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Attorney for Plaintiffs
FERNANDO CONTRERAS, VERONICA CONTRERAS,
GERALDO CONTRERAS, and MARK ADAMS

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 12 2002
John A. Clarke, Executive Officer/Clerk
By STEPHANIE SIANEZ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BC281458

FERNANDO CONTRERAS, VERONICA
CONTRERAS, GERALDO CONTRERAS,
MARK ADAMS, and PLAINTIFF DOES 1
through 100,000, inclusive,

Plaintiffs,

v.

TEMPLE BEAUDRY PARTNERS LLC, a
CALIFORNIA limited liability company; KAJIMA
URBAN DEVELOPMENT CORPORATION, a
DELAWARE corporation; KUD
INTERNATIONAL LLC, a DELAWARE limited
liability company; THE LEGASPI COMPANY, a
CALIFORNIA corporation; GATEWAY SCIENCE
& ENGINEERING, INC., a CALIFORNIA
corporation; PRINCEVILLE PARTNERS LLC, a
CALIFORNIA limited liability company;
TURNER/KAJIMA, a Joint Venture of TURNER
CONSTRUCTION COMPANY and KAJIMA
CONSTRUCTION SERVICES, INC.; KAJIMA
INTERNATIONAL, INC., a DELAWARE
corporation; KAJIMA DEVELOPMENT
CORPORATION, a DELAWARE corporation;
KAJIMA ENGINEERING AND
CONSTRUCTION, INC., a CALIFORNIA
corporation; KAJIMA CONSTRUCTION
SERVICES, INC., a DELAWARE corporation;

Case No. _____

**COMPLAINT FOR
RESTITUTION AND DAMAGES;
DEMAND FOR JURY TRIAL**

Penal Code § 374.8
Penal Code § 387
Penal Code § 487
Penal Code § 182
Business & Professions Code §17200
Civil Code §1709
Civil Code §1710

Common Law Tort Claims of
Fraudulent Concealment;
Misrepresentation, Making
Affirmative Misleading Statements,
and Failure to Disclose Material Facts

18 United States Code § 1961
(Racketeer Influenced and Corrupt
Organizations Act)

Complaint (30)

CAPTION CONTINUES ON NEXT PAGE

1 KAJIMA U.S.A., INC., a DELAWARE corporation;
2 LAW ENGINEERING AND ENVIRONMENTAL
3 SERVICES, INC., a GEORGIA corporation;
4 INTERA, INC., a NORTH CAROLINA
5 corporation; TURNER CONSTRUCTION
6 COMPANY, a NEW YORK corporation;
7 McLARAND, VASQUEZ & PARTNERS, INC., a
8 CALIFORNIA corporation; O'MELVENY &
9 MYERS LLP, a CALIFORNIA limited liability
10 partnership; ERNESTO VASQUEZ, KENNETH J.
11 REIZES, DOMINIC SHAMBRA, DAVID
12 CARTWRIGHT; and DEFENDANT DOES 1
13 through 500, inclusive,

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Defendants.

11 Plaintiffs, by its undersigned counsel, for its complaint against Defendants alleges and
12 states as follows:

13 **INTRODUCTION AND SUMMARY**

14 1. This complaint seeks to hold the defendants TEMPLE BEAUDRY PARTNERS
15 LLC, a CALIFORNIA limited liability company; KAJIMA URBAN DEVELOPMENT
16 CORPORATION, a DELAWARE corporation; KUD INTERNATIONAL LLC, a DELAWARE
17 limited liability company; THE LEGASPI COMPANY, a CALIFORNIA corporation; GATEWAY
18 SCIENCE & ENGINEERING, INC., a CALIFORNIA corporation; PRINCEVILLE PARTNERS
19 LLC, a CALIFORNIA limited liability company; TURNER/KAJIMA, a Joint Venture of TURNER
20 CONSTRUCTION COMPANY and KAJIMA CONSTRUCTION SERVICES, INC.; KAJIMA
21 INTERNATIONAL, INC., a DELAWARE corporation; KAJIMA DEVELOPMENT
22 CORPORATION, a DELAWARE corporation; KAJIMA ENGINEERING AND
23 CONSTRUCTION, INC., a CALIFORNIA corporation; KAJIMA CONSTRUCTION SERVICES,
24 INC., a DELAWARE corporation; KAJIMA U.S.A., INC., a DELAWARE corporation; LAW
25 ENGINEERING AND ENVIRONMENTAL SERVICES, INC., a GEORGIA corporation;
26 INTERA, INC., a NORTH CAROLINA corporation; TURNER CONSTRUCTION COMPANY,
27 a NEW YORK corporation; McLARAND, VASQUEZ & PARTNERS, INC., a CALIFORNIA
28 corporation; O'MELVENY & MYERS LLP, a CALIFORNIA limited liability partnership;

1 ERNESTO VASQUEZ, KENNETH J. REIZES, DOMINIC SHAMBRA, DAVID CARTWRIGHT;
2 and DEFENDANT DOES 1 through 500, inclusive, (“Defendants”) accountable for their
3 violations of law and breaches of legal duties associated with their role in the development of the
4 property known as the Belmont Learning Center, the first high school to be developed in the Los
5 Angeles Unified School District since 1974.

6 2. More specifically, but for these Defendants’ separate actions and mutual
7 conspiracy to avoid installing the methane/hydrogen sulfide mitigation measures as required by
8 law, the Belmont Learning Center would be open today, the first new inner-city high school in
9 the Los Angeles Unified School District in a generation. Approximately 4,500 children per year
10 would be getting a high quality education in a state-of-the-art school with the latest in
11 curriculum development, with a new administrative staff and teachers, in their own inner-city
12 neighborhood. Instead, these children are being forced to attend old, massively overcrowded
13 schools where every child does not even get a desk, or they are bused for more than an hour one-
14 way to far-away schools, where their ability to participate in the full range of educational
15 opportunities is permanently inhibited by the limitations of their transportation situation. But for
16 the failure of these Defendants to install a methane and hydrogen sulfide mitigation system, the
17 Belmont Learning Center would have opened in a timely manner in 1999, and as a result,
18 approximately 10,000 students in the Belmont Learning Center enrollment catchment area would
19 have received a superior education to the education that they actually received.

20 3. Defendants are large and nationally prominent companies or individuals in their
21 respective industries or fields, and they each had a fiduciary duty to the Plaintiffs in this matter,
22 including a fiduciary duty to each child destined to attend the Belmont Learning Center in and
23 since 1999. Defendants’ failure to meet their legal duties with regard to the mitigation of
24 methane and hydrogen sulfide adversely impacted these children’s fundamental interest in an
25 education that they anticipated and deserved, and thus these children respectfully seek
26 appropriate remedies from this Court.

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1 was taken by eminent domain to be part of the development of the Belmont Learning Center.
2 Mr. Contreras brings this action on behalf of himself and with his children Veronica and
3 Geraldo, who would have attended school at the Belmont Learning Center but for the illegal
4 conduct of the Defendants, in his and their own personal interest and on behalf of the general
5 public pursuant to Business & Professions Code §17204.

6 11. Plaintiff Veronica Contreras is a natural person and a resident of Los Angeles
7 County, and brings this action in her own personal interest and on behalf of the general public
8 pursuant to Business & Professions Code §17204.

9 12. Plaintiff Geraldo Contreras is a natural person and a resident of Los Angeles
10 County, and brings this action in his own personal interest and on behalf of the general public
11 pursuant to Business & Professions Code §17204.

12 13. Plaintiff Marks Adams is a natural person, a resident and taxpayer in Los Angeles
13 County, and he brings this action on behalf of himself and the general public pursuant to
14 Business & Professions Code §17204.

15 14. Plaintiff DOES 1 through 10,000 are each a “person” under Business &
16 Professions Code §§17204 and 17535. Plaintiff DOES 1 through 10,000 are children and/or
17 their parents who lived or are living in the Belmont Learning Center catchment zone, as shown
18 on the official records of the Los Angeles Unified School District, who would have attended
19 school at the Belmont Learning Center but for the illegal conduct of the Defendants. Plaintiff
20 DOES 1 through 10,000 bring this action in their own personal interest and on behalf of the
21 general public pursuant to Business & Professions Code §17204. Their true names and identities
22 are unknown to the named Plaintiffs at this time.

23 15. The term “Plaintiffs,” as used herein, is defined to mean Fernando Contreras,
24 Veronica Contreras, Geraldo Contreras, Mark Adams, as well as all Plaintiff DOES referred to
25 above.

26 16. Defendant TEMPLE BEAUDRY PARTNERS LLC is a limited liability company
27 organized under the laws of California and is a “person” within the meaning of Business &
28 Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

1 17. Defendant KAJIMA URBAN DEVELOPMENT CORPORATION is a
2 corporation organized under the laws of Delaware and is a “person” within the meaning of
3 Business & Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

4 18. Defendant KUD INTERNATIONAL LLC is a limited liability company
5 organized under the laws of Delaware and the successor-in-interest to KAJIMA URBAN
6 DEVELOPMENT LLC and is a “person” within the meaning of Business & Professions Code
7 §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

8 19. Defendant THE LEGASPI COMPANY is a corporation organized under the laws
9 of California and is a “person” within the meaning of Business & Professions Code §17201 and
10 18 U.S.C. §§ 1961(3) and 1964(c).

11 20. Defendant GATEWAY SCIENCE & ENGINEERING, INC. is a corporation
12 organized under the laws of California and is a “person” within the meaning of Business &
13 Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

14 21. Defendant KAJIMA ENGINEERING AND CONSTRUCTION, INC. is a
15 corporation organized under the laws of California and is a “person” within the meaning of
16 Business & Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

17 22. Defendant TURNER/KAJIMA, A JOINT VENTURE, is a joint venture of
18 defendants TURNER CONSTRUCTION COMPANY and KAJIMA CONSTRUCTION
19 SERVICES, INC., each of whom is a “person” within the meaning of Business & Professions
20 Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

21 23. Defendant TURNER CONSTRUCTION COMPANY is a corporation organized
22 under the laws of New York and is a “person” within the meaning of Business & Professions
23 Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

24 24. Defendant KAJIMA CONSTRUCTION SERVICES, INC. is a corporation
25 organized under the laws of Delaware and is a “person” within the meaning of Business &
26 Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

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1 25. Defendant KAJIMA INTERNATIONAL, INC., is a corporation organized under
2 the laws of Delaware and is a “person” within the meaning of Business & Professions Code
3 §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

4 26. Defendant KAJIMA DEVELOPMENT CORPORATION is a corporation
5 organized under the laws of Delaware and is a “person” within the meaning of Business &
6 Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

7 27. Defendant KAJIMA U.S.A., INC. is a corporation organized under the laws of
8 Delaware and is a “person” within the meaning of Business & Professions Code §17201 and 18
9 U.S.C. §§ 1961(3) and 1964(c).

10 28. Defendant LAW ENGINEERING AND ENVIRONMENTAL SERVICES, INC.
11 is a corporation organized under the laws of Georgia and successor-in-interest to LAW-
12 CRANDALL, INC. and is a “person” within the meaning of Business & Professions Code
13 §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

14 29. Defendant INTERA, INC. is a corporation organized under the laws of North
15 Carolina and is a “person” within the meaning of Business & Professions Code §17201 and 18
16 U.S.C. §§ 1961(3) and 1964(c).

17 30. Defendant McLARAND, VASQUEZ & PARTNERS, INC., is a corporation
18 organized under the laws of California and is a “person” within the meaning of Business &
19 Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

20 31. Defendant O’MELVENY & MYERS LLP is a limited liability partnership
21 organized under the laws of California and is a “person” within the meaning of Business &
22 Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

23 32. Defendant PRINCEVILLE PARTNERS LLC is a limited liability company
24 organized under the laws of California and is a “person” within the meaning of Business &
25 Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

26 33. Defendant ERNESTO VASQUEZ is a natural person and is a “person” within the
27 meaning of Business & Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

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1 34. Defendant KENNETH J. REIZES is a natural person and is a “person” within the
2 meaning of Business & Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

3 35. Defendant DOMINIC SHAMBRA is a natural person and is a “person” within the
4 meaning of Business & Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

5 36. Defendant DAVID CARTWRIGHT is a natural person and is a “person” within
6 the meaning of Business & Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

7 37. DEFENDANT DOES 1 through 500 are each a “person” within the meaning of
8 Business & Professions Code §17201 and 18 U.S.C. §§ 1961(3) and 1964(c).

9 38. The true names of DEFENDANT DOES 1 through 500 are unknown to Plaintiffs
10 at this time. When their identities are ascertained, the complaint shall be amended to reflect their
11 true names.

12 39. The term “Defendants,” as used herein is defined to mean all parties named, as
13 well as all DEFENDANT DOES referred to herein.

14 **STATUTORY AND REGULATORY BACKGROUND**

15 40. Penal Code § 374.8 § provides that

16 “(a) In any prosecution under this section, proof of the elements of the offense shall not
17 be dependent upon the requirements of Title 22 of the California Code of Regulations.

18 (b) Any person who knowingly causes any hazardous substance to be deposited into or
19 upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another,
20 without the permission of the owner, or into the waters of this state is punishable by
21 imprisonment in the county jail for not more than one year or by imprisonment in the state
22 prison for a term of 16 months, two years, or three years, or by a fine of not less than fifty dollars
23 (\$50) nor more than ten thousand dollars (\$10,000), or by both the fine and imprisonment,
24 unless the deposit occurred as a result of an emergency that the person promptly reported to the
25 appropriate regulatory authority.

26 (c) For purposes of this section, “hazardous substance” means either of the following:

27 (1) Any material that, because of its quantity, concentration, or physical or
28 chemical characteristics, poses a significant present or potential hazard to human health

1 and safety or to the environment if released into the environment, including, but not
2 limited to, hazardous waste and any material that the administering agency or a handler,
3 as defined in Chapter 6.91 (commencing with Section 25410) of Division 20 of the
4 Health and Safety Code, has a reasonable basis for believing would be injurious to the
5 health and safety of persons or harmful to the environment if released into the
6 environment.

7 (2) Any substance or chemical product for which one of the following applies:

8 (A) The manufacturer or producer is required to prepare a MSDS, as
9 defined in Section 6374 of the Labor Code, for the substance or product pursuant
10 to the Hazardous Substances Information Training Act (Chapter 2.5 (commencing
11 with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any
12 applicable federal law or regulation.

13 (B) The substance is described as a radioactive material in Chapter 1 of
14 Title 10 of the Code of Federal Regulations maintained and updated by the
15 nuclear Regulatory Commission.

16 (C) The substance is designated by the Secretary of Transportation in
17 Chapter 27 (commencing with Section 1801) of the appendix to Title 49 of the
18 United States Code and taxed as a radioactive substance or material.

19 (D) The materials listed in subdivision (b) of Section 6382 of the Labor
20 Code.”

21 41. Penal Code § 387 provides that

22 “(a) Any corporation, limited liability company, or person who is a manager with respect
23 to a product, facility, equipment, process, place of employment, or business practice, is guilty of
24 a public offense punishable by imprisonment in the county jail for a term not exceeding one
25 year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and
26 imprisonment; or by imprisonment in the state prison for 16 months, two, or three years, or by a
27 fine not exceeding twenty-five thousand dollars (\$25,000); or by both that fine and
28 imprisonment, but if the defendant is a corporation or a limited liability company the fine shall

1 not exceed one million dollars (\$1,000,000.00), if that corporation, limited liability company, or
2 person does all of the following:

3 (1) Has actual knowledge of a serious concealed danger that is subject to the
4 regulatory authority of an appropriate agency and is associated with that product or a
5 component of that product or business practice.

6 (2) Knowingly fails during the period ending 15 days after the actual knowledge
7 is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do
8 both of the following:

9 (A) Inform the Division of Occupational Safety and Health in the
10 Department of Industrial Relations in writing, unless the corporation, limited
11 liability company, or manager has actual knowledge that the division has been so
12 informed. Where the concealed danger reported pursuant to this paragraph is
13 subject to the regulatory authority of an agency other than the Division of
14 Occupational Safety and Health in the Department of Industrial Relations, it shall
15 be the responsibility of the Division of Occupational Safety and Health in the
16 Department of Industrial Relations, within 24 hours of receipt of the information,
17 to telephonically notify the appropriate government agency of the hazard, and
18 promptly forward any written notification received.

19 (B) Warn its affected employees in writing, unless the corporation, limited
20 liability company, or manager has actual knowledge that the employees have been
21 so warned. The requirement for disclosure is not applicable if the hazard is abated
22 within the time prescribed for reporting, unless the appropriate regulatory agency
23 nonetheless requires disclosure by regulation. Where the Division of
24 Occupational Safety and Health in the Department of Industrial Relations was not
25 notified, but the corporation, limited liability company, or manager reasonably
26 and in good faith believed that they were complying with the notification
27 requirements of this section by notifying another government agency, as listed in
28 paragraph (8) of subdivision (d), no penalties shall apply.

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(b) As used in this section:

(1) “Manager” means a person having both of the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business that includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) “Product” means an article of trade or commerce or other item of merchandise that is a tangible or an intangible good, and includes services.

(3) “Actual knowledge,” used with respect to a serious concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) “Serious concealed danger,” used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm, or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) “Great bodily harm” means a significant or substantial physical injury.

(6) “Serious exposure” means any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) “Warn its affected employees” means give sufficient description of the serious concealed danger to all individuals working for or in the business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

(8) “Appropriate government agency” means an agency on the following list that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

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- (A) The Division of Occupational Safety and Health in the Department of Industrial Relations.
- (B) State Department of Health Services.
- (C) Department of Agriculture.
- (D) County departments of health.
- (E) The United States Food and Drug Administration.
- (F) The United States Environmental Protection Agency.
- (G) The National Highway Traffic Safety Administration.
- (H) The Federal Occupation Safety and Health Administration.
- (I) The Nuclear Regulatory Commission.
- (J) The Consumer Product Safety Commission.
- (K) The Federal Aviation Administration.
- (L) The Federal Mine Safety and Health Review Commission.

(c) Notification received pursuant to this section shall not be used against any manager in any criminal case, except a prosecution for perjury or for giving a false statement.

(d) No person who is a manager of a limited liability company shall be personally liable for acts or omissions for which the limited liability company is liable under subdivision (a) solely by reason of being a manager of the limited liability company. A person who is a manager of a limited liability company may be held liable under subdivision (a) if that person is also a “manager” within the meaning of paragraph (1) of subdivision (b).

42. Penal Code § 487 provides that “Grand theft is theft committed in any of the following cases:

(a) When the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

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1 (1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other
2 fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding one
3 hundred dollars (\$100).

4 (B) For the purposes of establishing that the value of avocados or citrus fruit
5 under this paragraph exceeds one hundred dollars (\$100), that value may be shown by the
6 presentation of credible evidence which establishes that on the day of the theft avocados
7 or citrus fruit of the same variety and weight exceeded one hundred dollars (\$100) in
8 wholesale value.

9 (2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural
10 products are taken from a commercial or research operation which is producing that
11 product, of a value exceeding one hundred dollars (\$100).

12 (3) Where the money, labor, or real or personal property is taken by a servant,
13 agent, or employee from his or her principal or employer and aggregates four hundred
14 dollars (\$400.00) or more in any 12 consecutive month period.

15 (c) When the property is taken from the person of another.

16 (d) When the property taken is an automobile, firearm, horse, mare, gelding, any bovine
17 animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow,
18 or pig.

19 (e) This section shall become operative on January 1, 1997.

20 43. Penal Code § 182 provides that “

21 (a) If two or more persons conspire:

22 (1) To commit any crime.

23 (2) Falsify and maliciously to indict another for any crime, or to procure another
24 to be charged or arrested for any crime.

25 (3) Falsely to move or maintain any suit, action, or proceeding.

26 (4) To cheat and defraud any person of any property, by any means which are in
27 themselves criminal, or to obtain money or property by false pretenses or by false
28 promises with fraudulent intent not to perform those promises.

1 (5) To commit any act injurious to the public health, to public morals, or to
2 pervert or obstruct justice, or the due administration of the laws .

3 (6) To commit any crime against the person of the President or Vice President of
4 the United States, the Governor of any state or territory, any United States justice or
5 judge, or the secretary of any of the executive departments of the United States.

6 They are punishable as follows: When they conspire to commit any crime against the person of
7 any official specified in paragraph (6), they are guilty of a felony and are punishable by
8 imprisonment in the state prison for five, seven, or nine years. When they conspire to commit
9 any other felony, they shall be punishable in the same manner and to the same extent as is
10 provided for the punishment of that felony. If the felony is one for which different punishments
11 are prescribed for different degrees, the jury or court which finds the defendant guilty thereof
12 shall determine the degree of the felony the defendant conspired to commit. If the degree is not
13 so determined, the punishment for conspiracy to commit the felony shall be that prescribed for
14 the lesser de gree, except in the case of conspiracy to commit murder, in which case the
15 punishment shall be that prescribed for murder in the first degree. If the felony is conspiracy to
16 commit two or more felonies which have different punishments and the commission of those
17 felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the
18 felony which has the greater maximum term. When they conspire to do an act described in
19 paragraph (4), they shall be punishable by imprisonment in the state prison, or by imprisonment
20 in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars
21 (\$10,000.00), or by both that imprisonment and fine. When they conspire to do any of the other
22 acts described in this section, they shall be punishable by imprisonment in the county jail for not
23 more than one year, or in the state prison, or by a fine not exceeding ten thousand dollars
24 (\$10,000.00), or by both that imprisonment and fine. All cases of conspiracy may be prosecuted
25 and tried in the superior court of any county in which any overt act tending to effect the
26 conspiracy shall be done.

27 (b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the
28 offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in

1 the indictment or information, nor unless one of the acts alleged is proved; but other overt acts
2 not alleged may be given in evidence.

3 44. Each violation of Penal Code §§374.8, 387, 487, and 182 is a *per se* unlawful
4 business practice violation of the Unlawful Competition Law, Business & Professions Code
5 §17200 *et seq.*, and also constitutes an unfair business practice under that same statute.

6 45. An action for restitution and disgorgement of profits, among other remedies, is
7 specifically authorized under the Unlawful Competition Law at Business & Professions Code
8 §17203.

9 46. Business & Professions Code §17205 provides that “the remedies or penalties
10 provided by this chapter are cumulative to each other and to the remedies or penalties available
11 under all other laws of this state.”

12 47. The Racketeer Influenced and Corrupt Organizations Act (“RICO”) is contained
13 in Title 18 of the United States Code, sections 1961 through 1968. This federal status is aimed
14 at “racketeering activity” and to this end, among other civil and criminal remedies, creates a
15 private cause of action for treble damages by providing “[a]ny person injured in his business or
16 property by reason of a violation of section 1962 of this chapter may sue therefore . . . and shall
17 recover threefold the damages he sustains and the cost of the suit, including a reasonable
18 attorney’s fee.” (18 U.S.C. §1964(c).

19 JURISDICTION AND VENUE

20 48. The Court has jurisdiction over this action pursuant to Business & Professions
21 Code §§17203 and 17204, which individually and collectively allow enforcement in any court of
22 competent jurisdiction. The California Superior Court has jurisdiction over this action pursuant
23 to California Constitution Article VI, Section 10, which grants the Superior Court “original
24 jurisdiction in all cases except those given by statute to other trial courts.” The statutes under
25 which this action is brought do not grant jurisdiction to any other trial court. This court also has
26 jurisdiction to hear and decide this matter under the federal Racketeer Influenced and Corrupt
27 Organizations Act (RICO) (18 United States Code section 1961 *et seq.*), pursuant to *Cianci v.*
28 *Superior Court*, (1985) 40 Cal. 3d 903, 221 Cal. Rptr. 575, and *Tafflin v. Levitt*, 493 U.S. 455,

1 110 S.Ct. 792, 107 L.Ed.2d 887 (1990), in that all of the relevant facts and violations of law
2 occurred in, and all of the defendants do business in, the County of Los Angeles.

3 49. This Court has jurisdiction over Defendants because each Defendant is either a
4 corporation that has sufficient minimum contacts in California; is a natural person resident in
5 California; or has otherwise intentionally availed itself or himself of the California market, either
6 through the sale of its services in the state of California or by having an office located in
7 California so as to render the exercise of jurisdiction over it by the California courts consistent
8 with traditional notions of fair play and substantial justice.

9 50. Venue is proper in the Los Angeles Superior Court because all of the relevant
10 facts and violations of law occurred in, and all of the defendants do business in, the County of
11 Los Angeles.

12 **FACTUAL ISSUES AND LEGAL BACKGROUND**

13 51. The Los Angeles Unified School District's ("LAUSD") Office of Internal Audit
14 and Special Investigations Unit ("LAUSD Internal Auditor") was directed by the LAUSD
15 School Board on February 23, 1999, to investigate the following six issues relating to the
16 Belmont Learning Complex ("Belmont"):¹

- 17 • The acquisition, environmental assessment, and remediation of all land associated
18 with Belmont;
 - 19 • All contracts and payments to outside consultants and attorneys involved with
20 Belmont;
 - 21 • Alleged existences of conflicts of interest relating to Belmont;
 - 22 • Any account(s) controlled by the former Bond and Asset Management/Planning
23 and Development offices;
 - 24 • The selection, negotiation, and contracting process for the development and
25 construction of Belmont; and
- 26
27

28 ¹ The Office of Internal Audit and Special Investigations Unit is now known as the LAUSD
Office of the Inspector General.

- Pursue all legal rights and remedies including restitution in the event of the discovery of any wrongdoing regarding Belmont.

52. In response to the LAUSD School Board resolution of February 23, 1999, on September 13, 1999, the LAUSD Internal Auditor submitted his first set of findings, entitled “Report of Findings,” and on December 13, 1999, the LAUSD Internal Auditor submitted his second set of findings, entitled “Report of Findings – Part II.”

53. The LAUSD Internal Auditor’s “Report of Findings” of September 13, 1999, includes Chapters 6 through 16, inclusive, as well as Chapters 19 and 21, all of which are attached to this complaint as Exhibit 1 and thereby incorporated herein as if set forth in full.

54. The LAUSD Internal Auditor’s “Report of Findings – Part II” includes Chapters 5 through 9, inclusive, all of which are attached to this complaint as Exhibit 2 and thereby incorporated herein as if set forth in full.

55. On information and belief, Plaintiffs contend that the acts of the Defendants, as set forth in the LAUSD Internal Auditor’s two reports of findings, relevant portions of which are attached hereto as Exhibits 1 and 2, and thereby incorporated herein as if set forth in full, establish the facts that constitute actions and an enterprise that shall be referred to hereinafter as the “Belmont Conspiracy.”

56. On information and belief, Plaintiffs contend that the acts of the Defendants in the Belmont Conspiracy, as set forth in the LAUSD Internal Auditor’s two reports of findings, relevant portions of which are attached hereto as Exhibits 1 and 2, and thereby incorporated herein as if set forth in full, establish that during the acquisition, planning, and development of the Belmont Learning Center, the co-conspirators and each of them sought to avoid the mitigation, and also failed to mitigate, the escape of the hazardous substances methane and hydrogen sulfide known to be present in the subsurface soils at the Belmont Learning Center. The escape, entrainment and resulting deposit of the hazardous substances methane and hydrogen sulfide at the Belmont Learning Center was created and exacerbated by their grading and construction, as well as by the various actions undertaken to relocate and/or drill oil and gas wells, at the Belmont Learning Center. At all relevant times the Defendants in the Belmont

1 Conspiracy knew their duty to mitigate both the methane and hydrogen sulfide gases, but they
2 acted individually and in concert to avoid and ultimately to not meet that duty. By their actions,
3 the Defendants through the Belmont Conspiracy derailed the planned completion date of the
4 school, committed a fraud upon children, parents and taxpayers, and created a situation that
5 currently poses a significant threat to the health and safety of children and teachers who are or
6 may be assigned to attend or work at the site. Their motive was to seize control of vast public
7 financial resources, manipulate those resources to their own professional and financial ends, and
8 to thereby enhance their own power, stature and wealth.

9 57. On information and belief, Plaintiffs contend that the acts of the Defendants in
10 executing the Belmont Conspiracy were to avoid the legally-mandated methane and hydrogen
11 sulfide mitigation measures, including but not limited to the “Methane Seepage District
12 Regulations” set forth in the Los Angeles Municipal Code, Chapter IX, Article 1, Division 71
13 (formerly Division 15), *passim*, especially section 91.7104.1.1. Defendants’ failure to install the
14 legally-mandated methane and hydrogen sulfide mitigation measures violated the law, *inter alia*,
15 by causing illegal deposits of methane and hydrogen sulfide at the Belmont Learning Center,
16 thereby depriving illegally and thus robbing the children who were designated by LAUSD to
17 attend the Belmont Learning Center of their fundamental interest in an education at a first-class
18 school, with the latest developments in academic curriculum design, with new administrative
19 staff and teachers, in their own inner city school neighborhood, harming their parents as well.

20 58. As the California Supreme Court held in its landmark 1971 case of *Serrano v.*
21 *Priest*, “We are convinced that the distinctive and priceless function of education in our society
22 warrants, indeed compels, our treating it as a “fundamental interest.” 5 Cal.3d 584, 608-609.
23 The Supreme Court set forth several reasons for this conclusion, the first of which establishes the
24 essential economic aspect of public education as a fundamental interest. “First, education is
25 essential in maintaining what several commentators have termed “free enterprise democracy” –
26 that is, preserving an individual’s opportunity to compete successfully in the economic
27 marketplace, despite a disadvantaged background. Accordingly, the public schools of this state
28 are the bright hope for entry of the poor and oppressed into the mainstream of American

1 society.” 5 Cal.3d 584, 609. And critically to the point here, the Supreme Court concluded that
2 “Finally, education is so important that the state has made it compulsory-not only in the
3 requirement of attendance but also by assignment to a particular district and school. Although a
4 child of wealthy parents has the opportunity to attend a private school, this freedom is seldom
5 available to the indigent. In this context, it has been suggested that “a child of the poor assigned
6 willy- nilly to an inferior state school takes on the complexion of a prisoner, complete with a
7 minimum sentence of 12 years.” (citation omitted) 5 Cal.3d at 609. Plaintiffs act herein to
8 redress the harm to these children’s fundamental interest in a public education caused by the
9 illegal acts of the Defendants through the Belmont Conspiracy, which acts resulted in an illegal,
10 adverse and quantifiable deprivation of and to this fundamental interest of education.

11 59. Unfortunately no public prosecutor has as yet prosecuted any Defendant based
12 upon the LAUSD Internal Auditor’s findings.

13 60. As a result, acting on behalf of themselves as well as private attorneys general, all
14 Plaintiffs allege the following causes of action, with the exception of the Eighth and Ninth
15 Causes of Action, to which Plaintiff Mark Adams is not a party.

16 **FIRST CAUSE OF ACTION**

17 **(Violations Of Business & Professions Code §17200 *et seq.***

18 **Based On Unlawful Acts In Violation Of Penal Code § 374.8, By All Defendants)**

19 61. All Plaintiffs reallege and incorporate by reference as if specifically set forth
20 herein Paragraphs 1 through 60, inclusive.

21 62. Defendants have engaged in conduct which violates Penal Code § 374.8 by
22 causing the deposit of methane and hydrogen sulfide on the land of another.

23 63. By committing the acts alleged above in violation of Penal Code § 374.8,
24 Defendants have engaged in an unlawful business practice and an unfair business practice, each
25 of which constitutes unfair competition within the meaning of Business & Professions Code
26 §17200.

27 Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

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SECOND CAUSE OF ACTION

(Violations Of Business & Professions Code §17200 *et seq.*

Based On Violations Of Penal Code § 387, By All Defendants)

64. All Plaintiffs reallege and incorporate by reference as if specifically set forth herein Paragraphs 1 through 63, inclusive.

65. Defendants have engaged in conduct which violates Penal Code § 387 by failing to report a dangerous condition as required by law as a result of the deposit and unlawful build-up of methane and hydrogen sulfide on the land of another.

66. By committing the acts alleged above in violation of Penal Code § 374.8, Defendants have engaged in an unlawful business practice and an unfair business practice, each of which constitutes unfair competition within the meaning of Business & Professions Code §17200.

Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

THIRD CAUSE OF ACTION

(Violations Of Business & Professions Code §17200 *et seq.*

Based On Violations Of Penal Code § 487, By All Defendants)

67. All Plaintiffs reallege and incorporate by reference as if specifically set forth herein Paragraphs 1 through 66, inclusive.

68. Defendants have engaged in conduct that violates Penal Code § 487 by taking real or personal property of a value exceeding four hundred dollars (\$400) from each and all Plaintiffs.

69. By committing the acts alleged above in violation of Penal Code § 487, Defendants have engaged in an unlawful business practice and an unfair business practice, each of which constitutes unfair competition within the meaning of Business & Professions Code §17200.

Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

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FOURTH CAUSE OF ACTION

(Violations Of Business & Professions Code §17200 *et seq.*

Based On Violations Of Penal Code § 182, By All Defendants)

70. All Plaintiffs reallege and incorporate by reference as if specifically set forth herein Paragraphs 1 through 69, inclusive.

71. By conspiring to and committing the acts alleged above in violation of Penal Code §§ 374.8, 387, and 487, Defendants have engaged in a conspiracy in violation of Penal Code § 182, and thereby have engaged in an unlawful business practice and an unfair business practice, each of which constitutes unfair competition within the meaning of Business & Professions Code §17200.

Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

FIFTH CAUSE OF ACTION

(Violations Of Civil Code §§1709 And 1710:

**Misrepresentation, Making Affirmative Misleading Statements,
And Failure To Disclose Material Facts, By All Defendants)**

72. All Plaintiffs reallege and incorporate by reference as if specifically set forth herein Paragraphs 1 through 71, inclusive.

73. Defendant’s failure to disclose the presence of and build-up of methane and hydrogen sulfide at the Belmont Learning Center and the resulting health risks they posed, was and is deceptive and in violation of Civil Code §§1709 and 1710. As a result, Defendants have misrepresented, made affirmative misleading statements, and thus negligently and carelessly failed to fulfill their legal duty to disclose material facts regarding the presence and build-up of methane and hydrogen sulfide in a timely manner to avoid deceiving the children, residents and taxpayers around the Belmont Learning Center in violation of Civil Code §§1709 and 1710.

Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

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1 **SIXTH CAUSE OF ACTION**

2 **(Violations Of Business & Professions Code §§17200**

3 **Based On Violations Of Civil Code §§1709 and 1710:**

4 **Misrepresentation, Making Affirmative Misleading Statements,**
5 **And Failure To Disclose Material Facts, By All Defendants)**

6 74. All Plaintiffs reallege and incorporate by reference as if specifically set forth
7 herein Paragraphs 1 through 73, inclusive.

8 75. The deposit and unlawful build-up of methane and hydrogen sulfide on at the
9 Belmont Learning Center creates significant risks of acute and chronic harm to adults and even
10 greater risks for children.

11 76. Defendants have misrepresented, made affirmative misleading statements, and
12 thus negligently and carelessly failed to fulfill their legal duty to disclose material facts
13 regarding the presence and build-up of methane and hydrogen sulfide in a timely manner to
14 avoid deceiving the children, residents and taxpayers around the Belmont Learning Center in
15 violation of Civil Code §§1709 and 1710.

16 77. Accordingly, Defendants have also violated Business & Professions Code
17 §§17200's proscription against engaging in unfair and thus unlawful business practices, and
18 have thereby engaged in an unlawful business practice and an unfair business practice, each of
19 which constitutes unfair competition within the meaning of Business & Professions Code
20 §17200.

21 Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

22 **SEVENTH CAUSE OF ACTION**

23 **(Fraudulent Concealment, By All Defendants)**

24 78. All Plaintiffs realleges and incorporates by reference as if specifically set forth
25 herein Paragraphs 1 through 77, inclusive.

26 79. Defendant's failure to disclose the presence of and build-up of methane and
27 hydrogen sulfide at the Belmont Learning Center and the resulting health risks they posed
28 constitutes fraudulent concealment.

1 80. Defendants tolled any statute of limitations by this fraudulent concealment.
2 Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

3 **EIGHTH CAUSE OF ACTION**

4 **(Violations Of 18 U.S. C. 1962(c), By All Defendants)**

5 81. Complaining Plaintiffs reallege and incorporate by reference as if specifically set
6 forth herein Paragraphs 1 through 80, inclusive.

7 82. The Defendants are each a “person” within the meaning of 18 U.S.C. §§ 1961(3)
8 and 1964(c).

9 83. The Belmont Conspiracy is an “enterprise” within the meaning of 18 U.S.C.
10 § 1961(4) and 1962(c), which enterprise was engaged in and the activities of which affected
11 interstate commerce during the relevant times.

12 84. Each of the Defendants were associated with an enterprise, that is, the Belmont
13 Conspiracy, and did conduct or participate, directly or indirectly, in the conduct of the affairs of
14 the Belmont Conspiracy through a pattern of racketeering activity within the meaning of
15 18 U.S.C. §§ 1961(1)(B) and 1961(E) and 1961(5) and 1962(c), to wit:

- 16 (a) multiple instances of mail fraud in violation of 18 U.S.C.
17 §1341
18 (b) multiple instances of wire fraud in violation of 18U.S.C. 1343;
19 (c) robbery and conspiracy to commit robbery in violation of
20 California Penal Code §487, 18 U.S.C. § 1951 and 18 U.S.C.
21 § 2
22 (d) multiple instances of interstate transportation of persons and
23 stolen property in violation of 18 U.S.C. § 2314.

24 85. By reason of violation of 18 U.S.C. § 1962(c) committed by Defendants, the
25 complaining Plaintiffs were injured in an as yet undetermined amount, believed to be in excess
26 of not less than approximately five thousand dollars (\$5,000.00) each, for a total of Fifty Million
27 Dollars (\$50,000,000.00), within the meaning of 18 U.S.C. § 1964(c).

28 Wherefore, all Plaintiffs pray for judgment against Defendants, as set forth hereafter.

1 **NINTH CAUSE OF ACTION**

2 **(Violations Of 18 U.S. C. 1962(c)**

3 **By Conspiracy To Violate 18 U.S.C. § 1962(c), By All Defendants)**

4 86. Complaining Plaintiffs reallege and incorporate by reference as if specifically set
5 forth herein Paragraphs 1 through 85, inclusive.

6 87. The Defendants are each a “person” within the meaning of 18 U.S.C. §§ 1961(3)
7 and 1964(c).

8 88. The Belmont Conspiracy is an “enterprise” within the meaning of 18 U.S.C.
9 § 1961(4) and 1962(c), which enterprise was engaged in and the activities of which affected
10 interstate commerce during the relevant times.

11 89. Each of the Defendants were associated with an enterprise, that is, the Belmont
12 Conspiracy, and did conduct or participate, directly or indirectly, in the conduct of the affairs of
13 the Belmont Conspiracy, conspired within the meaning of 18 U.S.C. § 1962(d) to violate
14 18 U.S.C. § 1962(c), that is, Defendants did conspire to conduct or participate, directly or
15 indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity
16 within the meaning of 18 U.S.C. §§ 1961(1)(B) and 1961(E) and 1961(5) and 1962(c), to wit:

- 17 (a) multiple instances of mail fraud in violation of 18 U.S.C.
18 §1341
- 19 (b) multiple instances of wire fraud in violation of 18U.S.C. 1343;
- 20 (c) robbery and conspiracy to commit robbery in violation of
21 California Penal Code §487, 18 U.S.C. §§ 2 and 1951
- 22 (d) multiple instances of interstate transportation of persons and
23 stolen property in violation of 18 U.S.C. § 2314.

24 90. By reason of violation of 18 U.S.C. § 1962(c) committed by Defendants, the
25 Complaining Plaintiffs were injured in an as yet undetermined amount, believed to be in excess
26 of not less than approximately five thousand dollars (\$5,000.00) each, for a total of Fifty Million
27 Dollars (\$50,000,000.00), within the meaning of 18 U.S.C. § 1964(c).

28 Wherefore, Plaintiffs pray for judgment against Defendants, as set forth hereafter.

1 **PRAYER FOR RELIEF**

2 Plaintiffs pray for judgment against all Defendants as follows:

3 **On The First Through Fourth and Sixth Causes Of Action (Unlawful Competition**
4 **Law):**

5 1. That the Court, pursuant to Business & Professions Code §§17203, preliminarily
6 and permanently enjoin Defendants from violating Penal Code §§ 374.8, 387, 487, and 182, as
7 Plaintiffs shall specify in further application to the Court;

8 **On the First Through Fourth and Sixth Causes of Action (Unlawful Competition**
9 **Law):**

10 2. That the Court order each Defendant to notify each and every child that was
11 eligible to attend the Belmont Learning Center at or after its scheduled opening, and thereby give
12 such children an opportunity to obtain restitution from such Defendant;

13 3. That the Court order the Defendants, joint and severally, to pay restitution,
14 disgorge illicit profits and be subject to such other relief as may be necessary to restore any child
15 eligible to attend the Belmont Learning Center at or after its scheduled opening any money or
16 property, real or personal, which may have been acquired by means of the Defendants' illicit
17 acts alleged herein; as Plaintiffs shall specify in further application to the Court;

18 **On the Fifth Cause of Action (Misrepresentation, Making Affirmative Misleading**
19 **Statements, and Failure to Disclose Material Facts)**

20 4. That the Defendants be held liable for damages, individually and where permitted
21 by law, jointly and severally, in amounts to be determined at trial.

22 **On the Seventh Cause of Action (Fraudulent Concealment)**

23 5. That on the causes of action set forth above, the Court rule that each Defendant
24 tolled any and all statutes of limitations by their fraudulent concealment, and that the Court
25 assess suitable penalties for this conduct and enter any other orders of the Court that the Court
26 deems are just and proper, as Plaintiff shall specify in further application to the Court;

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1 **On the Eighth Cause of Action (Violations Of 18 U.S. C. 1962(c):**

2 6. That judgment be entered against Defendants, each of them jointly and severally,
3 in an undetermined amount not less than five thousand dollars (\$5,000.00) each, for a total of
4 Fifty Million Dollars (\$50,000,000.00) for the Seventh Cause of Action, with the sum duly
5 trebled in accordance with 18 U.S.C. § 1964(c); and for the costs of suit including a reasonable
6 attorney’s fee, in accordance with 18 U.S.C. §1964(c).

7 **On the Ninth Cause of Action (Violations Of 18 U.S. C. 1962(c) by Conspiracy to**
8 **Violate 18 U.S.C. § 1962(c):**

9 7. That judgment be entered against Defendants, each of them jointly and severally,
10 in an undetermined amount not less than five thousand dollars (\$5,000.00) each, for a total of
11 Fifty Million Dollars (\$50,000,000.00) for the Eighth Cause of Action, with the sum duly trebled
12 in accordance with 18 U.S.C. § 1964(c); and for the costs of suit including a reasonable
13 attorney’s fee, in accordance with 18 U.S.C. §1964(c).

14 **On All Causes of Action:**

15 8. For attorney’s fees and costs;

16 9. For pre-and post-judgment interest according to law;

17 10. For such other and further restitution, damages, and/or relief as this Court may
18 deem just and proper, including punitive damages pursuant to California Civil Code §3294(c)(1)
19 to the fullest extent permitted by law for each cause of action enumerated above.

20
21 Date: September 12, 2002

Respectfully submitted,

22 THE CARRICK LAW GROUP
23 A PROFESSIONAL CORPORATION

24
25 By _____ /s/
26 ROGER LANE CARRICK
27 Attorneys for Plaintiffs
28 Fernando Contreras, Veronica Contreras,
Geraldo Contreras, and Mark Adams

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DEMAND FOR JURY TRIAL

To the fullest extent permitted by law, Plaintiffs hereby demands a trial by jury on each and every cause of action.

Date: September 12, 2002

Respectfully submitted,

THE CARRICK LAW GROUP
A PROFESSIONAL CORPORATION

By _____ /s/
ROGER LANE CARRICK
Attorneys for Plaintiffs
Fernando Contreras, Veronica Contreras,
Geraldo Contreras, and Mark Adams