

1 Leslie A. Hulburt (CA Bar 250935)  
2 COZEN O'CONNOR  
3 501 West Broadway, Suite 1610  
4 San Diego, California 92101  
5 Telephone: 619.234.1700  
6 Facsimile: 619.234.7831

7 Attorneys for Plaintiff,  
8 FIREMAN'S FUND INSURANCE COMPANY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 IN AND FOR THE COUNTY OF ORANGE  
11 CENTRAL JUSTICE CENTER

12 FIREMAN'S FUND INSURANCE COMPANY,  
13 a California Corporation

14 Plaintiff,

15 vs.

16 NU FLOW AMERICA, INC., a New York  
17 Corporation; ABACUS PROPERTY  
18 MANAGEMENT, an Arizona Corporation; B&B  
19 PLUMBING, INC., a California Corporation;  
20 LAGUNA LIDO HOMEOWNERS  
21 ASSOCIATION, INC., a California Corporation;  
22 and DOES 1-50, inclusive,

23 Defendants.

Case No. 30-2012-00618007-CU-PO-CJC

**COMPLAINT FOR NEGLIGENCE**

Judge Francisco F. Firmat

**C-15**

24 Plaintiff, Fireman's Fund Insurance Company ("FFIC" or "Plaintiff"), alleges as follows:

25 1. FFIC is an insurance company authorized to do business in the State of California and  
26 issued to Marilyn Propstra ("Ms. Propstra" or "Insured") a policy of insurance which provided  
27 insurance coverage for Ms. Propstra's property located at 31755 Coast Highway #212, Laguna  
28 Beach, CA 92651 (the "Subject Property").

29 2. At all times mentioned herein, Defendant, Nu Flow America, Inc, ("Nu Flow" or  
30 "Defendant"), a New York Corporation, conducted business activities within the State of California  
31 and was retained to perform plumbing work, including epoxy the waste lines, at the Subject  
32 Property.

1           3.       At all times mentioned herein, Defendant, Abacus Property Management (“Abacus”  
2 or “Defendant”), an Arizona Corporation, conducted business activities within the State of California  
3 and is a general contractor who was hired to repair damages caused by a sewer main backup at the  
4 Subject Property.

5           4.       At all times mentioned herein, Defendant, B&B Plumbing, Inc. (“B&B” or  
6 “Defendant”), a California Corporation, conducted business activities within the State of California  
7 and is a plumbing contractor who was hired to repair damages caused by a sewer main backup at the  
8 Subject Property.

9           5.       At all times mentioned herein, Defendant, Laguna Lido Homeowners Association,  
10 Inc. (“Association” or “Defendant”), a California Corporation, conducted business activities within  
11 the State of California and is the Homeowners Association for the Subject Property.

12           6.       The true names and capacities, and/or legal responsibility for the damages herein  
13 alleged, whether individual, corporate, associate or otherwise, of Defendants named herein as DOES  
14 1 through 50, inclusive, and each of them, are unknown to Plaintiff, who therefore sues said  
15 Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names  
16 and capacities and/or responsibility when ascertained.

17           7.       Plaintiff is informed and believes and thereon alleges that each of the fictitiously  
18 named Defendants are legally responsible in some manner for the occurrences herein alleged, and  
19 that Plaintiff's losses as herein alleged are proximately caused by their conduct.

20           8.       On or about January 1, 2010, a sewer line backup occurred, which caused the guest  
21 bathroom toilet and kitchen sink in the insured's unit to back up and overflow raw sewage into the  
22 unit (“Subject Loss”).

23           9.       Pursuant to the terms of the policy issued by FFIC to Ms. Propstra, FFIC has paid and  
24 will pay in excess of \$114,000 as a result of the Subject Loss.

25           10.      Under the terms of the insurance policy provided to its insured, Ms. Propstra, and/or  
26 by operation of law, FFIC is equitably and legally subrogated to the rights and interests of its  
27 insured, Ms. Propstra, and is therefore entitled to institute and pursue legal remedies against  
28 Defendants that its insured, Ms. Propstra, could pursue to recover any and all monies paid by

1 Plaintiff under the policy.

2 **FIRST CAUSE OF ACTION**

3 **(Negligence Against All Defendants and DOES 1 through 50)**

4 11. Plaintiff realleges and incorporates by reference each and every allegation set forth in  
5 paragraphs 1 through 10 of this Complaint as though fully set forth herein.

6 12. At all times herein mentioned, Defendant Nu Flow and DOES 1 through 50 owed  
7 Plaintiff a duty to use due and reasonable care and caution in the performance of plumbing work at  
8 the subject property.

9 13. Defendant Nu Flow and DOES 1 through 50 breached the above duties in the  
10 following particulars:

- 11 a. failing to epoxy the sewer lines with reasonable and due care;  
12  
13 b. failing to follow industry customs regarding sewer lines,  
14  
15 c. failing to use caution and care to avoid a backup in the sewer line, and  
16  
17 d. otherwise failing to exercise due care in the performance of plumbing work at the  
subject location.

18 14. As a direct and proximate result of said negligence, damages in an amount in excess  
19 of \$114,000.00 have been incurred.

20 15. At all times herein mentioned, Defendants Abacus, B&B and DOES 1 through 50  
21 owed Plaintiff a duty to use due and reasonable care and caution in the performance of remedial  
22 construction work at the subject property.

23 16. Defendant Abacus, B&B and DOES 1 through 50 breached the above duties in the  
24 following particulars:

- 25 a. failing to perform the repair work and plumbing repairs with reasonable and due  
26 care;  
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- 1                   b. failing to get the proper permit work completed for the plumbing work and other  
2                   repairs,  
3                   c. failing to properly repair the plumbing lines to avoid future water damage, and  
4                   d. otherwise failing to exercise due care in the performance of remedial construction  
5                   work at the subject location.  
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7           17.     As a direct and proximate result of said negligence, damages in an amount in excess  
8 of \$114,000.00 have been incurred.

9           18.     At all times herein mentioned, Defendant Association and DOES 1 through 50 owed  
10 Plaintiff a duty to use due and reasonable care and caution in the oversight and governance of  
11 plumbing and repair work at the subject property.

12           19.     Defendant Association and DOES 1 through 50 breached the above duties in the  
13 following particulars:

- 14                   a. failing to oversee and govern repair work with reasonable and due care;  
15                   b. failing to follow industry standards regarding emergency repairs and  
16                   remedial work,  
17                   c. failing to follow HOA guidelines, rules and the applicable covenants,  
18                   conditions and restrictions, and  
19                   d. otherwise failing to exercise due care in the oversight and governance of  
20                   plumbing work and remedial construction at the subject location.  
21                   d. otherwise failing to exercise due care in the oversight and governance of  
22                   plumbing work and remedial construction at the subject location.

23           20.     As a direct and proximate result of said negligence, damages in an amount in excess  
24 of \$114,000.00 have been incurred.

25                   WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as  
26 follows:

27           1.     For damages in an amount to be determined according to proof at trial and for  
28 prejudgment interest thereon;

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- 2. For costs of suit incurred herein; and
- 3. For such other and further relief as the court may deem just and proper.

DATED: December 11, 2012

COZEN O'CONNOR

By:   
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LESLIE A. HULBURT  
Attorneys for Plaintiff  
FIREMAN'S FUND INSURANCE COMPANY