

FILED

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

5 Attorneys for Plaintiff
Sheldon G. Adelson
6
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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 SHELTON G. ADELSON, a Nevada
Citizen,

12 Plaintiff,

13 v.

14 LINDEN & ASSOCIATES, INC., a
California Corporation; and DOES 1-10,
15 inclusive,

16 Defendants.

Case No

CV09-5724

DSF
(RZX)

**SHELDON G. ADELSON'S
COMPLAINT FOR INDEMNITY,
BREACH OF WARRANTY,
BREACH OF CONTRACT, AND
NEGLIGENCE**

[JURY TRIAL DEMANDED]

17
18 Plaintiff SHELTON G. ADELSON, for its Complaint against defendants
19 LINDEN & ASSOCIATES, INC. and DOES 1 through 10, inclusive, alleges as
20 follows:

21 **JURISDICTION AND VENUE**

22 1. The United States District Court has original jurisdiction over this
23 matter pursuant to 28 U.S.C. § 1332 as there is complete diversity among the parties
24 and the amount in controversy exceeds \$75,000, exclusive of costs and interest.

25 2. Venue is proper in the Central District of California pursuant to 28
26 U.S.C. § 1391 as defendant Linden & Associates, Inc. resides in this District and a
27 substantial part of the events or omissions giving rise to the claims occurred in the
28 City of Malibu, County of Los Angeles, California.

1 **THE PARTIES**

2 3. At all times herein and material hereto, Plaintiff Sheldon G. Adelson, a
3 citizen of Nevada, owned a single-family residence at 23500 West Malibu Colony
4 Road in the City of Malibu, California (the "Malibu Residence").

5 4. Plaintiff is informed and believed, and thereon alleges, that at all times
6 herein and material hereto, Defendant Linden & Associates, Inc. ("Linden") is a
7 California corporation, organized and existing under the laws of the State of
8 California, and has its principal place of business in Los Angeles, California.
9 Linden purports to be licensed by the California State Contractors License Board,
10 license number 687816, and provided construction contracting and construction
11 services for the Malibu Residence.

12 5. Plaintiff does not know at this time the true names or capacities of the
13 defendants sued in this action as Does 1 through 10, inclusive, and therefore sues
14 these defendants under fictitious names. Plaintiff will seek to amend this Complaint
15 to allege their true names and capacities when they have been ascertained. Each of
16 the defendants named as Does 1 through 10 is responsible in some manner for the
17 events described below. To the extent any affiliates, agents, principals, consultants,
18 or subcontractors of Linden are substituted for Doe defendants, the definition of
19 Linden as used herein is to be broadened to include such defendants.

20 6. Plaintiff is informed and believes and on that basis alleges that at all
21 times relevant to the allegations in this Complaint, each of the defendants herein,
22 including some or all of the Doe defendants, was an agent, principal, servant,
23 employee and/or joint-venturer of the remaining defendants, including some or all of
24 the Doe defendants, and was at all times acting within the course and scope of said
25 agency relationship, service, employment and/or joint venture.

26 **GENERAL ALLEGATIONS**

27 7. Pursuant to a written contract, Linden constructed the Malibu
28 Residence for Mr. Adelson and his family.

- 1 8. Among other things, the contract included the following provisions:
- 2 a. "Contractor [Linden] warrants to Owner [Adelson] that ... all
- 3 Work will be of the highest quality, free from faults and defects and in
- 4 conformance with the plans and specifications therefore" and "Contractor will
- 5 cause to be furnished all labor and materials to construct and complete in a
- 6 first class workmanlike manner consistent with the character of similarly
- 7 priced and located residences."
- 8 b. "Contractor agrees to promptly make good, without cost to
- 9 Owner, any and all defects due to faulty workmanship or materials which may
- 10 appear subsequent to acceptance by Owner of the Work."
- 11 c. "Contractor shall promptly remedy all damage or loss to any
- 12 property, materials or work caused in whole or part by Contractor, or anyone
- 13 directly or indirectly employed or engaged by Contractor, or by anyone for
- 14 whose acts Contractor may be liable."
- 15 d. "Contractor, upon receiving notice from Owner ... that
- 16 Contractor had furnished inferior, defective, improper or unsound work or
- 17 materials ... will immediately proceed to remove such work or materials and
- 18 make good all other work or materials damaged thereby and, at the option of
- 19 Owner, Contractor shall immediately replace such work or materials with
- 20 work or materials as specified at no cost or expense to the Owner."
- 21 e. "Contractor shall indemnify and hold harmless Owner and his
- 22 agents, from and against any and all liability, damages, losses and expenses,
- 23 including attorney's fees, arising out of or resulting from the performance or
- 24 the rendering of the Work or from any other actions taken by Contractor or its
- 25 employees, agents or subcontractors hereunder or in pursuance hereof, or
- 26 from the acts or conduct of Contractor or any subcontractor, agent, servant or
- 27 employee of Contractor, or any consultant engaged by Contractor (including

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1 any act or omission which results in a defect in the Work or Project or its
2 failure to comply with all applicable laws).”

3 f. “The obligations and representations of the parties hereto
4 pursuant to the provisions hereof shall survive the completion of the Project,
5 the Work and termination of this Agreement.”

6 A true and correct copy of the contract is attached hereto as Exhibit A and
7 incorporated herein by this reference.

8 9. Subsequent to the completion of the Malibu Residence, Plaintiff
9 discovered that the Malibu Residence is and has been defective in that numerous
10 construction defects and deficiencies are now known to exist including, without
11 limitation, the following:

12 a. Weather- and water-exposed exterior surfaces of the building,
13 including skylights, windows, doors, stucco, trim, and roof and deck flashing,
14 have failed, thereby allowing water entry into the interior of the structure,
15 resulting in damage to walls, floors, and carpets;

16 b. Exterior waterproofing does not adequately protect the structure,
17 thereby allowing moisture into the structure causing deterioration, dryrot, and
18 mold and mildew infestation; and

19 c. Excessive moisture has led to a wide range of damage
20 throughout the home such as excessive humidity, excessive condensation,
21 water damage, mold growth, mold infestation and contamination, dryrot,
22 deterioration, staining, cracking, corroding, and other water- and moisture-
23 related damage.

24 10. Plaintiff is informed and believes, and thereon alleges, that, among
25 others, the decks and deck systems, windows and window systems, doors and door
26 systems, stucco and stucco wall systems, heating, ventilation, and air conditioning
27 systems, and slabs, retaining walls, and foundations drainage systems in and around
28 the Malibu Residence were negligently constructed, are defective, were defective

1 when constructed, and that each of the defects is a proximate cause of the excessive
2 moisture commonly and consistently occurring in the Malibu Residence.

3 11. Plaintiff is informed and believes, and based thereon alleges, that the
4 Malibu Residence may be additionally defective in ways and to extents now
5 precisely unknown, but which will be inserted herein by way of amendment or will
6 be established at the time of trial, according to proof.

7 12. Plaintiff is informed and believes, and based thereon alleges, that the
8 above-described defects arose out of, or were attributable to and are directly and
9 proximately caused by, the defective work of, and improper materials incorporated
10 by, Defendants in the construction of the Malibu Residence, and that before the time
11 it was discovered by Plaintiffs, could not have been discovered by the exercise of
12 reasonable diligence.

13 13. Subsequent to the completion of the Malibu Residence, Plaintiff
14 discovered that the Malibu Residence was not constructed to be of the highest
15 quality, free from faults and defects, in conformance with the plans and
16 specifications, or in a first class workmanlike manner consistent with the character
17 of similarly priced and located residences, in that numerous deviations below such
18 standards were discovered to exist including, without limitation, the following:

- 19 a. Interior floors were not level or true;
- 20 b. Interior finishes were incomplete and not completed in a first-
21 class manner of the highest quality;
- 22 c. Interior handrails were of a substandard quality and inappropriate
23 for the purpose for which they were installed.
- 24 d. Exterior paving stones were uneven, cracked, and discolored;
- 25 e. Exterior tile was improperly attached and finished;
- 26 f. Exterior hardware and fixtures were incapable of withstanding
27 the elements to which they were exposed, causing rusting, pitting, corrosion,
28 and discoloration;

1 g. Exterior handrails and guardrails were of a substandard quality
2 and structurally unsound;

3 h. HVAC equipment was inappropriately exposed to the elements;
4 and

5 i. The entry gate was constructed of inappropriate material and was
6 not of the highest or of first-class quality.

7 14. Defendants knew or had reason to know that Adelson would rely on the
8 skill, judgment, and expertise of each defendant in producing and constructing a
9 dwelling unit and component parts that would be of the highest quality, free from
10 faults and defects, completed in a first class workmanlike manner consistent with
11 the character of similarly priced and located residences, and reasonably fit for its
12 intended purpose.

13 15. Adelson uses the Malibu Residence in the way it was intended by
14 defendants to be used.

15 16. Adelson timely notified defendant Linden of the defective conditions.
16 Notwithstanding such notice, however, Defendants have declined and failed to
17 acknowledge responsibility for same or otherwise cause the appropriate restoration
18 and/or repairs to be made to the Malibu Residence, or to reimburse Plaintiff for the
19 cost of repairs, remediation, and restoration made by Plaintiff to date.

20 17. Adelson was therefore required to engaged the services of architects,
21 attorneys, and other contractors to assess, repair, and remediate the deficiencies and
22 defects herein alleged. As a result thereof, Adelson has incurred liabilities and
23 suffered damages, losses and expenses (including attorneys' fees) in addressing and
24 redressing the defective, inadequate, and improper construction of the Malibu
25 Residence, all of which arose out of or resulted from Linden's performance or the
26 rendering of the construction work or from other actions taken by Linden.

27 18. Adelson has and will continue to suffer further damages, losses, and
28 expenses in that he has been and will hereafter be required to perform works of

1 investigation, repair, restoration, and construction of portions of the Malibu
2 Residence to prevent further damage and to investigate, repair, and restore the
3 portions of the Malibu Residence to their proper condition.

4 **FIRST CAUSE OF ACTION**
5 **(Express Indemnification)**
6 **(Against All Defendants)**

7 19. Adelson re-alleges and incorporates by reference each of the allegations
8 set forth in paragraphs 1 through 18 inclusive.

9 20. As a result of and related to Defendants' work on and actions taken in
10 conjunction with the Malibu Residence, Adelson has within the past four years
11 incurred liabilities, damages, losses and expenses including, without limitation,
12 amounts paid to his architects, contractors, subcontractors, materials and equipment
13 suppliers, consultants, employees, accountants, and legal counsel in an amount
14 estimated to exceed \$750,000. Such liabilities did not result solely from the gross
15 negligence or willful misconduct of Adelson or Adelson's other contractors.

16 21. Despite a demand therefore, Defendants have failed and refused to
17 indemnify Adelson for his liabilities, damages, losses and expenses that arose and
18 continue to arise out of or are otherwise related to Linden's work on or actions taken
19 in conjunction with the Malibu Residence.

20 22. Based on the foregoing, Adelson is entitled to indemnification by
21 Defendants in an amount in excess of the jurisdictional minimum of this court and
22 according to proof.

23 **SECOND CAUSE OF ACTION**
24 **(Equitable Indemnification)**
25 **(Against All Defendants)**

26 23. Adelson re-alleges and incorporates by reference each of the allegations
27 set forth in paragraphs 1 through 18 inclusive.

28 24. As a result of Defendants' negligence and willful misconduct in their
performance of work on the Malibu Residence, Adelson has within the past four
years incurred liabilities, damages, losses and expenses including, without

1 limitation, amounts paid to his architects, contractors, subcontractors, materials and
2 equipment suppliers, consultants, employees, accountants, and legal counsel in an
3 amount estimated to exceed \$750,000.

4 25. Adelson's liabilities to the aforementioned were caused primarily and
5 ultimately by the negligence and willful misconduct of Defendants and by
6 Defendants' breaches of their various obligations with regard to the Project.
7 Adelson's liabilities arose, not as a result of any actual fault on his part, but solely
8 by operation of law, arising from his vicarious responsibility for the work performed
9 by Defendants.

10 26. Based on the foregoing, Adelson is entitled to be indemnified by
11 Defendants in an amount in excess of the jurisdictional minimum of this court and
12 according to proof.

13 **THIRD CAUSE OF ACTION**
14 **(Breach of Express Warranty)**
(Against All Defendants)

15 27. Adelson re-alleges and incorporates by reference each of the allegations
16 set forth in paragraphs 1 through 18 inclusive.

17 28. The contract provided in pertinent part that Linden expressly warranted
18 to Adelson as follows:

19 Contractor [Linden] warrants to Owner [Adelson] that ...
20 all Work will be of the highest quality, free from faults
21 and defects and in conformance with the plans and
22 specifications therefore

23 29. In warranting its work to Adelson in this manner, Linden expressly
24 represented that:

25 [Linden] agrees to promptly make good, without cost to
26 Owner, any and all defects due to faulty workmanship or
27 materials which may appear subsequent to acceptance by
28 Owner of the Work.

1 class workmanlike manner consistent with the character of similarly priced and
2 located residences; to make good, without cost to Adelson, any and all defects due
3 to faulty workmanship or materials which may appear subsequent to acceptance of
4 Linden's work; to remedy all damage or loss to property, materials and work caused
5 in whole or part by Linden; and to remove and replace inferior, defective, improper
6 and unsound work or materials and to make good all other work and materials
7 damaged thereby.

8 36. Adelson has fully performed and satisfied all conditions, covenants,
9 and promises required to be performed or satisfied by Adelson under the contract,
10 except where performance or satisfaction was excused.

11 37. Within four years past, Adelson has become aware of facts that resulted
12 in Adelson being informed that Defendants have breached the contract by, among
13 other things: failing to make good, without cost to Adelson, any and all defects due
14 to faulty workmanship and materials which appeared after acceptance of Linden's
15 work; failing to remedy damage and loss to property, materials and work caused in
16 whole or part by Linden; and failing to remove and replace inferior, defective,
17 improper and unsound work or materials and to make good all other work and
18 materials damaged thereby.

19 38. Adelson is informed and believes, and based thereon alleges, that the
20 above-described defects arose out of, or were attributable to and are directly and
21 proximately caused by, the above-described latent deficiency in the construction of
22 the Malibu Residence, and that before the time they were discovered by Adelson as
23 set forth herein, could not have been discovered by the exercise of reasonable
24 diligence.

25 39. As a direct and proximate result of Defendants' breaches of contract,
26 Adelson has been damaged in an amount in excess of the jurisdictional minimum of
27 this court and according to proof.

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FIFTH CAUSE OF ACTION
(Negligence)
(Against All Defendants)

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3 40. Adelson re-alleges and incorporates by reference each of the allegations
4 set forth in paragraphs 1 through 18 inclusive.

5 41. By reason of, among other things, the contract and various
6 representations concerning its ability to competently perform and supervise design
7 and construction services related to the Malibu Residence, Defendants were at all
8 times under a duty to Adelson to perform their work in a workmanlike manner and
9 in full compliance with the requirements of the contract, the requirements of the
10 project, and in accordance with the applicable standard of care.

11 42. Within three years past, Adelson has become aware of facts that
12 resulted in Adelson being informed that Defendants breached said duty of care and
13 acted negligently in that they failed to perform and supervise the work in a
14 workmanlike manner, in accordance with the applicable standard of care, or in a
15 manner which was consistent with the requirements of the contract. This breach has
16 resulted in damage to property and other damages for which Adelson seeks
17 recovery.

18 43. Adelson is informed and believes, and based thereon alleges, that the
19 above-described defects arose out of, or were attributable to and are directly and
20 proximately caused by, the above-described latent deficiency in the construction of
21 the Malibu Residence, and that before the time they were discovered by Adelson as
22 set forth herein, could not have been discovered by the exercise of reasonable
23 diligence.

24 44. Defendants knew or should have foreseen with reasonable certainty that
25 Adelson would suffer the monetary damages set forth herein if they failed to
26 perform their duty to cause the Malibu Residence to be completed in a proper and
27 workmanlike manner and fashion.

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1 45. As a result of Defendants' negligent acts and omissions, Adelson was
2 damaged in an amount in excess of the jurisdictional minimum of this court and
3 according to proof.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Adelson prays for relief against all Defendants as follows:

- 6 1. For judgment for damages in an amount in excess of \$750,000 to be
- 7 proven at trial;
- 8 2. For an order compelling Defendants to indemnify Adelson for the
- 9 liabilities and losses incurred as alleged above and according to proof;
- 10 3. For reasonable attorneys' fees and costs incurred in this matter;
- 11 4. For pre-judgment interest at the maximum amount allowed by law; and
- 12 5. For such other and further relief as the Court considers just and proper.

13
14 Dated: August 4, 2009

HOWREY LLP

15
16 By 
 17 Clark T. Thiel
 18 *Attorneys for Plaintiff*
 19 *Sheldon G. Adelson*

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8 Attorneys for Plaintiff
9 Sheldon G. Adelson

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 SHELTON G. ADELSON, a Nevada
13 Citizen,

14 Plaintiff,

15 v.

16 LINDEN & ASSOCIATES, INC., a
17 California Corporation; and DOES 1-20,
18 inclusive,

19 Defendants.

Case No.

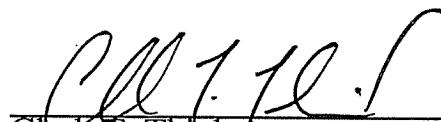
**SHELTON G. ADELSON'S
DEMAND FOR JURY TRIAL
[FRCP Rule 38 and Local Rule 38-1]**

20 Pursuant to Federal Court Rules of Civil Procedure Rule 38, Plaintiff Sheldon
21 G. Adelson hereby demands a trial by jury on all issues so triable.

22 Dated: August 4, 2009

HOWREY LLP

23 By



24 Clark T. Thiel
25 Attorneys for Plaintiff
26 Sheldon G. Adelson

Name & Address:

Clark T. Thiel, Esq. (SBN 190212)
HOWREY LLP
525 Market Street, Suite 3600
San Francisco, CA 94105

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHELDON G. ADELSON, a Nevada Citizen,

PLAINTIFF(S)

v.

LINDEN & ASSOCIATES, INC., a California
Corporation; and DOES 1-10, inclusive,

DEFENDANT(S).

CASE NUMBER

CV09-5724 DSF (RZx)

SUMMONS

TO: DEFENDANT(S): Linden & Associates, Inc.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Clark T. Thiel, whose address is Howrey LLP, 525 Market Street, Suite 3600, San Francisco, CA 94105. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: AUG - 5 2009

By: _____

NATALIE LONGORIA



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Nevada

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Cheryl L. Hill Date August 4, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))