As a result of providing the services outlined above, DDLLC and Integrity knew or, in
19 the exercise of ordinary care, should have known:

20 a) that the construction defects described in **13-16** existed;

21 b) that the Condominium had not been and was not being constructed in compliance
22 with approved building plans, state building code standards, manufacturer instructions, and/or
23 construction industry standards;

24 c) that the Condominium had suffered water intrusion, water damage, and
25 consequential damage and/or that there was a substantial and unreasonable risk that the
26 Condominium had or in the near future would suffer the water intrusion, water damage, and
27 consequential damage described in **13-16**;
28

1 d) that a failure to address and repair the construction defects, damage, and risks
2 during the activities in which they were engaged would result in water intrusion, water damage,
3 and consequential damage, or posed an unreasonable risk of resulting therein; and

4 e) that the construction defects, damage, and risks would remain undetected by the
5 Association and unit owners for a substantial period of time, thereby increasing the damages and
6 costs of repairing and remedying them, or that there was a substantial and unreasonable risk that
7 such would occur.

8 28.

9 Notwithstanding what DDLLC and Integrity knew or, in the exercise of reasonable care,
10 should have known, it failed to address and repair and failed to cause others to address or repair,
11 the conditions, physical damage, and risks described herein and in paragraphs **13-16**, above,
12 during its activities at the Condominium. DDLLC and Integrity also failed to disclose and/or
13 concealed and failed to cause others to disclose the water intrusion, water damage, construction
14 defects, and/or risks thereof to the Association and to the Owners.

15 29.

16 As a direct, natural, and proximate result of DDLLC and Integrity's negligence, Plaintiff
17 has been damaged as described in paragraph **24**, above.

18 **Count Three**

19 **(Negligence *per se* by DDLLC and Integrity)**

20 30.

21 The Oregon Building Code governs the construction, re-construction, alteration and
22 repair of buildings in Oregon. New construction must also be performed in accordance with
23 approved building plans. In addition, manufacturers of various building components publish
25 instructions governing the installation of the manufacturer's products, including integration of
26 the product with surrounding building components. Lastly, various construction industry
27 organizations publish installation guidelines for particular building components, and those
28 publications constitute industry standards. The building code, building plan approval,

1 manufacturers' instructions, and published industry standards establish uniform performance
2 standards to protect the health, safety, welfare, comfort and security of Oregon residents.

3 31.

4 DDLC and Integrity were required to follow the Oregon Building Code. This duty exists
5 independently of other duties owed to Plaintiff. DDLLC and Integrity had additional
6 unconditional duties to perform its work in accordance with all approved building plans, all
7 relevant manufacturers' installation instructions and published construction industry standards.

8 32.

9 DDLLC and Integrity were negligent *per se* because they violated the Oregon Building
10 Code, failed to follow the approved building plans, manufacturer installation instructions, and
11 published construction industry standards by building the Condominium with the construction
12 defects described in paragraph 15, above.

13 33.

14 As a result of Integrity's negligence *per se*, Plaintiff has been damaged as set forth in
15 paragraph 24, above.

16
17 **SECOND CLAIM FOR RELIEF**

18 **(Negligent Misrepresentation by DDLLC)**

19 34.

20 Plaintiff re-alleges paragraphs 1-17 and 19-33 and incorporates them by reference herein.

21 35.

22 The obligations and duties that DDLLC owed to the Association, and its owner members,
23 constitute a special relationship. The Association and its Owners depended on DDLLC to
25 properly administer and manage operation of the Association for the benefit of its members and
26 to make all disclosures concerning the true condition of the Condominium and those areas and
27 components that the Association is required to maintain. The special relationship imposed on
28 DDLLC the obligation to exercise reasonable care to avoid making misrepresentations to the

1 Association and its owner members, as well as to properly investigate the true condition of the
2 Association's interests, the Owners' interests, and to make full disclosure of the same to other
3 board members and Owners.

4 36.

5 During and following the construction of the Condominium, as a result of its intimate
6 association with and oversight of the development, construction, construction supervision,
7 inspection of construction progress, and sales of the Condominium units; establishment,
8 oversight, and operation of the Association; preparation of the Association's budget; and/or
9 establishment and maintenance of assessment levels, DDLLC knew or, in the exercise of
10 reasonable care, should have known:

- 11 a) that the defects and damage listed in paragraphs **13-16**, above, existed;
- 12 b) that the Condominium had or, in the near future, would suffer the water intrusion,
13 water damage, and consequential damages described in paragraphs **13-16**, above;
- 14 c) that a failure to address and repair the construction defects, code violations and
15 water intrusion, during the activities in which they were engaged would result in such water
16 intrusion, water damage, structural damage, and consequential damage or posed an unreasonable
17 risk of resulting therein;
- 18 d) that the construction defects, code violations, water intrusion, water damage, and
19 consequential damage would remain undetected by the Association and its owner members for a
20 substantial period of time, thereby increasing the damage and cost of repairing or remedying;
- 21 e) that the Association's budget needed to include provision of funds for repair and
22 replacement of the water damage and consequential damage caused by the construction defects,
23 and code violations;
- 25 f) that the level of assessments had not been established and/or maintained at an
26 adequate level to meet the operating, maintenance, and other common expenditures and to also
27 provide for adequate replacement costs and sufficient reserves in light of the construction
28

1 defects, code violations, water damage, and consequential damage being suffered by the
2 Association and owner members; and

3 g) that the Association would incur costs and expenses as a result of DDLLC's
4 failure to properly construct and/or address problems at the Condominium, including inspection,
5 repair costs, and legal fees.

6 37.

7 However, notwithstanding what it knew or, in the exercise of reasonable care, should
8 have known, prior to the sale of the units, DDLLC expressly (in writing or orally) represented
9 and/or implied the following facts regarding the construction and condition of the Condominium:

10 a) the Condominium was built according to the approved plans and in compliance
11 with local and state building code standards, manufacturer installation instructions, and
12 published construction industry standards;

13 b) it had inspected the Condominium or had caused the Condominium to be
14 professionally inspected during and following its construction for quality and compliance with
15 the city-approved plans and local and state building code standards;

16 c) the Condominium had no faulty workmanship, improper or defective materials,
17 improper construction, and/or material structural defects;

18 d) the Condominium had no water intrusion or water damage problems or risks
19 thereof;

20 e) the Condominium had no moisture problems in the structure or risks thereof;

21 f) the Condominium had no other material defects affecting the buildings; and

22 g) the monthly assessments were sufficient to pay the operating, maintenance, and
23 other common expenses and also to provide for adequate replacement reserves.

25 38.

26 Inasmuch as the knowledge and disclosure of the construction defects code violations,
27 water intrusion, water damage, and consequential damage described in paragraphs 13-16, above,
28 and elsewhere herein, were and are material to the sales, value, and use, repair, and maintenance

1 of the Condominium, and the amounts of general and special assessments necessary to maintain,
2 repair, and replace the same, DDLLC knew or, in the exercise of reasonable care, should have
3 known, that the misrepresentations and failures to disclose described herein would be relied upon
4 by the Association and unit purchasers.

5 39.

6 At the time of the misrepresentations and failures to disclose, DDLLC knew or, in the
7 exercise of reasonable care, should have known that such representations were false and the true
8 facts are as they are alleged in paragraphs 13-16.

9 40.

10 As a direct, natural, and proximate result of DDLLC's negligent misrepresentations as
11 described herein, Plaintiff has been damaged as set forth in paragraph 24 above.

12
13 **THIRD CLAIM FOR RELIEF**

14 **(Breach of Fiduciary Duties by DDLLC, Dion, Pike, and Doe 1)**

15 41.

16 Plaintiff re-alleges paragraphs 1-17, 19-33, and 35-40 and incorporates them by
17 reference herein.

18 42.

19 The defects and damages described in this Complaint affect the common interests of all
20 Condominium unit Owners because each unit Owner is ultimately responsible (as a member of
21 the Association) for the payment of assessments in order for the Association to fulfill its
22 maintenance and repair obligations under the Declaration. In addition, the Association is an
23 Oregon nonprofit corporation. Pursuant to ORS 65.077(1), the Association is authorized to sue
25 and be sued, and complain and defend in its corporate name. ORS 100.417(1) subjects the
26 Association's directors to the standards of care set forth in ORS 65.357, 65.361, 65.367, 65.369
27 and 65.377.

28 //

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
28

43.

Before the turnover from Developer control of the Association to the owners (“turnover”), Dion, Pike, and Doe 1 served on the Association’s Board of Directors. As such, pursuant to ORS 65.357(1), Dion, Pike, and Doe 1 each owed the Association fiduciary duties of care and loyalty. In addition, prior to turnover, DDLLC, Dion, Pike, and Doe 1 were the controlling members of the Association and exercised the power to appoint the directors of the Association and controlled all the Association’s appointments, operations, expenditures, repairs, acts, and failures to act. As a result of those roles, DDLLC, Dion, Pike, and Doe 1 owed additional fiduciary duties of care and loyalty to the Association and its minority owner-members. In all roles alleged herein, DDLLC, Dion, Pike, and Doe 1 had the duty to act at all times in the best interests of the Association and the Owners, including the duty to appoint directors who would act in the best interests of the Association and the Owners.

44.

DDLLC, Dion, Pike, and Doe 1 simultaneously maintained control of the Developer and the Association and, therefore, had conflicts of interest in all transactions between the Developer and the Association. Because DDLLC, Dion, Pike, and Doe 1 each had a conflict of interest, none could ratify any conflict transaction. Conflicts involving both DDLC and the Association included, but were not limited to:

- a) taking all reasonable steps to remedy problems in the Condominium, including water intrusion, construction defects, code violations, water damage and consequential damage – meanwhile marketing and selling units;
- b) disclosing all problems and areas of concern with the Condominium to all Owners and the owner officers and directors of the Association – meanwhile marketing and selling units;
- c) keeping, maintaining, and providing to the Association, its directors, officers, and authorized agents, all records of activities and problems at the Association – meanwhile marketing and selling units;

//

1 d) preparing with due care a budget for the Association to provide for the operation,
2 maintenance, and other common expenditures and to provide for adequate replacement costs and
3 sufficient reserves for the Condominium – meanwhile marketing and selling units;

4 e) establishing assessments at an adequate level to meet the operating, maintenance
5 and other common expenditures, and to provide for adequate replacement costs and sufficient
6 reserves for the Condominium – meanwhile marketing and selling units; and

7 f) ensuring that the Condominium was constructed properly and in accordance with
8 building code standards – meanwhile marketing and selling units;

9 45.

10 DDLLC, Dion, Pike, and Doe 1 breached their fiduciary duties of care and loyalty to the
11 Association and the Owners by exercising control of the Association for their own interests by:

12 a) failing to disclose to the Association and its Owners the construction defects listed
13 herein, by preventing their discovery thereof, and by failure to warn them thereof;

14 b) failing to cause a proper investigation to be made and reported regarding the need
15 for repairs of damage to the Condominium, as well as the need for protective measures to
16 prevent future damage thereto, and failing to cause such needed repairs and protective measures
17 to be achieved;

18 c) failing to prepare with due care the budget for the Association as to the operating,
19 maintenance, reserves and other expenses of the Association;

20 d) failing to keep and maintain and/or refusing to provide or hand-over, contrary to
21 the requirements of the Oregon Condominium Act, ORS Chapter 100, to the Association, records
22 of activities and problems at or with the Association, building plans and specifications, and
23 maintenance guidelines of for the Condominium; and

25 e) failing to establish assessments at an adequate level to meet the operating,
26 maintenance, and other common expenditures, and by failing to provide adequate replacement
27 costs and sufficient reserves for the Condominium.

28 //

1 46.

2 As a result of such conduct, the Association is responsible for arranging for the repair and
3 replacement of the building envelope of the Condominium, and must raise, by assessment or
4 otherwise, the funds to complete the reconstruction.

5 47.

6 Each breach alleged above resulted in a savings of cost to DDLCC, Dion, Pike, and Doe
7 1, and/or increased net cash received at closing. To the extent that amount increased at the
8 expense of the Association, the savings to DDLCC, Dion, Pike, and Doe 1 is also a distribution
9 from the Association to one of its members. As the Association's directors, Dion, Pike, and Doe
10 1 are personally liable for the distributions under ORS 65.367. As a direct and proximate result
11 of the breaches of fiduciary duties to the Association and Owners, Plaintiff has been damaged as
12 set forth in paragraph 24 above.

13 48.

14 Plaintiff is entitled to recover its reasonable attorney fees under ORS 100.470.

15
16 **FOURTH CLAIM FOR RELIEF**

17 **(Violations of the Oregon Condominium Act by DDLCC)**

18 49.

19 Plaintiff realleges paragraphs 1-17, 19-33, 35-40, and 42-48 and incorporates them by
20 reference herein.

21 50.

22 DDLCC and/or agents acting on its behalf made written misrepresentations as more
23 specifically alleged hereafter.

24 51.

25
26 ORS 100.770 prohibits developers or their agents from using any misrepresentation,
27 omission, or other fraudulent means in connection with the sale of any condominium unit; or to
28 make any untrue statement of material fact or fail to state a material fact necessary to make other

1 statements not misleading; or to engage in any conduct that would operate as a fraud or
2 deception. ORS 100.780 voids any condition, stipulation, or provision in a unit sales contract or
3 lease or other legal document that binds any purchaser to waive any legal rights the purchaser
4 may have against a developer.

5 52.

6 Plaintiff and the unit owners are within the class of persons intended to be protected by
7 these statutes, and the harms that have been caused to Plaintiff and the unit owners are the types
8 of harms intended to be protected against by these statutes.

9 53.

10 In the course of developing the property into the Condominium, DDLLC participated in
11 the adoption, issuance, and filing of the statutorily required Disclosure Statement with the Real
12 Estate Commissioner of the State of Oregon. A copy of the Disclosure Statement was distributed
13 to all unit owners when they purchased their units.

14 54.

15 In the Disclosure Statement, DDLLC represented that it had prepared, with due care, a
16 budget as to the operating, maintenance, and other common expenses and replacement reserves
17 of the Condominium. DDLLC also represented that it had prepared, with due care, a reserve
18 study detailing the expected useful life of the elements of the Condominium and the amount of
19 reserve funds needed to replace those elements.

20 55.

21 By not disclosing the problems with the Condominium buildings, DDLLC represented
22 that:

- 23 a) the Condominium was built and/or repaired according to the approved plans and
25 in compliance with local and state building code standards and manufacturers' specifications;
26 b) it had inspected the Condominium or had caused the Condominium to be
27 professionally inspected during and following its construction and/or repair;

28 //

1 c) the Condominium's units and common elements were in good condition and
2 had been fully and properly maintained;

3 d) the Condominium had no faulty workmanship, improper or defective
4 materials, improper construction and/or material structural defects;

5 e) the Condominium had no water intrusion or water damage problems, or risks
6 thereof;

7 f) the Condominium had no moisture problems in the structure or risks thereof;

8 g) the Condominium had no other material defects affecting the buildings;

9 h) the budget and reserve study were accurate and adequate to fund the Association's
10 operating, maintenance and other expenditures, to determine the estimated useful life of the
11 common elements of the Condominium, and to provide for adequate replacement costs and
12 sufficient reserves for the Condominium;

13 i) the monthly assessments were sufficient to pay the operating, maintenance, and
14 other common expenses and also to provide for adequate replacement reserves;

15 j) the Condominium had no moisture problems in the structure; and

16 k) any problems or defects with the Condominium had been repaired.

17 56.

18 Furthermore, in the course of marketing the units, DDLCC and their agents repeatedly
19 and expressly told or implied to potential purchasers that:

20 a) the Condominium was built and/or repaired in compliance with local and state
21 building code standards and manufacturers' specifications;

22 b) it had inspected the Condominium or had caused the Condominium to be
23 professionally inspected during and following its construction and/or repairs for quality and
25 compliance with local and state building code standards;

26 c) the Condominium's units and common elements were in good condition and had
27 been properly and fully maintained;

28 //

1 d) the Condominium had no faulty workmanship, improper or defective materials,
2 improper construction and/or material structural defects;

3 e) the Condominium had no water intrusion or water damage problems, or risks
4 thereof;

5 f) the Condominium had no moisture problems in the structure or risks thereof;

6 g) the Condominium had no other material defects affecting the buildings;

7 h) the budget and reserve study were accurate and adequate to fund the
8 Association's operating, maintenance, and other expenditures, to determine the estimated
9 useful life of the common elements of the Condominium and to provide for adequate
10 replacement costs and sufficient reserves for the Condominium; and

11 i) the monthly assessments were sufficient to pay the operating, maintenance and
12 other common expenses and also to provide for adequate replacement reserves.

13 57.

14 Likewise, DDLLC failed to disclose and/or concealed the water intrusion; water damage;
15 construction defects; consequential damage; evidence of water intrusion problems and
16 consequential damage; actual material defects and conditions, risks and material non-
17 conformities and inaccuracies or possibilities thereof; and inaccuracy and insufficiency of the
18 budget, reserve study, and level of assessments, as all set forth, above, and elsewhere herein, to
19 the unit owners and the Association.

20 58.

21 Each of the representations in the Disclosure Statement and to the unit owners, the
22 failures to disclose, and the concealment made by DDLLC and/or its agents was of material facts
23 and was false and misleading, in that belief in them and ignorance of the true facts and
25 conditions naturally tended to influence:

26 a) the purchasers of the units to purchase them for the amounts paid;

27 b) the Association to delay making investigations of the true facts and making
28 arrangements for needed maintenance and repairs and preventive measures; and

1 c) the Association to delay recognition of the need for corrected budgets,
2 projections, estimates of useful life and increased assessments and reserves.

3 59.

4 The conduct of DDLLC and/or their agents, as described above, constituted violations of
5 ORS 100.770 by:

6 a) the issuance of documents, printed matter, literature, public reports and
7 advertisements containing untrue statements of material fact and failure to state material facts
8 necessary in order to make their other statements not misleading; and

9 b) acts, practices, and course of business that operated as a fraud or deception on the
10 unit purchasers and owners and the Association.

11 60.

12 DDLLC knew its representations and omissions amounted to false representations and
13 concealment, or it made the representations recklessly without regard for whether they were true
14 and gave a false impression.

15 61.

16 DDLLC knew that Plaintiff Association and the unit owners would rely on the accuracy
17 of the Disclosure Statement, the unit sales agreement, the oral representations, and the lack of
18 any disclosure of water intrusion, water damage, dry rot, mold and structural defects. DDLLC
19 intended that Plaintiff and the unit owners so rely.

20 62.

21 Despite using reasonable care to discover the facts, neither Plaintiff nor the unit owners
22 knew DDLLC's, or their agents' representations and/or failures to disclose were false or of the
23 true condition of the Condominium as described above.

24 63.

25 Plaintiff and unit owners reasonably believed and relied on DDLLC's oral and written
26 representations and the lack of disclosure as to said water intrusion, water damage, dry rot, mold
27 and structural defects.
28

1 64.

2 As a direct, natural, and proximate result of DDLLC's violations of the Oregon
3 Condominium Act, as above described, Plaintiff has been damaged as alleged in paragraph 24,
4 above.

5 65.

6 This is an action to enforce compliance with the terms and provisions of the Oregon
7 Condominium Act. Plaintiff is entitled to recover its reasonable attorney fees pursuant to ORS
8 100.470.

9 **FIFTH CLAIM FOR RELIEF**
10 **(Breach of Contract – DDLLC)**

11 66.

12 Plaintiff realleges paragraphs 1-17, 19-33, 35-40, 42-48, and 50-65 and incorporates
13 them by reference herein.

14 **Count 1**
15 **(Breach of Sale Agreements)**

16 67.

17 DDLLC sold the Condominium units to individual unit owners pursuant to unit sales
18 agreements.

19 68.

20 DDLLC materially breached the terms of the unit sales agreements by failing to provide
21 the unit owners with defect free and habitable units, and by refusing and/or failing to repair or
22 cause to be repaired all defects at the condominium, including defect in or to components of the
23 units and common elements as set forth in paragraphs 13-16 and elsewhere herein, and all
25 damage resulting from these defects.

26 69.

27 Plaintiff was due on close of each sale agreement a sum equal to the total deferred
28 assessments for maintenance and reserves. As such Plaintiff was a third-party beneficiary of the

1 sale agreements. As a result of DDLLC's breach of the sale agreements, Plaintiff's account was
2 underfunded at the closing of each sale agreement.

3 70.

4 Plaintiff and the unit owners have performed all of their obligations required under the
5 unit sales agreements and disclosure statement, and all conditions precedent to DDLLC's
6 obligations have been performed or have occurred.

7 71.

8 As a direct, natural and proximate result of DDLLC's breach of contract, Plaintiff has
9 been damaged as set forth in paragraph 24 above. All such damages were reasonably
10 foreseeable at the time of the sales of the units and the making of the contracts.

11 72.

12 Pursuant to the unit sales agreements, Plaintiff is entitled to its reasonable attorney fees
13 incurred in protecting and defending its rights under the contract.

14 **Count 2**

15 **(Breach of Contractual Warranty by DDLLC)**

16 73.

17 As part of the individual unit sales, DDLLC expressly warranted to purchasers that the
18 units and common elements were constructed in a workmanlike manner and would be free from
19 defects.

20 74.

21 In purchasing the units, purchasers relied on DDLLC's express warranties. In addition,
22 the Association and its members relied on DDLLC's express warranties on the units and
23 common elements when evaluating and establishing budget and assessment levels.

24 75.

25 DDLLC breached its express warranties by failing to adequately repair and/or refusing
26 to repair all defects in the condominium units and/or common elements as set forth elsewhere
27 herein.
28

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
28

76.

As a direct, natural, and proximate result of DDLIC's breach of express warranty, Plaintiff has been damaged as set forth in paragraph 24, above.

77.

Pursuant to the unit sales agreements, Plaintiff is entitled to its reasonable attorney fees incurred in protecting and defending its rights under the express warranties.

PUNITIVE DAMAGES

91.

Plaintiff reserves the right to move to amend the Complaint to allege punitive damages pursuant to ORS 31.725.

WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

1. On Plaintiff's First Claim for Relief, count one against DDLIC, Dion, Pike, and Doe 1, jointly and severally, damages as set forth in paragraph 24, above;
2. On Plaintiff's First Claim for Relief, count two against DDLIC and Integrity, jointly and severally, damages as set forth in paragraph 24, above;
3. On Plaintiff's First Claim for Relief, count three against DDLIC and Integrity, jointly and severally, damages as set forth in paragraph 24, above;
4. On Plaintiff's Second Claim for Relief against DDLIC, damages as set forth in paragraph 24, above;
5. On Plaintiff's Third Claim for Relief against DDLIC, Dion, Pike, and Doe 1, jointly and severally, damages as set forth in paragraph 24, above, and Plaintiff's reasonable attorney fees;
6. On Plaintiff's Fourth Claim for Relief against DDLIC, damages as set forth in paragraph 24, above, and Plaintiff's reasonable attorney fees;
7. On Plaintiff's Fifth Claim for Relief, count one against DDLIC, damages as set forth in paragraph 24, above, and Plaintiff's reasonable attorney fees;

//

- 1 8. On Plaintiff's Fifth Claim for Relief, count 2 against DDLLC, damages as set
2 forth in paragraph 27, above, and Plaintiff's reasonable attorney fees;
3 9. All allowable pre-judgment interest;
4 10. For their costs and disbursements incurred herein; and
5 11. Such other relief as the court deems just and equitable.

6 DATED this 20th day of October, 2017.

7 **VIAL FOTHERINGHAM LLP**

8
9 By: 

10 Jason L. Grosz, OSB #063429

11 jlg@vf-law.com

12 503-684-4111

13 *Of Attorneys for Plaintiff*

14 Trial Attorney: Jason L. Grosz, OSB #063429