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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

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RACHEL MCCLOSKEY, ANN GORMLEY,  
ALLEN WRIGHT, ELEANOR BAKER, as  
TRUSTEES OF 1400 CENTRE CONDOMINIUM  
TRUST,  
Plaintiffs,  
v.  
HORIZON DEVELOPMENT LLC,  
JOHN L. SULLIVAN, and REAL ESTATE  
EQUITY DEVELOPMENT AND CONSULTING,  
LLC,  
Defendants.

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**VERIFIED COMPLAINT AND JURY DEMAND**

**PARTIES**

1. The Plaintiffs are duly elected and/or appointed members of the Board of Trustees of 1400 Centre Condominium Trust (“Trustees” or “Plaintiffs”) under a Declaration of Trust dated December 31, 2020 and recorded with the Suffolk County Registry of Deeds in Book 64629, Page 215 (the “Declaration”). The Declaration established the 1400 Centre Condominium Trust (the “Trust”) as the organization of unit owners of 1400 Centre Condominium, a residential condominium located at 1400 Centre Street, Roslindale, Massachusetts (the “Condominium”).

2. The Defendant Horizon Development, LLC (“Horizon”) is a Massachusetts limited liability corporation with a principal place of business at 215 Burroughs Road, Braintree, Massachusetts 02184.

3. The Defendant John L. Sullivan (“Sullivan”) is an individual with a last and usual address of 215 Burroughs Road, Braintree, Massachusetts 02184.

4. The Defendant Real Estate Equity Development And Consulting LLC (“REED”) is a Massachusetts limited liability corporation with a principal place of business at 15 Brownson Terrace, Boston, Massachusetts 02130.

### **FACTS**

5. The Condominium was established by the recording of a Master Deed dated December 31, 2020 and recorded with the Suffolk County Registry of Deeds in Book 64629, Page 186, as amended (the “Master Deed”).

6. Horizon is the declarant of the Condominium, within the meaning of Massachusetts General Laws, Chapter 183A, Section 1, as expressly stated in the Master Deed.

7. REED was the project manager for the Condominium construction project.

8. On information and belief, the Condominium, including the building, the units, and the common areas and facilities appurtenant thereto was constructed between approximately October 2016 and the end of January 2021.

9. The Condominium includes sixteen (16) residential units and one (1) commercial unit, all in a single four (4) story building with a first-floor enclosed garage containing thirteen (13) parking spaces and an exterior parking lot containing seven (7) off-street parking spaces.

10. Horizon sold and conveyed the first Condominium unit to an individual owner on January 24, 2021 and has, to date, sold all sixteen (16) of the residential units.

11. Horizon is the owner of the Condominium’s commercial unit.

12. The Declaration establishes Horizon as the original Trustee of the Trust.

13. The four (4) Plaintiff-Trustees were elected as additional Trustees of the Trust on or about February 16, 2023.

14. Pursuant to the Declaration, Horizon will remain as a Trustee of the Trust until the earlier of: such time as Horizon no longer owns a unit, or the passing of three years after the conveyance of the first unit.

15. Horizon conveyed the first unit on January 29, 2021; therefore, Horizon's term as Trustee ends on January 29, 2024, unless Horizon sells its unit before that date.

16. Horizon was the sole Trustee of the Trust during the construction of the Condominium building and common areas and facilities and during the period of time during which it marketed and sold Condominium units. At all times material, Sullivan was a principal of Horizon.

17. Shortly after the turnover of control of the Trust to a unit owner-elected board of trustees, the Trustees engaged a sound engineering consultant to investigate a sound transmission problem between Condominium units. The Trustees hired the sound engineer because of the poor sound insulation the Trustees and other unit owners experienced while in their units, where sound transmission from the units above and the roof is loud.

18. The sound engineer conducted sound tests and determined that the sound transmission in the Condominium units ceiling assemblies do not comply with industry standards, the applicable Building Code, or the architectural detail provided in the construction drawings for the Condominium. The sound engineer concluded that the common area ceiling assemblies are missing crucial elements needed for sound transmission reduction.

19. In October 2023, Horizon was provided with the sound engineers report containing the details of its investigation and findings. Horizon proposed a solution involving the installation of "puddy pads" at various locations in the units. With the Trustees' permission, Horizon installed the pudgy pads in a single unit as a test. Follow up testing by the sound engineer showed that this proposed solution completely failed.

20. Horizon has failed to remedy the sound transmission defect.

21. The Trustees retained a civil engineering firm to investigate other issues with the Condominium building common areas and facilities. The civil engineer performed an investigation to evaluate the as-built conditions of the common area building components as they pertain to Building Code, the original construction documents, and standard construction practices. The civil engineer's investigation uncovered numerous and substantial defects, all as reported by the civil engineer as set forth below.

22. The gutters, downspouts, and ice melt systems called for in the Plans were never installed at the cornice roofs. As a result, the parapet cap is ponding water in several areas. The worst ponding is at the Unit 405 patio parapet by the main building wall.

23. There are two exterior exclusive-use patios located at the 4th floor roof that are accessed from Units 404 and 405, respectively. Each balcony is approximately 8'x10' in size. The TPO membrane at the top of the parapet wall is ponding water in several locations.

24. There are a number of installation deficiencies with the fiber cement lap siding at the patio parapet walls. These include over-driven face nails, sloppy/missing caulking installation at trim and corner locations, and a broken piece of lap siding.

25. The majority of the exterior walls of the building are clad with horizontal fiber cement lap HardiePlank siding. The siding is blind nailed with a 7" exposure. Several overdriven nails were noted at the HardiePlank siding. Overdriven nails expose the inner matrix of the fiber cement panel to the elements, which will lead to moisture infiltration and premature failure of the panel.

26. A number of additional deficiencies were discovered regarding the exterior walls. These include the following:

A. Exposed spray foam was found being used to close a gap at the foundation wall step under the building bump outs at Weld Street. This

location should be covered with PVC trim for permanent weather protection.

- B. A crack was noted in the foundation wall at the rear of the building by the gas meters. This crack should be sealed for weathertightness and insects.
- C. Sloppy/missed paint touch ups are noted in several areas.
- D. Some of the utility penetrations by the gas meters are not caulked where the piping penetrates the foundation wall. Such locations are vulnerable to water infiltration and should be sealed.
- E. The door perimeters at the water service room and the stairwell vestibule have not been caulked, leaving the underlying membrane flashings exposed. Membrane flashings like these can break down under prolonged exposure to UV sunlight. Caulking these doors should be done to make the building more weathertight and to protect the underlying flashings from deterioration.

27. Many of the unit owners report condensation problems on the windows during the winter.

28. The garage egress door located adjacent to the overhead door was not installed properly. Despite hinge adjustments, the door slab rubs against the frame and does not open or close properly.

29. Traffic bollards called for in the plans at the garage door were never installed, and concrete blocks left inside the garage were never installed in the parking lot.

30. There is a large reinforced concrete wall located at the rear of the property. According to the available Plans, the wall is a cantilever style structure with approximately 7 feet of the wall exposed above grade and four feet below grade. The rear face of the wall has a stamped pattern to simulate stone masonry. The top of the wall is serviced with six-foot tall PVC privacy fencing.

31. Several cracks were noted at the top of the retaining wall. These cracks will be prone to take on water and worsen during the freeze/thaw cycles of winter.

32. There is additional and substantial site work called for in the building plans along the front of the building that was never completed. This includes, without limitation, the construction of concrete and brick masonry planters along the brick veneer walls on Centre Street, the construction of PVC lattice enclosed crawlspaces under the building bump-outs on Weld Street, and the extension of the stone wall on Weld Street. Portions of the city sidewalk were temped in with asphalt but need to be replaced with concrete.

33. The building plans call for the exposed CMU walls in the stairwells to receive a plaster skim coat and paint, but this was never done.

34. The record drawings include an exhaust system to mechanically ventilate the trash room and the residential storage spaces. This exhaust system was intended to keep the trash smells from propagating through the building and avoid high levels of moisture from accumulating in the storage spaces. The exhaust system, however, was not installed. As a result, a very strong smell emanating from the unventilated trash room constantly permeates the building entrance lobby above.

35. Electrical provisions were installed during the construction phase of the building for the installation of a fire smoke damper in the trash room as called and required by the fire code on the design drawings, but no fire smoke damper was installed.

36. The garage CO system controller was never electrically wired, therefore the ventilation system and exhaust system has never operated. The record electrical drawings do not show any provisions for the CO system to be electrically powered and are poorly coordinated with the mechanical drawings. The roof mounted unit installed to serve the various residential corridors was never electrically wired. The record electrical drawings do show power provisions for the unit, but it appears that electrical power was never brought up to it.

37. A number of residents have complained about issues with the condensate drain system serving the air handler units. Per the building record drawings, the systems were designed such that there would be a dedicated “condensate drain riser” where all the air handler units would drain into by gravity. The installed system was instead provided with a local condensate pump and a drain pan. The air handler’s condensate drains directly to the pump and is pumped through a vinyl hose running into the wall to an unknown drain location. The discharge vinyl hose was noted to be full of mold and may cause draining issues due to build up obstructions.

38. The domestic water heaters of the residential units were installed without a condensate neutralizer kit as called for in the record drawings. By 248 CMR, the Massachusetts Plumbing Code, the installed gas fired furnace and the instantaneous water heater are required to be installed with a condensate drain neutralizer kit. This is because low ph levels in the drain wastewater will corrode cast iron piping or PVC piping sealers over time and cause leaks within building walls.

39. Wall penetrations by systems’ piping, venting and ductwork were not properly fireproofed or installed with the proper fire rating. The building drawings show that the ceilings, demising walls, and floors are fire rated. The HVAC design drawings call for all mechanical systems such as piping, venting, and ductwork to be fireproofed at penetrations, and no pipe or venting system penetrations in the mechanical closet walls or ceilings are fireproofed.

40. In the units, some ceiling supply diffusers are missing fire dampers. The main supply ductwork connecting to the air handler is required to have a fire damper at the point of penetration of the ceiling, and an access door should also be provided. Neither the access door or fire dampers were installed.

41. The roof mounted unit installed to provide ventilation for the various residential corridors was never electrically wired. The record electrical drawings do show power provisions, but it appears that electrical power was never brought up to the unit. No fire dampers were installed at the ceilings for the corridor ventilation system.

42. The domestic water piping is not insulated, not only within the dwelling units but also the piping running in the garage ceiling.

43. Both plumbing and electrical drawings call for the installation of a sump pump that would allow the basement to drain into the building sewer system, as this could not be accomplished by gravity due to elevation issues between the basement level and the city sewer line. The sump basin was installed but no sump pump or electrical provisions were installed. This system is critical since the domestic water service and fire protection service come into the building at basement levels.

44. Per the design drawings, the first-floor and basement spaces were to be provided with electrical resistance heat, but these heating systems were not installed. All spaces, including the storage areas, must be temperature controlled to prevent the wet sprinkler system from freezing and causing major water damage.

45. Pursuant to NFPA 13, all fire department connections and components related to system service or testing shall be provided with signs. The signs called for by the drawings at the standpipe fire hose connections at the stairwells in each floor are missing.

46. An exit sign at the 3<sup>rd</sup> floor corridor area is one-sided, whereas a double-sided sign is required.

47. Stairwell fire alarm pull stations were installed behind the exit door swing path. It would be impossible to see the pull station and activate the fire alarm if the doors were opened in an emergency.



48. The kitchen and bathroom exhaust system terminations for the second and third floor were installed at the exterior walls. Many were installed less than three (3) feet from windows, which is a violation of the International Mechanical Code and Massachusetts Building Code.

49. In a recent heavy rain event, several units experienced significant water intrusion due to what is suspected to be a defect in the Condominium building roof.

50. Said deficiencies have caused and continue to cause significant physical damage to the Condominium including, but not limited to, degradation of the various components of the Condominium common areas and facilities, degradation of the individual Condominium units and a diminution in value of the Condominium common areas and facilities.

51. The Plaintiffs have suffered real damages as a proximate result of the deficiencies in the design and construction of the Condominium building and common areas and facilities, as set forth herein without limitation, and they will be obliged to continue to expend substantial sums to correct these material defects and deficiencies and the resulting property damage. Exclusive of any defect causing the recent water infiltration into units, and exclusive of additional construction and design defects not specifically identified herein, the estimated costs associated with the repair of the sound and other defects amount to \$2,300,944.55,

52. On or about October 26, 2023, the Trustees, by and through their counsel, mailed to Horizon and Sullivan, through their counsel, via Certified Mail and electronic mail, a demand for relief pursuant to G.L. c. 93A, §§ 2 and 9.

53. By agreement of the parties' respective counsel, Horizon and Sullivan were given until December 1, 2023, to respond to the Trustees' Chapter 93A demand letter.

54. The deadline has passed, and Horizon and Sullivan have not responded to the Trustees' Chapter 93A demand letter.

## CLAIMS

### COUNT I - NEGLIGENCE

#### **(Horizon Development LLC and Real Estate Equity Development And Consulting LLC)**

55. The Plaintiffs hereby repeat and re-allege Paragraphs 1 through 54 of this Complaint as if set forth fully herein.

56. The Defendants Horizon and REED owed a duty to the Condominium Trust as the organization of unit owners at the Condominium to exercise due care in the design and construction of the Condominium buildings and associated common areas and facilities so that said areas and facilities would be adequate for their intended purposes, constructed in a good and workmanlike manner in accordance with any and all applicable laws, codes, and industry standards, and free of defects in workmanship and materials.

57. Horizon and REED failed to exercise due care in the construction of the Condominium buildings and associated common areas and facilities by failing to construct said improvements in a good and workmanlike manner in accordance with any and all applicable laws, codes, and industry standards, free of defects in workmanship and materials all as alleged herein.

58. The negligence of Horizon and REED in constructing the Condominium buildings and associated common areas and facilities has directly and proximately caused and continues to cause significant physical damage to property including, but not limited to, degradation to various components of the Condominium common areas and facilities, and a diminution in value of the Condominium common areas and facilities.

59. As a direct, proximate and foreseeable result of the failures of Horizon and REED to exercise due care in the construction of the Condominium buildings and associated common areas and facilities, the Plaintiffs will be required to continue to expend substantial sums to

correct the material defects and deficiencies existing in said improvements and the resulting property damage. The Plaintiffs have suffered real damages as a proximate result of the negligence of Horizon and REED in constructing the Condominium buildings and associated common areas and facilities.

WHEREFORE, the Plaintiffs pray for the relief set forth below.

**COUNT II – BREACH OF FIDUCIARY DUTY**  
**(As to Horizon Development LLC and John L. Sullivan)**

60. The Plaintiffs hereby repeat and re-allege Paragraphs 1 through 59 of this Complaint as if set forth fully herein.

61. The Defendant Horizon, as sole Trustee of the Condominium Trust during the development and construction of the Condominium buildings and common areas and facilities, owed the Condominium Trust a fiduciary duty to exercise good faith, loyalty, and due diligence.

62. The Defendant Sullivan was at all relevant times, and is, an officer and manager of Horizon. As an officer and manager of Horizon, Sullivan, individually owed a fiduciary duty to the Trust

63. During the period of time in which Horizon was the sole Trustee of the Condominium Trust, it constructed and submitted to condominium status the Condominium buildings and the common areas and facilities appurtenant thereto in a materially deficient condition.

64. While Horizon was a Trustee of the Condominium Trust, Horizon and Sullivan were aware, or should have been aware, that the Condominium common areas were being constructed in an inadequate and deficient manner.

65. After the unit-owner Trustees notified Horizon and Sullivan of the Condominium building's defects and deficiencies as set forth herein, Horizon and Sullivan failed to remedy the defects and deficiencies.

66. Horizon and Sullivan failed to ensure that the Condominium, including the common areas and facilities appurtenant thereto, were adequately and properly constructed in a good and workmanlike manner in conformance with all applicable codes, statutes, rules and regulations. Horizon and Sullivan failed to pursue any and all legal remedies available with regard to the numerous construction defects existing in the Condominium building and the associated common areas and facilities, all in breach of his fiduciary duties.

67. Horizon and Sullivan acted in bad faith, clearly benefiting their own interests and contrary to the interests, and inconsistent with the purposes of, the Condominium Trust.

68. The conduct of Horizon and Sullivan with respect to the development, construction and submission to condominium status of the Condominium buildings and the common areas and facilities appurtenant thereto constituted a material breach of the fiduciary duties they owed to the Condominium Trust. As a direct and proximate result of Horizon's and Sullivan's improper conduct, the Plaintiffs have suffered substantial money damages.

WHEREFORE, the Plaintiff pray for the relief set forth below.

**COUNT III – VIOLATION OF G.L. C. 93A**  
**(As to Defendants Horizon Development LLC and John L. Sullivan)**

69. The Plaintiffs hereby repeat and re-allege Paragraphs 1 through 68 of this Complaint as if set forth fully herein.

70. The Defendant Sullivan was at all relevant times, and is, an officer and manager of Horizon.

71. At all times material hereto, Horizon and Sullivan were engaged in the conduct of commerce within Massachusetts, specifically, the development and construction of residential condominium projects and the marketing and sale of individual residential condominium units.

72. The willful and knowing failure of Horizon and Sullivan, their employees, agents, and/or servants, to design and/or construct the Condominium, including all of the common areas

and facilities appurtenant thereto, in a good and workmanlike manner, in accordance with any and all applicable laws and codes and industry standards and free of defects in workmanship and materials is a violation of Massachusetts General Laws, Chapter 93A, Section 2 as such conduct is "oppressive or otherwise unconscionable; and/or fails "to comply with existing statutes, rules, regulations or laws meant for the protection of the public's health, safety or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide consumers of this Commonwealth protection....”

73. As a corporate officer of Horizon, Sullivan is liable individually for his personal acts or omissions giving rise to the Condominium defects.

74. As a direct and proximate result of Horizon and Sullivan’s improper conduct, the Plaintiffs have been required to incur, and will continue to incur, substantial expenses and damage related to correcting the numerous deficiencies in the Condominium, including all of the common areas and facilities appurtenant thereto.

WHEREFORE, the Plaintiffs pray for the relief set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray that this Honorable Court:

- A. Under Counts I, II, and III, enter judgment in favor of the Plaintiffs and against Horizon in an amount to be determined, together with reasonable attorneys’ fees and costs;
- B. Under Count I, enter judgment in favor of the Plaintiffs and against REED in an amount to be determined, together with reasonable attorneys’ fees and costs;
- C. Under Count II, enter judgment in favor of the Plaintiffs and against Horizon and Sullivan and award the Plaintiffs three times the amount of the Plaintiffs’ actual damages together with attorney’s fees, costs and all other damages occurring from the Horizon’s and Sullivan’s willful and knowing violations of M.G.L. Chapter 93A; and
- D. Grant such other relief as may be just and proper.

### VERIFICATION


I, Robert Kovalko, hereby depose and state as follows:

1. I am a property manager with Simplified Property Solutions, LLC, the Property Management company for the 1400 Centre Condominium (the "Condominium").

2. I have read the above Verified Complaint and, knowing the contents thereof, have found that the allegations of fact set forth therein, based on my own personal knowledge, to be true, except where stated upon information and belief and as to those allegations I believe them to be true.

Signed under the pains and penalties of perjury.

Dated: January 11, 2024

  
Name: Robert Kovalko *As Agent of*  
Duly authorized agent on behalf of *1400 Centre Street Trust*  
1400 Centre Condominium Trust

**DEMAND FOR JURY**

The Plaintiffs demand a trial by jury on all counts so triable.

Respectfully submitted,

RACHEL MCCLOSKEY, ANN GORMLEY,  
ALLEN WRIGHT, ELEANOR BAKER, as  
TRUSTEES OF 1400 CENTRE CONDOMINIUM  
TRUST,

By their attorneys,

*/s/ Thomas W. Aylesworth*

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Dated: January 16, 2024