

Apr 22, 2016 4:15 PM

David H. Yamasaki
Chief Executive Officer/Clerk
Superior Court of CA, County of Santa Clara
Case #1-13-CV-258281 Filing #G-83041
By R. Walker, Deputy

1 JON B. ZIMMERMAN [SBN. 112281]
2 GREGORY B. COHEN [SBN. 225510]
3 ROBINSON & WOOD, INC.
4 227 N 1st Street
5 San Jose, California 95113
6 Telephone: (408) 298-7120
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8 Attorneys for Plaintiff, CILKER
9 APARTMENTS, LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

11 CILKER APARTMENTS, LLC,

12 Plaintiff,

13 vs.

14 WESTERN NATIONAL CONSTRUCTION,
15 MCLARLAND, VARQUEZ & PARTNERS,
16 GROUP M ENGINEERS, GENTRY
17 ASSOCIATES CONSTRUCTION
18 CONSULTANTS, LARCO INDUSTRIES,
19 FITCH PLASTERING, COURTNEY
20 WATERPROOFING, CELL CRETE, LOS
21 NIETOS CONSTRUCTION, MADERA
22 FRAMING, KELLY DOOR, TARA
23 COATINGS, LDI, and DOES 1-100,
24 inclusive,

25 Defendant.

Case No. 113CV258281

**DECLARATION OF RICHARD AVELAR
IN SUPPORT OF PLAINTIFF CILKER
APARTMENTS, LLC'S OPPOSITION TO
DEFENDANT TARA COATINGS, INC.'S
MOTION FOR SUMMARY JUDGMENT
AND/OR SUMMARY ADJUDICATION**

Date: May 6, 2016
Time: 9:00 a.m.
Dept.: 1

21 AND RELATED CROSS-ACTIONS

24 I, Richard Avelar declare as follows:

25 1. I am a licensed Architect, General Contractor, Founder, Principal and President of
26 Richard Avelar and Associates in Oakland, California. I have personal knowledge of the facts set
27 forth herein, except as to those stated on information and belief and, as to those, I am informed
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1 and believe them to be true. If called as a witness, I could and would competently testify to the
2 matters stated herein.

3 2. I was retained to act as the lead architectural and construction expert on behalf of
4 Plaintiff CILKER APARTMENTS, LLC (hereinafter "Plaintiff") in March, 2014. Attached hereto
5 as **Exhibit "1"** is a true and correct copy of my current Curriculum Vitae.

6 3. On August 11-15, 2014 and August 25-28, 2014, I led Plaintiff's project wide
7 destructive testing (hereinafter "DT"). The August 2014 DT revealed widespread and substantial
8 decay in the building framing, including dimensional members and OSB sheathing, both at the
9 horizontal and vertical assemblies at all locations, including building envelope (windows and
10 stucco) as well as the podium deck. This investigation also revealed systemic defects and
11 significant resulting damage throughout the Subject Project. The findings also resulted in
12 additional shoring of the project at numerous locations, primarily for damage to wood structures
13 caused by water infiltration.

14 4. None of the conditions observed during the August, 2014 DT were open, exposed,
15 or evident, nor were they apparent by a reasonable inspection on the part of Plaintiff. Moreover,
16 without destructively testing the various building components, Plaintiff would not have reason to
17 know of the damage that was uncovered at the Subject Property.

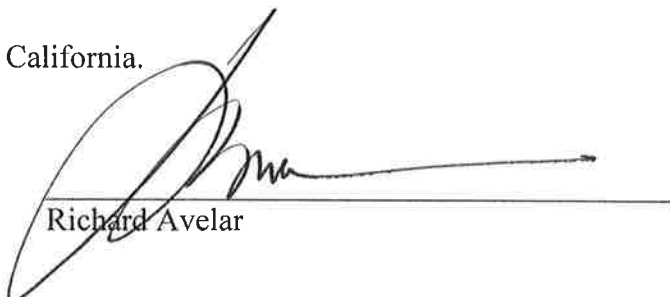
18 5. Even had Plaintiff performed a reasonably careful inspection of the various
19 building components, the nature and extent of the damage existing at the Subject Property would
20 not have been discovered at any time prior to the initial destructive testing that was performed in
21 2013, and the subsequent testing in 2014.

22 6. I have reviewed Exhibits E and F to Defendant Tara Coating's Evidence In Support
23 of Opposition to Tara Coatings, Inc.'s Motion For Summary Judgment and/or Summary
24 Adjudication. In my opinion, these documents reflect what I consider to be ordinary and prudent
25 maintenance of issues which are commonly found in multi-story wood frame and podium
26 foundation constructed buildings of the size and complexity as the Subject Property. The Subject
27 Property consists of 182 residential apartment units, and these documents relate to only a handful
28 of units. Moreover, each of the requests/issues was addressed and resolved, which was reasonable

1 and supports the isolated nature of these events. Nothing in these documents alters my opinions
2 stated above that the defects and damages identified and claimed by Plaintiff in this litigation
3 against Tara Coatings, Inc. and the other defendants are latent, and not reasonably discoverable by
4 Plaintiff. Moreover, none of these documents would in my professional opinion raise any
5 reasonable suspicion on the part of Plaintiff that broad, systemic or project wide construction
6 issues existed at that time, or that there was any need for further Plaintiff to further investigate the
7 construction of the project. And finally, many of the documents relate to matters before the
8 completion of construction of the project, when the property was in the possession of the general
9 contractor, Western National Construction, and not Plaintiff.

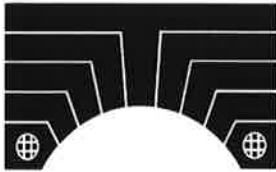
10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed April 22, 2016, at San Jose, California.

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Richard Avelar

ROBINSON & WOOD, INC.
ATTORNEYS AT LAW

Exhibit 1



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

RICHARD M. AVELAR, A.I.A., NCARB

EDUCATION

- 1972 University of California, Berkeley
Bachelor of Arts, Major in Architecture
(With highest honors)
- 1974 University of California, Berkeley
Master of Architecture

BUSINESS

EXPERIENCE

RICHARD AVELAR & ASSOCIATES

A California Corporation
Oakland, California

President, Founder, and Principal Architect

1976 - Present

Richard Avelar is the founding and managing Principal of one of the premier Forensic Architectural and Construction Firms on the West Coast. Responsible for providing construction litigation support services, including field investigation, code compliance review of existing conditions and contract documents, preparing reconstruction design documents and contract administration of reconstruction.

Responsibilities also include architectural residential and commercial design, construction documentation and administration for projects. Richard Avelar also provides quality assurance reviews for developers of single and multi-family homes, during the construction process, and provides education and information regarding proper construction methods.

Construction Litigation Support Services: (Partial list of Previous Projects)

- Bacara Resort & Spa
Santa Barbara, California
Defense Expert
- Pacific Ranch (*Condominiums*)
Huntington Beach, California
Lead Defense Expert
- Gateway Apartments ("Ridgeway")
Marin City, California
Plaintiff Expert
- Sheraton at Wild Horse Pass
Chandler, Arizona
Plaintiff Expert
- Weisel Residence
Maui, Hawaii
Defense Expert
- Terraces at Emery Bay (*Condominiums*)
Emeryville, California
Plaintiff Expert

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- Promontory View (*Apartments*)
San Ramon, California
Plaintiff Expert
- Kahala Nui Senior Living Center
Honolulu, Hawaii
Plaintiff Expert
- San Ramon Library
San Ramon, California
Plaintiff Expert
- 2775 Green Street (*single family home*)
San Francisco, California
Defense Expert
- Rollingwood HOA (*Condominiums*)
Fair Oaks, California
Plaintiff Expert
- Lick Mill Creek Apartments
Santa Clara, California
Lead Defense Expert
- MDG Construction
Reno, Nevada
Plaintiff Expert
- Nordby Construction
Santa Rosa, California
Plaintiff Expert
- Madison Woods HOA (*Condominiums*)
North Highlands, California
Plaintiff Expert
- Golden Gateway Commons (*Multi-use*)
San Francisco, California
Defense Expert

Reconstruction Document Services: (Partial list of reconstruction projects)

- Santa Rosa Junior College – Race Health & Science Building
Santa Rosa, California
- Quiet Harbor (*Condominiums*)
Vallejo, California
- Clearpointe Duets (*Condominiums*)
Vallejo, California
- Rincon de los Esteros (*Apartments*)
San Jose, California
- Cupertino Park Center (*Apartments*)
Daly City, California
- Promontory View (*Apartments*)
San Ramon, California
- Terraces @ Emery Station (*Condominiums*)
Emeryville, California
- Snowcrest Lodge (*Condominiums*)
Kirkwood, California
- Hilton Garden Inn
Burlingame, California
- Roundtree (*Condominiums*)
Concord, California
- Devonwood (*Condominiums*)
Hercules, California

Providing Quality Assurance Measures

- Shea Homes
- Warmington Homes
- Braddock and Logan
- New Urban West
- Greystone
- California Community Builders
- UDC Homes
- Signature Properties

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Richard Avelar & Associates
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Guest Speaker

- BIA Annual Meeting (Los Angeles and San Francisco)
- COCHA Annual Meeting (1995, 1996)
- BOMA East Bay, Building Deficiency Seminar (1997)
- Executive Council of Homeowners-ECHO (1998)
- PCBC, The Western Building Show (1999)
- Western Consultants Association-WESTCON (2000)
- Travelers Insurance Seminar (2001)
- Association of Defense Council of Northern California and Nevada (2002)
- Lorman Education Services (2002)

1974 - 1976

SIMONDS AND MILHOUSE, ARCHITECTS
Oakland, California

Architect in Training

Under direction of project architect, responsible for day-to-day production and coordination of contract documents for various public and private projects including: theaters, senior citizen centers, park and recreational buildings. Simonds and Milhouse's expertise was in the area of reconstruction, primarily of public buildings damaged by fire. Richard Avelar gained substantial experience in the generation of contract documents that define types of repair and limits of work.

RELATED EXPERIENCE

CHABOT COLLEGE
Hayward, California

1977 - 1986

Part-time Instructor

Developed an articulated architecture program with the University of California, Berkeley and Cal-Poly. Taught courses including: Structural Systems for Buildings, Architectural Drafting Principals, Construction Materials and Methods, Introduction to the Architectural Profession, Introduction to Environmental Design, Architecture in the Community, and Construction Cost Estimating.

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Richard Avelar & Associates
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REGISTRATION

- California, Registered Architect, 1976 - Registration #C-008713
- Hawaii, Registered Architect, 2009 - Registration #AR-7162
- Nevada, Registered Architect, 2008 – Registration #6331
- Arizona, Registered Architect, 2001 – Registration #36281
- Colorado, Registered Architect, 2015 – Registration #ARC.00403980
- National Council of Architectural Registration Boards, 1983-NCARB Certificate No. 28826
- California, General Contractor, 2000 - License No. B-780224
- California, General Contractor, 2002 – License No. A-780224 (general engineering)

PROFESSIONAL AFFILIATIONS

- American Institute of Architects (AIA)
- International Code Council (ICC)
- Construction Specifications Institute (CSI)
- Executive Council of Homeowners (ECHO)
- Western Construction Consultants Association (WESTCON)
- California Association of Community Managers (CACM)
- Forensic Expert Witness Association