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7 Attorney for Plaintiff EDGEWATER ISLE
8 MASTER ASSOCIATION

FILED
SAN MATEO COUNTY

JAN 31 2001

Clerk of the Superior Court
By *[Signature]*
DEPUTY CLERK

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN MATEO

11 EDGEWATER ISLE MASTER
12 ASSOCIATION, INC., a California
13 nonprofit mutual benefit corporation,

14 Plaintiff,

15 vs.

16 EDGEWATER ISLE HOMEOWNERS
17 ASSOCIATION, a California nonprofit
18 mutual benefit corporation, and DOES 1
19 through 20, inclusive,

20 Defendants.

Case No. 415687

COMPLAINT FOR DAMAGES
FOR BREACH OF CONTRACT,
OPEN BOOK ACCOUNT,
COMMON COUNT, AND
BREACH OF FIDUCIARY DUTY
AND ESTABLISHMENT OF A
CONSTRUCTIVE TRUST

Summons Issued

21 Plaintiff EDGEWATER ISLE MASTER ASSOCIATION, INC. alleges that:

22 GENERAL ALLEGATIONS

23 1. Plaintiff EDGEWATER ISLE MASTER ASSOCIATION, INC. (hereinafter
24 referred to as the "Master Association") is, and was from December 21, 1983, to the date
25 of the filing of this complaint, a nonprofit mutual benefit corporation duly organized and
26 existing under and by virtue of the laws of the State of California, with its principal office
27 located in the City of San Mateo, County of San Mateo, State of California.

28 2. Plaintiff Master Association is informed and believes, and thereon alleges, that
defendant EDGEWATER ISLE HOMEOWNERS ASSOCIATION (hereinafter referred

1 to as the "North Association") is, and was from December 21, 1983, to the date of the
2 filing of this complaint, a nonprofit mutual benefit corporation duly organized and
3 existing under and by virtue of the laws of the State of California, with its principal office
4 located in the City of San Mateo, County of San Mateo, State of California.

5 3. The true names and capacities, whether individual, corporate, associate or
6 otherwise, of defendants named herein as DOES 1 through 20, inclusive, are unknown to
7 plaintiff, who therefore sues these defendants by such fictitious names. Plaintiff Master
8 Association is informed and believes, and thereon alleges, that each of the defendants
9 designated herein as a DOE is legally responsible in some manner for the acts and
10 omissions herein alleged, and are responsible to plaintiff for damages as hereinafter
11 alleged.

12 4. Whenever in this complaint reference is made to any act or omission of a
13 corporate defendant, such allegation shall be deemed to mean that that corporate
14 defendant, its officers, directors, stockholders, agents, employees and representatives did
15 or authorized such act or omission while actively engaged in the management, direction
16 and control of the affairs of that corporate defendant, and while acting within the course
17 and scope of their agency and employment.

18 5. The Edgewater Isle Development (hereinafter referred to as the
19 "Development"), located in the City of San Mateo, County of San Mateo, State of
20 California, includes two separate residential common interest subdivisions, Edgewater
21 Isle North and Edgewater Isle South, with each having an owners association, the North
22 Association and the Edgewater Isle South Owners' Association (hereinafter referred to as
23 the "South Association").

24 6. Each of the residential common interest subdivisions was established with the
25 recording of a declaration of covenants, conditions and restrictions.

26 7. The declaration of covenants, conditions and restrictions for the Edgewater Isle
27 North subdivision provides in part that the North Association may levy and collect
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1 assessments from each unit owner in the Edgewater Isle North subdivision for the
2 management, maintenance and repair of the Edgewater Isle North subdivision, and the
3 declaration of covenants, conditions and restrictions for the Edgewater Isle South
4 subdivision provides in part that the South Association may levy and collect assessments
5 from each unit owner in the Edgewater Isle South subdivision for the management,
6 maintenance and repair of the Edgewater Isle South subdivision.

7 8. Throughout the Development are a number of common facilities such as private
8 streets, driveways, alleyways and bike paths, private storm sewers, private storm sewer
9 lift pumps, private levee areas, private bulkheads for storm sewers, private sanitary sewer
10 trunk lines, outfalls, side sewers and sewer connections, recreational vehicle storage
11 areas, private water mains, water meters, private streetlights, private fire hydrants, private
12 garbage receptacles, and landscaping, all benefitting the two residential subdivision, as
13 well as a senior housing project and a commercial project, in the Development, and all
14 managed, maintained and operated by the Master Association.

15 9. In a declaration of covenants, conditions and restrictions, entitled "Enabling
16 Declaration Establishing Master Association" recorded in the Recorder's Office for the
17 County of San Mateo, State of California, on January 4, 1984, document number
18 84000928 (hereinafter referred to as the "Master Declaration"), which Master Declaration
19 encumbers both the Edgewater Isle North subdivision and the Edgewater Isle South
20 subdivision, the Master Association was given the duty and responsibility to manage,
21 maintain and operate the common facilities referred to in paragraph 8, *supra*, of this
22 complaint, as well as the authority to levy and collect assessments (hereinafter referred to
23 as the "Master Unit Assessment") for that purpose from, among others, the unit owners of
24 both the Edgewater Isle North subdivision and the Edgewater Isle South subdivision.

25 10. Plaintiff Master Association is informed and believes, and thereon alleges that,
26 approximately from the time of the formation of each of the associations, Master, North
27 and South, to and through June 30, 1999, (hereinafter referred to as the "Payment
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1 Period”), both the North Association and the South Association orally agreed to collect
2 from their respective unit owners a monthly assessment amount that would include the
3 Master Assessment amount that each unit owner was obligated to pay to the Master Unit
4 Association, which Master Unit Assessment amount would then be paid to the Master
5 Association by both the North Association and the South Association as those
6 Associations were invoiced on a monthly basis, according to an open book account; in
7 exchange for which the Master Association agreed not to assess the unit owners of the
8 North Association separately for the Master Unit Assessment, but rather to provide the
9 monthly invoices directly to the North Association (said agreement hereinafter referred to
10 as the “Collection Agreement”).

11 11. As a result of the Collection Agreement, a fiduciary relationship existed
12 between the Master Association, as principal, and the North Association, as agent.

13 12. Plaintiff Master Association is informed and believes and thereon alleges that
14 over the Payment Period, the North Association levied and collected Master Unit
15 Assessments, as agent for the Master Association, from their unit owners and held them
16 in trust to be paid to the Master Association pursuant to monthly invoices from the Master
17 Association to the North Association.

18 13. Plaintiff Master Association is informed and believes, and thereon alleges that
19 over the Payment Period, the North Association did not always pay the total amount that
20 was invoiced by the Master Association to the Master Association, with the result that a
21 running receivable balance began to accrue.

22 14. Plaintiff Master Association is informed and believes, and thereon alleges that
23 as of December 31, 1997, the principal receivable balance owed by the North Association
24 to the Master Association was \$63,303.29; that as of December 31, 1998, the principal
25 receivable balance owed by the North Association to the Master Association had been
26 reduced to \$54,829.05; and that as of October 31, 1999, the principal receivable balance
27 owed by the North Association to the Master Association had been reduced to
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1 \$34,221.26.

2 15. In the first half of the year 1999, the North Association notified the Master
3 Association that the North Association would, after June 30, 1999, no longer levy and/or
4 collect from the unit owners of the North Association the Master Unit Assessment, and
5 that the Master Association would thereafter have to levy and assess this amount directly
6 from those unit owners.

7 16. Although the North Association continued to make payments on its
8 outstanding balance owed to the Master Association, the North Association as of
9 October 31, 1999, owed to the Master Association the principal receivable balance of
10 \$34,221.26 (hereinafter referred to as the "Principal Balance").

11 17. Although the Master Association continues to invoice the North Association
12 for the Principal Balance together with other charges owed by the North Association, the
13 North Association has only paid the other charges billed and has not, since October 31,
14 1999, made any further payments to reduce the Principal Balance.

15 18. Plaintiff Master Association is informed and believes, and thereon alleges that,
16 although the North Association has and continues to acknowledge that it owes at least a
17 portion of the Principal Balance to the Master Association, the North Association now
18 disputes the amount owed.

19 19. Although the Master Association has made available to representatives of the
20 North Association the raw data upon which the monthly invoices from the Master
21 Association to the North Association were based, and provided to representatives of the
22 North Association a financial review of the invoices by a Certified Public Accountant, the
23 North Association continues to dispute the amount of the Principal Balance and has failed
24 and/or refused to indicate to the Master Association the amount in dispute.

25 **FIRST CAUSE OF ACTION**
26 (Breach of Contract)

27 20. Plaintiff Master Association incorporates in this First Cause of Action
28 paragraphs 1 through 19, inclusive, of the General Allegations of this complaint as though

1 fully set forth herein.

2 21. Plaintiff Master Association has performed all of the conditions, covenants
3 and promises required on its part to be performed in accordance with the terms and
4 conditions of the Collection Agreement.

5 22. Plaintiff Master Association is informed and believes, and thereon alleges that,
6 pursuant to the Collection Agreement, defendants agreed to and were obligated to levy
7 and assess the Master Unit Assessment, collect said amount from each of the unit owners
8 in the North Association and pay said amounts collected to the Master Association
9 pursuant to monthly invoices submitted to the Master Association to the North
10 Association.

11 23. Plaintiff Master Association is informed and believes, and thereon alleges that
12 defendants breached the Collection Agreement in that said defendants represented to the
13 unit owners of the North Association that a portion of each of their monthly assessments
14 was to cover the cost of the monthly Master Unit Assessment, and thereafter levied and
15 collected from the unit owners of the North Association on a monthly basis over the
16 Payment Period the Master Unit Assessment, but thereafter failed to pay from those
17 collected sums the full amount of the invoiced amounts submitted to the North
18 Association by the Master Association.

19 24. Plaintiff Master Association is informed and believes, and thereon alleges that
20 defendants further breached the Collection Agreement in that said defendants, long after
21 being invoiced by the Master Association, challenged the amount of the invoices and
22 have now failed to pay any further amounts to the Master Association so as to reduce the
23 Principal Balance in spite of the fact that the North Association has acknowledged that it
24 does owe to the Master Association at least a portion of the Principal Balance.

25 25. As a direct and proximate result of the acts and omissions of said defendants,
26 plaintiff Master Association has sustained and continues to sustain damage in that
27 plaintiff Master Association has not been paid the Principal Balance, nor any portion
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1 thereof, and has not had the use of those funds to pay its operating expenses and
2 adequately fund its reserves, since said Principal Amount became due and owing to
3 plaintiff Master Association.

4 26. As a direct and proximate result of the acts and omissions of said defendants,
5 plaintiff Master Association has been required to consult with and retain legal counsel to
6 institute this action to the sums due to plaintiff which defendants refuse to pay.

7 WHEREFORE, plaintiff prays for judgment against defendants, and each of them,
8 as hereinafter set forth.

9 **SECOND CAUSE OF ACTION**
10 **(Breach of Open Book Account)**

11 27. Plaintiff hereby incorporates by reference in this Second Cause of Action each
12 and every allegation set forth in paragraphs 1 through 19, inclusive, and paragraphs 21
13 through 26, inclusive, as though fully set forth herein.

14 28. Within four years last past, defendants became indebted to plaintiff on an open
15 book account for money due in the sum of \$34,221.26, together with interest thereon at
16 the legal rate, as a result of the Collection Agreement.

17 29. Plaintiff has repeatedly demanded payment of this amount from defendants,
18 who have refused and failed to pay.

19 WHEREFORE, plaintiff prays for judgment against defendants, and each of them,
20 as hereinafter set forth.

21 **THIRD CAUSE OF ACTION**
22 **(Common Count)**

23 30. Plaintiff hereby incorporates by reference in this Third Cause of Action each
24 and every allegation set forth in paragraphs 1 through 19, inclusive, and paragraphs 21
25 through 26, inclusive, as though fully set forth herein.

26 31. Within four years last past, defendants became indebted to plaintiff in the sum
27 of \$34,221.26, together with interest thereon at the legal rate.

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1 32. Plaintiff has repeatedly demanded payment of this amount from defendants,
2 who have refused and failed to pay.

3 WHEREFORE, plaintiff prays for judgment against defendants, and each of them,
4 as hereinafter set forth.

5 **FOURTH CAUSE OF ACTION**
6 **(Breach of Fiduciary Duty)**

7 33. Plaintiff hereby incorporates by reference in this Fourth Cause of Action each
8 and every allegation set forth in paragraphs 1 through 19, inclusive, and paragraphs 21
9 through 26, inclusive, as though fully set forth herein.

10 34. Plaintiff Master Association is informed and believes, and thereon alleges that
11 defendants breached their fiduciary obligation to plaintiff in that said defendants
12 represented to the unit owners of the North Association that a portion of each of their
13 monthly assessments was to cover the cost of the monthly Master Unit Assessment, and
14 thereafter levied and collected from the unit owners of the North Association on a
15 monthly basis over the Payment Period the Master Unit Assessment, but thereafter failed
16 to pay from those collected sums the full amount of the invoiced amounts submitted to
17 the North Association by the Master Association.

18 35. Plaintiff Master Association is informed and believes, and thereon alleges that
19 defendants further breached their fiduciary obligation to plaintiff in that said defendants,
20 long after being invoiced by the Master Association, challenged the amount of the
21 invoices and have now failed to pay any further amounts to the Master Association so as
22 to reduce the Principal Balance in spite of the fact that the North Association has
23 acknowledged that it does owe to the Master Association at least a portion of the
24 Principal Balance.

25 WHEREFORE, plaintiff prays for judgment against defendants, and each of them,
26 as hereinafter set forth.

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1 **FIFTH CAUSE OF ACTION**
2 **(Constructive Trust)**

3 36. Plaintiff hereby incorporates by reference in this Fifth Cause of Action each
4 and every allegation set forth in paragraphs 1 through 19, inclusive, paragraphs 21
5 through 26, inclusive, and paragraphs 34 and 35, inclusive, as though fully set forth
6 herein.

7 37. By virtue of defendants' violation of its fiduciary relationship with plaintiff,
8 defendants have collected Master Unit Assessments for the unit owners of the Edgewater
9 Isle North subdivision and retained said funds who now holds said funds as a constructive
10 trustee for the benefit of plaintiff.

11 WHEREFORE, plaintiff prays for judgment against defendants, and each of them,
12 as hereinafter set forth.

13 **PRAYER FOR RELIEF**

14 1. For damages in the principal amount of \$34,221.26, together with interest
15 thereon at the legal rate from the date that each payment became due and owing to
16 plaintiff;

17 2. For an order declaring that defendants hold \$34,221.26, together with interest
18 thereon at the legal rate from the date that each payment became due and owing to
19 plaintiff, in trust for plaintiff;

20 3. For reasonable attorneys fees, costs and expenses of litigation, according to
21 proof; and

22 4. For such other and further relief as the court may deem just and proper.

23 Dated: January 31, 2001

Respectfully submitted,

24 LAW OFFICE OF JOHN D. GARVIC

25
26 By 

27 JOHN D. GARVIC,
28 Attorney for Plaintiff Edgewater
Isle Master Association