

CLERK OF THE COURT

NJUD

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Courtney K. Lee, Esq.

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

SCOTT PHILLIPS, individually; TEODORO H.) CASE NO. A-15-714632-D

and ROSA-LINDA R. BAUTISTA, individually;)
BROWER FAMILY TRUST, individually;) DEPT. NO. XXII

CHARLES COLUCCI, individually; HARRY E.)
CROSBY REVOCABLE TRUST; DR. KAREN) **NOTICE OF ENTRY OF FINAL**
FELDMAN, individually; COLLEEN T. SAN) **JUDGMENT RE: PLAINTIFFS**
FILIPPO, individually; THE GILLES FAMILY) **RONALD TURNER AND ROBERT**
LIVING TRUST, DATED JANUARY 14, 2010;) **DYKEMA**

DAVID M. GORDON, individually; CHARLES)
and MARIA HEARN, individually; THOMAS C.)

and KATHLEEN A. JOHNSON, individually;)

AARON KNUDSON, individually; LORRAINE)

JOHNSON, individually; JOLEAN JONES,)

individually; YOUNG KYOON KIM and INOK)

KIM, individually; MIKE and TALIA)

LAQUITARA, individually; JAMES and)

ANDRONICKIE LAUTH, individually;)

LEPORE FAMILY TRUST DATED OCTOBER)

30, 2008; JOHN LEVERITT, individually;)

ROGER A. MARTIN AND VIRGINIA C.)

MARTIN JOINT LIVING TRUST; MASLIN)

FAMILY LIVING TRUST DATED JANUARY)

24, 2011; THOMAS MEYERS and MARY C.)

MONICA-MEYERS, individually; MARK)

MONACO, individually; SAMIR FARID)

MOUJAES AND SYLVA PUZANTIAN)

MOUJAES LIVING TRUST u/t/d August 13,)

2013; BUD O'BRIEN and ROSALIE O'BRIEN,)

individually; DAVID L. POWELL and JUNE D.)

COOPER, individually; RANDALL and NICOLE)

ROEDECKER, individually; EUGENIUSZ and)

1 ZOFIA SUCHECKI, individually; GARY G.
2 TON, individually; ROY and SHARON VAN
3 SLYKE, individually; LAUREL YVONNE
4 WEAVER, individually; SCOTT M. ZIPKIN and
5 ROBERT A. & ELLEN R. ZIPKIN, individually;
6 MICHAEL J. and GLORIA NAN CONNOLLY,
7 individually; ROBERT and CONCETTA
8 GAYNOR, individually; HECTOR G. and
9 ROSARIO GARCIA, individually; JAMES A.
10 HENDERSON JR., individually; HOWARD S.
11 and ROBERTA P. LEVINE, individually; KURT
12 FIELD and CRISTEN BOLANDER-FIELD,
13 individually; BOBBIE SMITH, individually;
14 CHAD and ALLICIA TOMOLO, individually;
15 WILLIAM and CONNIE MCDERMOTT,
16 individually; SYDNEY WOO, individually;
17 PREMIERE HOLDINGS RESIDENTIAL
18 DIVISION, LLC, a Nevada Limited-Liability
19 Company; VEROL R. and DEBRA A.
20 BELLINFANTE, individually; ALFREDO and
21 ILUMINADA CAMPOS, individually; WYNSIE
22 MARIE CHAN, individually; ROBERT M.
23 DYKEMA, individually; BROCK and REANNA
24 FOSTER, individually; J C F FAMILY TRUST;
25 WI JO KANG and CHONG-JA KANG,
26 individually; TAKESHI NAKAYA, individually;
27 DIONISIO ONG, individually; POURZIAEE
28 ERAJ AND SEDI POURZIAEE JOINT LIVING
TRUST; JOSEPH and MILAGROS RIVERA,
individually; SALISBURY FAMILY TRUST;
WILLIAM A. and CYNTHIA J. SHOOP,
individually; RONALD TURNER, individually;
BRENT and SARA URE, individually;
WILLIAM R. and NANCY WALLEY, JR.,
individually; KIEL YOST, individually; STEVEN
and MARIA MOORE, individually;

Plaintiffs,

v.

DEL WEBB COMMUNITIES, INC., an Arizona
Corporation; and DOES 1 through 500, inclusive,
Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

DATED this 24th day of December, 2015 SHINNICK RYAN & RANSAVAGE P.C.

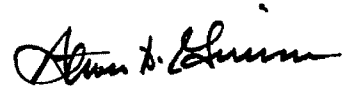
Attorneys for Plaintiffs

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Exhibit “1”

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CLERK OF THE COURT

JUDG

Duane E. Shinnick, Esq.
Bar No. 7176
Courtney K. Lee, Esq.
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Attorneys for PLAINTIFFS

DISTRICT COURT

CLARK COUNTY, NEVADA

SCOTT PHILLIPS, individually; TEODORO H.) CASE NO. A-15-714632-D
and ROSA-LINDA R. BAUTISTA, individually;)
BROWER FAMILY TRUST, individually;) DEPT. NO. XXII
CHARLES COLUCCI, individually; HARRY E.)
CROSBY REVOCABLE TRUST; DR. KAREN)
FELDMAN, individually; COLLEEN T. SAN)
FILIPPO, individually; THE GILLES FAMILY)
LIVING TRUST, DATED JANUARY 14, 2010;)
DAVID M. GORDON, individually; CHARLES)
and MARIA HEARN, individually; THOMAS)
C. and KATHLEEN A. JOHNSON, individually;)
AARON KNUDSON, individually; LORRAINE)
JOHNSON, individually; JOLEAN JONES,)
individually; YOUNG KYOON KIM and INOK)
KIM, individually; MIKE and TALIA)
LAQUITARA, individually; JAMES and)
ANDRONICKIE LAUTH, individually;)
LEPORE FAMILY TRUST DATED OCTOBER)
30, 2008; JOHN LEVERITT, individually;)
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MONACO, individually; SAMIR FARID)
MOUJAES AND SYLVA PUZANTIAN)
MOUJAES LIVING TRUST u/t/d August 13,)
2013; BUD O'BRIEN and ROSALIE)
O'BRIEN, individually; DAVID L. POWELL)
and JUNE D. COOPER, individually;)
RANDALL and NICOLE ROEDECKER,)
individually; EUGENIUSZ and ZOFIA)

1 SUCHECKI, individually; GARY G. TON,
2 individually; ROY and SHARON VAN SLYKE,
3 individually; LAUREL YVONNE WEAVER,
4 individually; SCOTT M. ZIPKIN and ROBERT
5 A. & ELLEN R. ZIPKIN, individually;
6 MICHAEL J. and GLORIA NAN CONNOLLY,
7 individually; ROBERT and CONCETTA
8 GAYNOR, individually; HECTOR G. and
9 ROSARIO GARCIA, individually; JAMES A.
10 HENDERSON JR., individually; HOWARD S.
11 and ROBERTA P. LEVINE, individually; KURT
12 FIELD and CRISTEN BOLANDER-FIELD,
13 individually; BOBBIE SMITH, individually;
14 CHAD and ALLICIA TOMOLO, individually;
15 WILLIAM and CONNIE MCDERMOTT,
16 individually; SYDNEY WOO, individually;
17 PREMIERE HOLDINGS RESIDENTIAL
18 DIVISION, LLC, a Nevada Limited-Liability
19 Company; VEROL R. and DEBRA A.
20 BELLINFANTE, individually; ALFREDO and
21 ILUMINADA CAMPOS, individually;
22 WYNSIE MARIE CHAN, individually;
23 ROBERT M. DYKEMA, individually; BROCK
24 and REANNA FOSTER, individually; J C F
25 FAMILY TRUST; WI JO KANG and CHONG-
26 JA KANG, individually; TAKESHI NAKAYA,
27 individually; DIONISIO ONG, individually;
28 POURZIAEE ERAJ AND SEDI POURZIAEE
JOINT LIVING TRUST; JOSEPH and
MILAGROS RIVERA, individually;
SALISBURY FAMILY TRUST; WILLIAM A.
and CYNTHIA J. SHOOP, individually;
RONALD TURNER, individually; BRENT and
SARA URE, individually; WILLIAM R. and
NANCY WALLEY, JR., individually; KIEL
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MOORE, individually;

Plaintiffs,

v.

DEL WEBB COMMUNITIES, INC., an Arizona
Corporation; and DOES 1 through 500,
inclusive,

Defendants.

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FINAL JUDGMENT

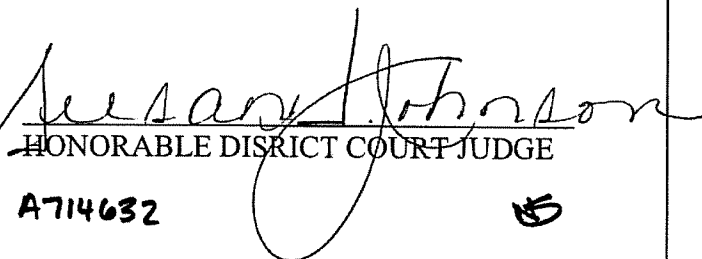
On June 23, 2015, before the Honorable Susan H. Johnson in Department XXII of the above-referenced Court, Defendant brought on for hearing their Motion to Dismiss ("Motion") filed on May 19, 2015.

Duane E. Shinnick, Esq. of Shinnick, Ryan & Ransavage, P.C. appeared on behalf of Plaintiffs, and Richard D. Young, Esq. of Koeller, Nebeker, Carlson & Haluck, LLP appeared on behalf of Defendant Del Webb Communities, Inc. All other appearances noted on the record.

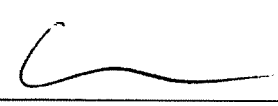
Pursuant to NRCP 54(b), the Court, finding there is no just reason for delay and upon the express direction for the entry of final judgment, final judgment is hereby entered only as to Plaintiffs Ronald Turner ("Turner") and Robert M. Dykema ("Dykema") based upon the Order dated November 25, 2015 ("Order"). The Order granted Defendant Del Webb Communities, Inc.'s ("Del Webb") Motion to Dismiss Plaintiffs Turner and Dykema, inter alia. Because the Court considered material outside of the pleadings - the notices of completion - in dismissing Plaintiffs Turner and Dykema, such dismissals operated as summary judgments. The Order found that Turner's and Dykema's constructional defect claims are time-barred by the ten (10) Statute(s) of Repose, NRS 11.203 and/or limitations.

IT IS SO ORDERED.

DATED this 22nd day of Dec., 2015.


HONORABLE DISTRICT COURT JUDGE
A714632

Respectfully Submitted by:
SHINNICK, RYAN & RANSVAGE P.C.

By: 
Duane E. Shinnick, Esq.
Bar No. 7176
Courtney K. Lee, Esq.
Bar No. 8154
Attorneys for PLAINTIFFS

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Nevada Bar No. 8310

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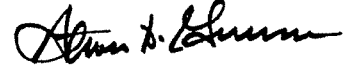
Phone: (702) 853-5500

Fax: (702) 853-5599

Attorneys for Defendant

Del Webb Communities, Inc.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

SCOTT PHILLIPS, individually; TEODORO
H. and ROSA-LINDA R. BAUTISTA,
individually; BROWER FAMILY TRUST,
individually; CHARLES COLUCCI,
individually; HARRY E. CROSBY
REVOCABLE TRUST; DR. KAREN
FELDMAN, individually; COLLEN T. SAN
FILIPPO, individually; THE GILLES FAMILY
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2014; DAVID M. GORDON, individually;
CHARLES and MARIA HEARN, individually;
THOMAS C. and KATHLEEN A. JOHNSON,
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individually; LORRAINE JOHNSON,
individually; JOLEAN JONES, individually;
YOUNG KYOON KIM and INOK KIM,
individually; MIKE and TALIA LAQUITARA,
individually; JAMES and ANDRONICKIE
LAUTH, individually; LEPORE FAMILY
TRUST DATED OCTOBER 30, 2008; JOHN
LEVERITT, individually; ROGER A. MARTIN
and VIRGINIA C. MARTIN JOINT LIVING
TRUST; MASLIN FAMILY LIVING TRUST
DATED JANUARY 24, 2011; THOMAS
MEYERS and MARY CM MONICA-
MEYERS, individually; MARK MONACO,
individually; SAMIR FARID MOUJAES and
SYLVA PUZANTIAN MOUJAES LIVING
TRUST u/t/d August 13, 2013; BUD O'BRIEN
and ROSALIE O'BRIEN, individually; DAVID
L. POWELL and JUNE D. COOPER,
individually; RANDALL and NICOLE
ROEDECKER, individually; EUGENIUSZ and
ZOFIA SUCHECKI, individually; GARY G.
TON, individually; ROY and SHARON VAN
SLYKE, individually; LAUREL YVONNE
WEAVER, individually; SCOTT M. ZIPKIN

CASE NO.: A714632

DEPT. NO.: XXII

**NOTICE OF ENTRY OF ORDER
RE: DEFENDANT DEL WEBB
COMMUNITIES, INC.'S MOTION
TO DISMISS**

and ROBERT A. & ELLEN R. ZIPKIN,
individually; MICHAEL J. and GLORIA NAN
CONNOLLY, individually; ROBERT AND
CONCETTA GAYNOR, individually;
HECTOR G. and ROSARIO GARCIA,
individually; JAMES A. HENDERSON JR.,
individually; HOWARD S. and ROBERTA P.
LEVINE, individually; KURT FIELD and
CRISTEN BOLANDER-FIELD, individually;
BOBBIE SMITH, individually; CHAD and
ALLICIA TOMOLA, individually; WILLIAM
and CONNIE MCDERMOTT, individually;
SYDNEY WOO, individually; PREMIERE
HOLDINGS RESIDENTIAL DIVISION, LLC,
a Nevada limited-Liability Company; VEROL
R. and DEBRA A. BELLINFANTE,
individually; ALFREDO and ILUMINADA
CAMPOS, individually; WYNSIE MARIE
CHAN, individually; ROBERT M. DYKEMA,
individually; BROCK and REANNA FOSTER,
individually; J C F FAMILY TRUST; WI JO
KANG and CHONG-JA KANG, individually;
TAKESHI NAKAYA, individually; DIONISIO
ONG, individually; POURZIAEE ERAJ AND
SEDI POURZIAEE JOINT LIVING TRUST;
JOSEPH and MILAGROS RIVERA,
individually; SALISBURY FAMILY TRUST;
WILLIAM A. and CYNTHIA J. SHOOP,
individually; RONALD TURNER, individually;
BRENT and SARA URE, individually;
WILLIAM R. and NANCY WALLEY JR.,
individually; KIEL YOST, individually;
STEVEN and MARIA MOORE, individually;

Plaintiffs

vs.

DEL WEBB COMMUNITIES, INC., an
Arizona Corporation, and DOES 1-500,

Defendants.

YOU AND EACH OF YOU, PLEASE TAKE NOTICE that an Order Re: Defendant

Del Webb Communities, Inc.'s Motion to Dismiss was

1 entered in the above-entitled action on November 16, 2015. A true and correct copy of is
2 attached hereto.

3 Dated this 25th day of November, 2015.

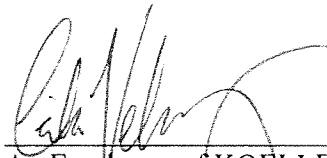
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5 KOELLER, NEBEKER, CARLSON
& HALUCK, LLP

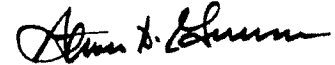
6
7 BY: 

8 RICHARD D. YOUNG, ESQ.
9 Nevada Bar. No. 11331
300 S. Fourth St., Suite 500
10 Las Vegas, NV 89101
Phone: (702) 853-5500
11 Fax: (702) 853-5599
Attorneys for Defendant Del Webb
12 Communities, Inc.

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on the 25th day of November, 2015, I served a true and
15 correct copy of the foregoing Notice of Entry of Order Re: Defendant Del Webb
16 Communities, Inc.'s Motion to Dismiss by electronically serving all parties via the Court's
17 Electronic Filing System.

18
19
20 
21 An Employee of KOELLER, NEBEKER, CARLSON
& HALUCK, LLP
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

SCOTT PHILLIPS, individually; TEODORO H. and ROSA-LINIDA R. BAUTISTA, individually; BROWER FAMILY TRUST, individually; CHARLES COLUCCI, individually; HARRY E. CROSBY REVOCABLE TRUST; DR. KAREN FELDMAN, individually; COLLEN T. SAN FILIPPO, individually; THE GILLES FAMILY LIVING TRUST DATED JANUARY 14, 2014; DAVID M. GORDON, individually; CHARLES and MARIA HEARN, individually; THOMAS C. and KATHLEEN A. JOHNSON, individually; AARON KNUDSON, individually; LORRAINE JOHNSON, individually; JOLEAN JONES, individually; YOUNG KYOON KIM and INOK KIM, individually; MIKE and TALIA LAQUITARA, individually; JAMES and ANDRONICKIE LAUTH, individually; LEPORE FAMILY TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT, individually; ROGER A. MARTIN AND VIRGINIA C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY 24, 2011; THOMAS MEYERS and MARY CM MONICA-MEYERS, individually; MARK MONACO, individually; SAMIR FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13, 2013; BUD O'BRIEN and ROSALIE O'BRIEN, individually; DAVID L. POWELL and JUNE D. COOPER, individually; RANDALL and NICOLE ROEDECKER, individually; EUGENIUSZ and ZOFIA SUCHECKI, individually; GARY G. TON, individually; ROY and SHARON VAN SLYKE, individually; LAUREL YVONNE WEAVER, individually; SCOTT M. ZIPKIN and ROBERT A & ELLEN R. ZIPKIN, individually; MICHAEL J. and GLORIA NAN CONNOLLY, individually; ROBERT and CONCETTA GAYNOR,

Case No. A-15-714632-D

Dept. No. XXII

ORDER RE: DEFENDANT DEL
WEBB COMMUNITIES, INC.'S
MOTION TO DISMISS

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

1 individually; HECTOR G. and ROSARIO
2 GARCIA, individually; JAMES A.
3 HENDERSON, JR., individually; HOWARD S.
4 and ROBERTA P. LEVINE, individually;
5 KURT FIELD and CRISTEN BOLANDER-
6 FIELD, individually; BOBBIE SMITH,
7 individually; CHAD and ALLICIA TOMOLA,
8 individually; WILLIAM and CONNIE
9 MCDERMOTT, individually; SYDNEY WOO,
10 individually; PREMIERE HOLDINGS
11 RESIDENTIAL DIVISION, LLC, a Nevada
12 limited liability company; VEROL R. and
13 DEBRA A. BELLINFANTE, individually;
14 ALFREDO and ILUMINADO CAMPOS,
15 individually; WYNSIE MARIE CHAN,
16 individually; ROBERT M. DYKEMA,
17 individually; BROCK and REANNA FOSTER,
18 individually; J.C.F. FAMILY TRUST; WI JO
19 KANG and CHONG-JA KANG, individually;
20 TAKESHI NAKAYA, individually; DIONISIO
21 ONG, individually; POURZIAEE ERAJ AND
22 SEDI POURZIAEE JOINT LIVING TRUST;
23 JOSEPH and MILAGROS RIVERA,
24 individually; SALISBURY FAMILY TRUST;
25 WILLIAM A. and CYNTHIA J. SHOOP,
26 individually; RONALD TURNER,
27 individually; BRENT and SARA URE,
28 individually; WILLIAM R. and NANCY
WALLEY, JR., individually; KEIL YOST,
individually; STEVEN and MARIA MOORE,
individually,

Plaintiffs,

Vs.

DEL WEBB COMMUNITIES, INC., an
Arizona Corporation, and DOES 1-500,

Defendants.

ORDER RE: DEFENDANT DEL WEBB COMMUNITIES, INC.'S MOTION TO DISMISS

This matter, concerning Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss filed May 19, 2015, came on for hearing on the 23rd day of June 2015 at the hour of 10:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiffs SCOTT PHILLIPS, TEODORO H. and

1 ROSA-LINIDA R. BAUTISTA, BROWER FAMILY TRUST, CHARLES COLUCCI, HARRY E.
2 CROSBY REVOCABLE TRUST; DR. KAREN FELDMAN, COLLEN T. SAN FILIPPO, THE
3 GILLES FAMILY LIVING TRUST DATED JANUARY 14, 2014; DAVID M. GORDON,
4 CHARLES and MARIA HEARN, THOMAS C. and KATHLEEN A. JOHNSON, AARON
5 KNUDSON, LORRAINE JOHNSON, JOLEAN JONES, YOUNG KYOON KIM and INOK KIM,
6 MIKE and TALIA LAQUITARA, JAMES and ANDRONICKIE LAUTH, LEPORE FAMILY
7 TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT, ROGER A. MARTIN AND VIRGINIA
8 C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY
9 24, 2011; THOMAS MEYERS and MARY CM MONICA-MEYERS, MARK MONACO, SAMIR
10 FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/d August 13,
11 2013; BUD O'BRIEN and ROSALIE O'BRIEN, DAVID L. POWELL and JUNE D. COOPER,
12 RANDALL and NICOLE ROEDECKER, EUGENIUSZ and ZOFIA SUCHECKI, GARY G. TON,
13 ROY and SHARON VAN SLYKE, LAUREL YVONNE WEAVER, SCOTT M. ZIPKIN and
14 ROBERT A & ELLEN R. ZIPKIN, MICHAEL J. and GLORIA NAN CONNOLLY, ROBERT and
15 CONCETTA GAYNOR, HECTOR G. and ROSARIO GARCIA, JAMES A. HENDERSON, JR.,
16 HOWARD S. and ROBERTA P. LEVINE, KURT FIELD and CRISTEN BOLANDER-FIELD,
17 BOBBIE SMITH, CHAD and ALLICIA TOMOLA, WILLIAM and CONNIE MCDERMOTT,
18 SYDNEY WOO, PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC, VEROI. R. and
19 DEBRA A. BELLINFANTE, ALFREDO and ILUMINADO CAMPOS, WYNSIE MARIE CHAN,
20 ROBERT M. DYKEMA, BROCK and REANNA FOSTER, J.C.F. FAMILY TRUST; WI JO
21 KANG and CHONG-JA KANG, TAKESHI NAKAYA, DIONISIO ONG, POURZIAEE ERAJ
22 AND SEDI POURZIAEE JOINT LIVING TRUST; JOSEPH and MILAGROS RIVERA,
23 SALISBURY FAMILY TRUST, WILLIAM A. and CYNTHIA J. SHOOP, RONALD TURNER,
24 BRENT and SARA URE, WILLIAM R. and NANCY WALLEY, JR., KEIL YOST, STEVEN and

1 MARIA MOORE, by and through their attorney, DUANE E. SHINNICK, ESQ. of the law firm,
2 SHINNICK RYAN & RANSAVAGE; and Defendant DEL WEBB COMMUNITIES, INC. appeared
3 by and through its attorney, RICHARD D. YOUNG, ESQ. of the law firm, KOELLER NEBEKER
4 CARLSON & HALUCK. Having reviewed the papers and pleadings on file herein, heard oral
5 arguments of the lawyers, and taken this matter under advisement, this Court makes the following
6 Findings of Fact and Conclusions of Law:
7

8 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

9 1. This case arises as a result of alleged constructional defects suffered by 62
10 homeowners/homeowner groups living in single family homes within Del Webb's Anthem
11 Highlands residential development. Many of the Plaintiff homeowners/homeowner groups filed the
12 initial Complaint against Defendant DEL WEBB COMMUNITIES, INC. on February 27, 2015,
13 alleging claims of (1) breach of contract and express warranties, (2) breach of implied warranties,
14 (3) negligence and negligence *per se* and (4) breach of implied warranty of habitability, and all
15 brought pursuant to NRS 40.600, *et seq.* The Complaint was subsequently amended on March 6,
16 2015 to include the constructional defect claims of additional homeowners/homeowner groups.
17

18 2. Defendant DEL WEBB COMMUNITIES, INC. moves this Court to dismiss the
19 claims of six (6) Plaintiff homeowners/homeowner groups identified and upon the bases listed
20 below:
21

22 a. Plaintiffs SALISBURY FAMILY TRUST, RONALD TURNER, ROBERT
23 DYKEMA and TAKESHI NAKAYA as their claims are time-barred by the applicable Statute of
24 Repose. According to Defendant, these particular plaintiffs first asserted claims of constructional
25 defects more than ten (10) years after the date of substantial completion.
26

27 ...

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b. Plaintiffs DIONISIO ONG and TAKESHI NAKAYA lack standing to pursue their construction defect claims as they sold their respective properties prior to the filing of the Complaint.

c. Plaintiffs STEVEN MOORE and MARIA MOORE failed to comply with the pre-litigation requirements of NRS 40.600, and thus, until they do abide by all such requisites, they cannot file their lawsuit, whereby their claims should be dismissed.

3. In response, Plaintiffs do not oppose the dismissal of claims lodged by DIONISIO ONG and TAKESHI NAKAYA as these particular homeowners no longer desire to pursue their claims. However, with respect to claims brought by Plaintiffs SALISBURY FAMILY TRUST, RONALD TURNER and ROBERT DYKEMA, these homeowners disagree their action is time-barred by the Statute of Repose. They propose they served their NRS 40.645 notice to Defendant DEL WEBB COMMUNITIES, INC. within the ten-year time frame, and such notice tolled the Statute of Repose. Their claims, therefore, should not be dismissed. Further, STEVEN MOORE and MARIA MOORE did comply with the requirements of NRS 40.600, *et seq.*, whereby their constructional defects action should not be dismissed.

CONCLUSIONS OF LAW

1. Rule 12(b) of the Nevada Rules of Civil Procedure (NRCP) provides every defense, in law or fact, to a claim for relief shall be asserted in the responsive pleading thereto if one is required, except that certain defenses, including plaintiff's failure to state a claim upon which relief may be granted,¹ may be made by motion. If matters outside the pleading are presented to and are not excluded by the court, the motion to dismiss shall be treated as one for summary judgment and disposed of as provided in NRCP 56. In that case, all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by NRCP 56. *See* NRCP 12(b). Here, both

¹See NRCP 12(b)(5).

1 Plaintiffs and Defendant produced exhibits for consideration and they were not excluded by the
2 Court. The standard by which this Court decides Defendant DEL WEBB COMMUNITIES, INC.'S
3 Motion to Dismiss is that set forth by NRCP 56.

4 2. Summary judgment is appropriate and "shall be rendered forthwith" when the
5 pleadings and other evidence on file demonstrate no "genuine issue as to any material fact [remains]
6 and that the moving party is entitled to a judgment as a matter of law." *See* NRCP 56(c); Wood v.
7 Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls which
8 factual disputes are material and will preclude summary judgment; other factual disputes are
9 irrelevant. *Id.*, 121 Nev. at 731. A factual dispute is genuine when the evidence is such that a
10 rational trier of fact could return a verdict for the non-moving party. *Id.*, 121 Nev. at 731.

11 3. While the pleadings and other proof must be construed in a light most favorable to
12 the non-moving party, that party bears the burden "to do more than simply show that there is some
13 metaphysical doubt" as to the operative facts in order to avoid summary judgment bent entered in
14 the moving party's favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586
15 (1986), *cited by* Wood, 121 Nev. at 732. The non-moving party "must, by affidavit or otherwise, set
16 forth specific facts demonstrating the existence of a genuine issue for trial or have summary
17 judgment entered against him." Bulbman Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591
18 (1992), *cited by* Wood, 121 Nev. at 732. The non-moving party "'is not entitled to build a case on
19 the gossamer threads of whimsy, speculation, and conjecture.'" Bulbman, 108 Nev. at 110, 825 P.2d
20 591, *quoting* Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

21
22
23 **Plaintiffs DIONISIO ONG and TAKESHI NAKAYA**

24 3. Here, Plaintiffs do not oppose Defendant DEL WEBB COMMUNITIES, INC.'S
25 motion as it seeks dismissal of claims lodged by Plaintiffs DIONISIO ONG and TAKESHI
26 NAKAYA. As there is no opposition, this Court grants Defendant's motion as it pertains to the
27
28

1 constructional defects claims of Plaintiffs ONG and NAKAYA. *Also see* EDCR 2.20(e).

2 **Plaintiffs SALISBURY FAMILY TRUST, RONALD TURNER and ROBERT DYKEMA**

3 4. As noted above, Defendant DEL WEBB COMMUNITIES, INC. moves this Court to
4 dismiss the constructional defect claims lodged by Plaintiffs SALISBURY FAMILY TRUST,
5 RONALD TURNER and ROBERT DYKEMA upon the basis they are barred by the ten-year Statute
6 of Repose.²

7
8 5. Prior to February 25, 2015,³ NRS 11.203(1) provided an action based upon a known
9 deficiency may not be brought "more than 10 years after the substantial completion of such an
10 improvement...."⁴ NRS 11.2055 defines the "date of substantial completion;" it states in salient
11 part:

12 1. Except as otherwise provided in subsection 2, for the purposes of NRS 11.202
13 to 11.206, inclusive, the date of substantial completion of an improvement to real property
14 shall be deemed to be the date on which:

- 15 (a) The final building inspection of the improvement is conducted;
16 (b) A notice of completion is issued for the improvement; or
17 (c) A certificate of occupancy is issued for the improvement,
18 *whichever occurs later.* (Emphasis added)

19 6. Notwithstanding the aforementioned, if the injury occurs in the tenth (10th) year after
20 substantial completion of such an improvement, an action for damages for injury to property or
21 person may be commenced within two (2) years after the date of such injury. *See* NRS 11.203(2).⁵

22 7. In this case, a "Certificate of Occupancy" for the home located at 2798 Lochleven

23 ²Defendant does not concede the appropriate Statute of Repose period is ten (10) years, or that set forth in NRS
24 11.203. Its position is, irrespective of the Statute of Repose imposed, whether it be six (6), eight (8) or ten (10), the
25 claims of Plaintiffs SALISBURY FAMILY TRUST, RONALD TURNER and ROBERT DYKEMA are time-barred.

26 ³With the enactment of Assembly Bill (AB) 125 in late February 2015, the Statute of Repose is now six (6)
27 years from date of the residence's substantial completion. For purposes of the instant motion, however, this Court
28 applies the pre-AB 125 Statute of Repose periods, which include the ten (10) year Statute of Repose set forth by NRS
11.203.

⁴NRS 11.204(1) provided an action based on a latent deficiency may not be commenced "more than 8 years
after the substantial completion of such an improvement" and NRS 11.205(1) set forth an action based upon a patent
defect may not be commenced "more than 6 years after the substantial completion of such an improvement...."

⁵The tenth (10th) year is defined as starting as the beginning of the nine-year anniversary and ending on the
tenth anniversary. An action for injury occurring between the start of Year 9 and ending the tenth (10th) anniversary may
be commenced within two (2) years thereafter.

1 Way, Henderson, Nevada and owned by Plaintiff SALISBURY FAMILY TRUST¹ was issued by the
2 City of Henderson on November 23, 2004.⁶ A "Notice of Completion" was issued by Defendant
3 DEL WEBB COMMUNITIES, INC. approximately a month later, on December 30, 2004.⁷ As NRS
4 11.2055(1) specifically provides the date of substantial completion is the latter of three events, i.e.
5 final building inspection being conducted, the issuance of the certificate of occupancy, or when the
6 notice of completion is issued, this Court concludes the date the SALISBURY FAMILY TRUST
7 home was substantially completed is December 30, 2004.

9 Plaintiff SALISBURY FAMILY TRUST served its NRS 40.645 notice on December 30,
10 2014.⁸ While it is Plaintiff's view such notice served on the last day is timely, Defendant disagrees.
11 Defendant proposes the last day to serve a notice pursuant to NRS 40.645 was December 29, 2014.
12 This Court found no authority within the Nevada Revised Statutes, and particularly within NRS
13 40.600, *et seq.*, to support either party's position. However, the timeliness of a document's filing is
14 addressed within the Nevada Rules of Civil Procedure (NRCP), and particularly, in Rule 6. It
15 provides in pertinent part:

17 (a) *Computation.* In computing any period of time prescribed or allowed by these
18 rules, by the local rules of any district court, by order of court, *or by any applicable statute*,
19 the day of the act, event, or default from which the designated period time begins to run shall
20 not be included. The last day of the period so computed shall be included, unless it is a
21 Saturday, a Sunday, or a non-judicial day, in which event the period runs until the end of the
22 next day which is not a Saturday, a Sunday, or a non-judicial day or, when the act to be done
is the filing of a paper in court, a day on which whether or other conditions have made the
office of the clerk of the district court inaccessible, in which event the period runs until the
end of the next day which is not one of the aforementioned days. (Emphasis added)

23 Here, the day of the act, i.e. the issuance of the Notice of Completion, is not included within
24 the computation when the designated time begins to run. See NRCP 6(a). The designated time to
25

26 ⁶See Exhibit A attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss filed May 19,
2015.

27 ⁷See Exhibit 2 to Plaintiffs' Limited Opposition to Del Webb Communities, Inc.'s Motion to Dismiss filed June
5, 2015. No evidence was presented when the final building inspection was conducted; presumably, the inspection was
28 conducted prior to the City of Henderson issuing the "Certificate of Occupancy."

⁸See Exhibit E attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss.

1 run begins December 31, 2004. Accordingly, assuming the appropriate period for the Statute of
2 Repose is ten (10) years,⁹ Plaintiff SALISBURY FAMILY TRUST served its notice of
3 constructional defects timely when such was sent on the last day, December 30, 2014. Defendant
4 DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss, as it pertains to the claims of Plaintiff
5 SALISBURY FAMILY TRUST, is denied.

6 As it has concluded SALISBURY FAMILY TRUST timely served its NRS 40.645 notice,
7 and thus, this Plaintiff's claims do not warrant dismissal, this Court declines to consider whether the
8 action is "saved" by application of NRS 11.203's "savings clause."

10 8. The issuance of the "Certificate of Occupancy" for the residence owned by Plaintiff
11 RONALD TURNER, 2844 Blythwood Square, Henderson, Nevada, was December 6, 2004.¹⁰ The
12 "Notice of Completion" was issued eight (8) days later, December 14, 2004.¹¹ This Court concludes
13 Plaintiff TURNER'S home was substantially completed on the latter date, December 14, 2004. *See*
14 NRS 11.2055. Plaintiff TURNER served his NRS 40.645 notice of constructional defects on
15 December 22, 2014. Unfortunately, such service falls outside the ten-year Statute of Repose period,
16 and, as a consequence, Plaintiff RONALD TURNER'S constructional defect claims must be
17 dismissed as being time-barred. *See* NRS 11.203.

19 Plaintiff TURNER proposes his claims are not time-barred as the "Notice of Completion"
20 was not recorded until December 23, 2004. While this Court appreciates his stance, NRS 11.2055
21 does not identify the recording of the completion's notice at the local or county recorder's office as a
22 defining date for substantial completion. As noted above, NRS 11.2055 specifically provides the
23 improvement to real property is substantially completed upon the occurrence of the latter of three
24

26
27 ⁹Again, for purposes of this motion, this Court appreciates Defendant addresses the ten-year Statute of Repose,
but has not conceded it is the appropriate time frame.

28 ¹⁰*See* Exhibit B attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss.

¹¹*See* Exhibit 3 attached to Plaintiffs' Opposition to Del Webb Communities, Inc.'s Motion to Dismiss.

1 events: (1) the final building inspection, (2) the issuance of the Certificate of Occupancy, or (3) the
2 issuance of the Notice of Completion, *whichever is later*. This Court declines Plaintiff's invitation
3 for it to interpret or expand the statute to include another and different definition for "substantially
4 completed."

5 9. The "Certificate of Occupancy" was issued for Plaintiff ROBERT DYKEMA'S
6 house, 2818 Craigton Drive, Henderson, Nevada on November 2, 2004.¹² The "Notice of
7 Completion" was issued on November 30, 2004.¹³ The NRS 40.645 Notice served by Plaintiff
8 DYKEMA upon Defendant DEL WEBB COMMUNITIES, INC. is dated December 2, 2014.¹⁴ The
9 service of the constructional defects notice pursuant to NRS 40.645 falls outside the ten-year Statute
10 of Repose period, and as a consequence, Plaintiff DYKEMA'S constructional defect claims are
11 time-barred and must be dismissed.
12

13 As it notes concerning MR. TURNER'S claims, the recording of the Notice of Completion,
14 which, in Plaintiff DYKEMA'S case, was December 8, 2004, is not a defining event. Again, this
15 Court declines to consider the recording date as another date of substantial completion, or when the
16 Statute of Repose period begins.
17

18 **Claims of Plaintiffs STEVEN MOORE and MARIA MOORE**

19 10. As noted above, Defendant DEL WEBB COMMUNITIES, INC. proposes the
20 constructional defect claims of Plaintiffs STEVEN MOORE and MARIA MOORE should be
21 dismissed given their failure to abide by NRS Chapter 40's pre-litigation requirements. This Court
22 understands these Plaintiffs served their initial NRS 40.645 Notice on February 26, 2015, utilizing
23 the statute's pre-AB 125 requirements. Assembly Bill (AB) 125 requirements went into effect
24 February 25, 2015. Plaintiffs STEVEN MOORE and MARIA MOORE supplemented or amended
25
26

27 ¹²See Exhibit C attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss.

28 ¹³See Exhibit 4 attached to Plaintiffs' Opposition to Del Webb Communities, Inc.'s Motion to Dismiss.

¹⁴See Exhibit G attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss.

1 their NRS 40.645 on May 27, 2015 to comply with the AB 125 newly-enacted requirements.¹⁵

2 11. Although these Plaintiffs may have complied with the new requirements of NRS
3 40.645, there is no indication within their Opposition to suggest they complied with the other
4 requisites of NRS Chapter 40. In this Court's view, Plaintiffs STEVEN MOORE and MARIA
5 MOORE must comply with all the pre-litigation requirements of NRS 40.600, *et seq.* before they
6 can institute litigation. For this reason, this Court grants Defendant DEL WEBB COMMUNITIES,
7 INC.'S Motion to Dismiss as it pertains to the constructional defect claims of STEVEN MOORE
8 and MARIA MOORE *without prejudice*.

10 12. Notably, these Plaintiffs have set forth dismissal of this action could result in their
11 being forever time-barred in bringing their constructional defect claims, and, for that reason, this
12 Court should stay the action to allow the completion of the NRS Chapter 40 pre-litigation process.
13 *See* NRS 40.647. This Court disagrees with Plaintiffs' assessment. As the NRS Chapter 40 pre-
14 litigation process has not concluded, it continues and any pertinent limiting statute is tolled. *See*
15 NRS 40.695. Plaintiffs must conclude the pre-litigation process, and should their constructional
16 defects not be repaired or resolved, they can either file a new complaint or move this Court to
17 include their claims along with those of their neighbors.

19 Accordingly, and based upon the aforementioned Findings of Fact and Conclusions of Law,

21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant DEL WEBB
22 COMMUNITIES, INC.'S Motion to Dismiss filed May 19, 2015 is granted in part, denied in part;

23 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the claims brought by
24 Plaintiffs DIONISIO ONG and TAKESHI NAKAYA is dismissed, as unopposed;

25 ...

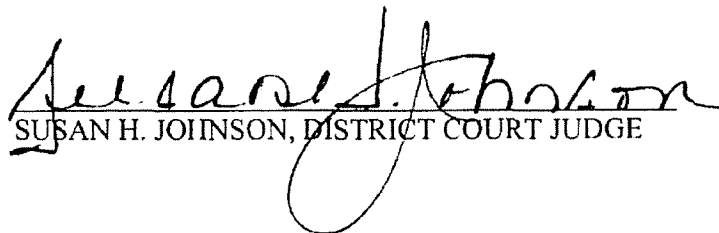
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28 ¹⁵See Exhibit I attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss, and Exhibit 6
to Plaintiffs' Opposition to Del Webb Communities, Inc.'s Motion to Dismiss.

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the constructional defect
2 claims brought by Plaintiffs RONALD TURNER and ROBERT DYKEMA are dismissed as being
3 time-barred pursuant to the ten (10) year Statute of Repose, NRS 11.203;

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the constructional defect
5 claims brought by Plaintiffs STEVEN MOORE and MARIA MOORE are dismissed, *without*
6 *prejudice*, for failing to abide by and complete the pre-litigation process set forth by NRS 40.600, *et*
7 *seq.*, prior to the filing of their First Amended Complaint; and
8

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant DEL WEBB
10 COMMUNITIES, INC.'S Motion to Dismiss, seeking dismissal of Plaintiff SALISBURY FAMILY
11 TRUST'S constructional defect claims are denied as, in this Court's view, the NRS 40.645 notice
12 was timely served upon this Defendant, whereby this Plaintiff's claims are not time-barred. *See*
13 NRS 11.203.
14

15 DATED and DONE this 16th day of November 2015.

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18 SUSAN H. JOINSON, DISTRICT COURT JUDGE
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SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

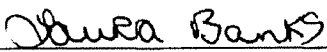
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CERTIFICATE OF SERVICE

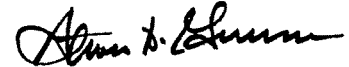
I hereby certify that, on the 16th day of November 2015, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: DEFENDANT DEL WEBB COMMUNITIES, INC.'S MOTION TO DISMISS to the following counsel of record, and first-class postage was fully prepaid thereon:

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Las Vegas, Nevada 89107
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Las Vegas, Nevada 89101
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Laura Banks, Judicial Executive Assistant



CLERK OF THE COURT

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Bar No. 8154
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

SCOTT PHILLIPS, individually; TEODORO H. and) CASE NO. A-15-714632-D
ROSA-LINDA R. BAUTISTA, individually;)
BROWER FAMILY TRUST, individually;) DEPT. NO. XXII
CHARLES COLUCCI, individually; HARRY E.)
CROSBY REVOCABLE TRUST; DR. KAREN)
FELDMAN, individually; COLLEEN T. SAN)
FILIPPO, individually; THE GILLES FAMILY)
LIVING TRUST, DATED JANUARY 14, 2010;)
DAVID M. GORDON, individually; CHARLES and)
MARIA HEARN, individually; THOMAS C. and)
KATHLEEN A. JOHNSON, individually; AARON)
KNUDSON, individually; LORRAINE JOHNSON,)
individually; JOLEAN JONES, individually;)
YOUNG KYOON KIM and INOK KIM,)
individually; MIKE and TALIA LAQUITARA,)
individually; JAMES and ANDRONICKIE LAUTH,)
individually; LEPORE FAMILY TRUST DATED)
OCTOBER 30, 2008; JOHN LEVERITT,)
individually; ROGER A. MARTIN AND)
VIRGINIA C. MARTIN JOINT LIVING TRUST;)
MASLIN FAMILY LIVING TRUST DATED)
JANUARY 24, 2011; THOMAS MEYERS and)
MARY C. MONICA-MEYERS, individually;)
MARK MONACO, individually; SAMIR FARID)
MOUJAES AND SYLVA PUZANTIAN)
MOUJAES LIVING TRUST u/t/d August 13, 2013;)
BUD O'BRIEN and ROSALIE O'BRIEN,)
individually; DAVID L. POWELL and JUNE D.)

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1 COOPER, individually; RANDALL and NICOLE
2 ROEDECKER, individually; EUGENIUSZ and
3 ZOFIA SUCHECKI, individually; GARY G. TON,
4 individually; ROY and SHARON VAN SLYKE,
5 individually; LAUREL YVONNE WEAVER,
6 individually; SCOTT M. ZIPKIN and ROBERT A.
7 & ELLEN R. ZIPKIN, individually; MICHAEL J.
8 and GLORIA NAN CONNOLLY, individually;
9 ROBERT and CONCETTA GAYNOR, individually;
10 HECTOR G. and ROSARIO GARCIA, individually;
11 JAMES A. HENDERSON JR., individually;
12 HOWARD S. and ROBERTA P. LEVINE,
13 individually; KURT FIELD and CRISTEN
14 BOLANDER-FIELD, individually; BOBBIE
15 SMITH, individually; CHAD and ALLICIA
16 TOMOLO, individually; WILLIAM and CONNIE
17 MCDERMOTT, individually; SYDNEY WOO,
18 individually; PREMIERE HOLDINGS
19 RESIDENTIAL DIVISION, LLC, a Nevada
20 Limited-Liability Company; VEROL R. and
21 DEBRA A. BELLINFANTE, individually;
22 ALFREDO and ILUMINADA CAMPOS,
23 individually; WYNSIE MARIE CHAN,
24 individually; ROBERT M. DYKEMA, individually;
25 BROCK and REANNA FOSTER, individually; J C
26 F FAMILY TRUST; WI JO KANG and CHONG-JA
27 KANG, individually; TAKESHI NAKAYA,
28 individually; DIONISIO ONG, individually;
POURZIAEE ERAJ AND SEDI POURZIAEE
JOINT LIVING TRUST; JOSEPH and MILAGROS
RIVERA, individually; SALISBURY FAMILY
TRUST; WILLIAM A. and CYNTHIA J. SHOOP,
individually; RONALD TURNER, individually;
BRENT and SARA URE, individually; WILLIAM
R. and NANCY WALLEY, JR., individually; KIEL
YOST, individually; STEVEN and MARIA
MOORE, individually;

Plaintiffs,

V.

DEL WEBB COMMUNITIES, INC., an Arizona
Corporation; and DOES 1 through 500, inclusive,
Defendants.

PLEASE TAKE NOTICE THAT PLAINTIFFS hereby file this FIRST AMENDED
CONSTRUCTION DEFECT COMPLAINT pursuant to N.R.C.P. 15(a). This First Amended
Complaint is being filed in order to identify by name the following Plaintiff homeowners as ROES 1
through 27 respectively:

ROE	PLAINTIFF	ADDRESS
1 2	VEROL R. BELLINFANTE DEBRA A. BELLINFANTE	2535 Braehead Lane Henderson, NV 89044
3 4	ALFREDO CAMPOS ILUMINADA CAMPOS	2648 Dirleton Place Henderson, NV 89044
5	WYNSIE MARIE CHAN	2568 Dirleton Place Henderson, NV 89044
6	ROBERT M. DYKEMA	2818 Craigton Drive Henderson, NV 89044
7 8	BROCK FOSTER REANNA FOSTER	2679 Lochleven Way Henderson, NV 89044
9	J C F FAMILY TRUST	2545 Lockerbie Street Henderson, NV 89044
10 11	WI JO KANG CHONG-JA KANG	2644 Dirleton Place Henderson, NV 89044
12	TAKESHI NAKAYA	2450 Antrim Irish Drive Henderson, NV 89044
13	DIONISIO ONG	2707 Cramond Street Henderson, NV 89044
14	POURZIAEE ERAJ AND SEDI POURZIAEE JOINT LIVING TRUST	2683 Lochleven Way Henderson, NV 89044
15 16	JOSEPH RIVERA MILAGROS RIVERA	2755 Strathblane Ave. Henderson, NV 89044
17	SALISBURY FAMILY TRUST	2798 Lochleven Way Henderson, NV 89044
18 19	WILLIAM A. SHOOP CYNTHIA J. SHOOP	2836 Blythswood Square Henderson, NV 89044
20	RONALD TURNER	2844 Blythswood Square Henderson, NV 89044
21 22	BRENT URE SARA URE	2711 Cramond Street Henderson, NV 89044
23 24	WILLIAM R. WALLEY, JR. NANCY WALLEY	2764 Strathblane Ave. Henderson, NV 89044
25	KIEL YOST	2715 Lochleven Way Henderson, NV 89044
26 27	STEVEN MOORE MARIA MOORE	2647 Dirleton Place Henderson, NV 89044

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COMPLAINT FOR DAMAGES

Comes Now Plaintiffs,

PLAINTIFF	ADDRESS
SCOTT PHILLIPS	2527 Findlater Street Henderson, NV 89044
TEODORO H. BAUTISTA ROSA-LINDA R. BAUTISTA	2694 Bothwell Place Henderson, NV 89044
BROWER FAMILY TRUST	2668 Lochleven Way Henderson, NV 89044
CHARLES COLUCCI	2588 Lochleven Way Henderson, NV 89044
HARRY E. CROSBY REVOCABLE TRUST	2580 Dirleton Place Henderson, NV 89044
DR. KAREN FELDMAN	2770 Mintlaw Ave. Henderson, NV 89044 2443 Antrim Irish Drive Henderson, NV 89044
COLLEEN SAN FILIPPO	2581 Kinghorn Place Henderson, NV 89044
THE GILLES FAMILY LIVING TRUST, DATED JANUARY 14, 2010	2591 Lochleven Way Henderson, NV 89044
DAVID M. GORDON	2587 Dirleton Place Henderson, NV 89044
CHARLES HEARN MARIA HEARN	2635 Lochleven Way Henderson, NV 89044
THOMAS C. JOHNSON KATHLEEN A. JOHNSON	2610 Kinghorn Place Henderson, NV 89044
AARON KNUDSON	2683 Dirleton Place Henderson, NV 89044
LORRAINE JOHNSON	2695 Lochleven Way Henderson, NV 89044
JOLEAN JONES	2663 Lochleven Way Henderson, NV 89044
YOUNG KYOON KIM INOK KIM	2566 Kinghorn Place Henderson, NV 89044
MIKE LAQUITARA TALIA LAQUITARA	2532 Flodden Street Henderson, NV 89044
JAMES LAUTH ANDRONICKIE LAUTH	2672 Lochleven Way Henderson, NV 89044
LePORE FAMILY TRUST DATED OCTOBER 30, 2008	2602 Kinghorn Place Henderson, NV 89044
JOHN LEVERITT	2744 Mintlaw Ave. Henderson, NV 89044
ROGER A. MARTIN AND VIRGINIA C.	2591 Dirleton Place

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MARTIN JOINT LIVING TRUST	Henderson, NV 89044
MASLIN FAMILY LIVING TRUST DATED JANUARY 24, 2011	2644 Kinghorn Place Henderson, NV 89044
THOMAS MEYERS MARY C. MONICA-MEYERS	2539 Findlater Street Henderson, NV 89044
MARK MONACO	2575 Dirleton Place Henderson, NV 89044
SAMIR FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13, 2013	2803 Lochleven Way Henderson, NV 89044
BUD O'BRIEN ROSALIE O'BRIEN	2751 Lochleven Way Henderson, NV 89044
DAVID L. POWELL JUNE D. COOPER	2574 Kinghorn Place Henderson, NV 89044
RANDALL ROEDECKER NICOLE ROEDECKER	2799 Alnwick Court Henderson, NV 89044
EUGENIUSZ SUCHECKI ZOFIA SUCHECKI	2638 Kinghorn Place Henderson, NV 89044
GARY G. TON	2652 Kinghorn Place Henderson, NV 89044
ROY VAN SLYKE SHARON VAN SLYKE	2595 Dirleton Place Henderson, NV 89044
LAUREL YVONNE WEAVER	2524 Flodden Street Henderson, NV 89044
SCOTT M. ZIPKIN ROBERT A. ZIPKIN ELLEN R. ZIPKIN	2528 Flodden Street Henderson, NV 89044
MICHAEL J. CONNOLLY GLORIA NAN CONNOLLY	2768 Strathblane Ave. Henderson, NV 89044
ROBERT GAYNOR CONCETTA GAYNOR	2751 Kindeace Ave. Henderson, NV 89044
HECTOR G. GARCIA ROSARIO GARCIA	2777 Struan Ave. Henderson, NV 89044
JAMES A. HENDERSON JR.	2776 Kindeace Ave. Henderson, NV 89044
HOWARD S. LEVINE ROBERTA P. LEVINE	2454 Antrim Irish Drive Henderson, NV 89044
KURT FIELD CRISTEN BOLANDER-FIELD	2483 Antrim Irish Drive Henderson, NV 89044
BOBBIE SMITH	2482 Lothian Street Henderson, NV 89044
CHAD TOMOLO ALLICIA TOMOLO	2740 Leys Burnett Ave. Henderson, NV 89044
WILLIAM MCDERMOTT CONNIE MCDERMOTT	2748 Leys Burnett Ave. Henderson, NV 89044
SYDNEY WOO	2773 Strathblane Ave.

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	Henderson, NV 89044
PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC	2723 Cramond Street Henderson, NV 89044
VEROL R. BELLINFANTE DEBRA A. BELLINFANTE	2535 Braehead Lane Henderson, NV 89044
ALFREDO CAMPOS ILUMINADA CAMPOS	2648 Dirleton Place Henderson, NV 89044
WYNSIE MARIE CHAN	2568 Dirleton Place Henderson, NV 89044
ROBERT M. DYKEMA	2818 Craigton Drive Henderson, NV 89044
BROCK FOSTER REANNA FOSTER	2679 Lochleven Way Henderson, NV 89044
J C F FAMILY TRUST	2545 Lockerbie Street Henderson, NV 89044
WI JO KANG CHONG-JA KANG	2644 Dirleton Place Henderson, NV 89044
TAKESHI NAKAYA	2450 Antrim Irish Drive Henderson, NV 89044
DIONISIO ONG	2707 Cramond Street Henderson, NV 89044
POURZIAEE ERAJ AND SEDI POURZIAEE JOINT LIVING TRUST	2683 Lochleven Way Henderson, NV 89044
JOSEPH RIVERA MILAGROS RIVERA	2755 Strathblane Ave. Henderson, NV 89044
SALISBURY FAMILY TRUST	2798 Lochleven Way Henderson, NV 89044
WILLIAM A. SHOOP CYNTHIA J. SHOOP	2836 Blythswood Square Henderson, NV 89044
RONALD TURNER	2844 Blythswood Square Henderson, NV 89044
BRENT URE SARA URE	2711 Cramond Street Henderson, NV 89044
WILLIAM R. WALLEY, JR. NANCY WALLEY	2764 Strathblane Ave. Henderson, NV 89044
KIEL YOST	2715 Lochleven Way Henderson, NV 89044
STEVEN MOORE MARIA MOORE	2647 Dirleton Place Henderson, NV 89044

(hereinafter "Plaintiffs"), by and through their attorneys, Duane E. Shinnick, Esq. and Courtney K. Lee, Esq. of the law firm Shinnick, Ryan & Ransavage P.C., and for causes of action against Defendants, and each of them, allege and complain as follows:

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6. Plaintiffs allege that at all times herein mentioned, Defendants, and each of them, were the agents, servants and employees of each other and were acting in the course and scope of their agency or employment in doing the acts herein alleged.

1 7. Plaintiffs do not know the true names and capacities of defendants sued herein as Does 1 to
2 500, including, and therefore sue these defendants by such fictitious names. Plaintiffs are informed
3 and believe, and thereon allege, that each of the said fictitiously named defendants are responsible in
4 some manner for the defective and negligent engineering, architecture, construction, supply of
5 improper materials, and inspection of the subject property single family homes, or in some other
6 actionable manner were an integral part of the chain of development, construction and marketing of
7 the subject property single family homes, and that Plaintiffs damages as herein alleged were
8 proximately caused by their conduct. Plaintiffs pray for leave to amend this Complaint when the true
9 names and capacities of such defendants are ascertained.
10

11
12 8. Defendants Does 1 through 500, inclusive, whether individual, corporate, associate or
13 otherwise are fictitious names of defendants whose true names and capacities, at this time, are
14 unknown to Plaintiffs. Plaintiffs are informed and believe and thereupon allege that at all times
15 herein mentioned each of the defendants sued herein as Does 1 through 500 was the agent, servant
16 and employee of his or her co-defendants, and in doing the things hereinafter mentioned was acting in
17 the scope of his or her authority as such agent, servant and employee, and with the permission and
18 consent of his or her co-defendants; and that each of said fictitiously named defendants, whether an
19 agent, corporation, association, or otherwise, is in some way liable or responsible to the Plaintiffs on
20 the facts hereinafter alleged, and caused injuries and damages proximately thereby as hereinafter
21 alleged. At such time as defendants' true names become known to Plaintiffs, Plaintiffs will ask leave
22 of this Court to amend this Complaint to insert said true names and capacities.
23
24

25 9. Plaintiffs have discovered defects and damages within the periods of the applicable statutes
26 of limitations that the subject property has and is experiencing defective conditions, in particular,
27 there are damages stemming from, among other items, defectively built roofs, leaking windows, dirt
28

1 coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect
2 intrusion through foundation slabs, and other poor workmanship.

3
4 It was the result of the representations by Defendants that they would repair the defects and
5 their conduct in so performing some works of repair, as well their proposals for correcting the defects
6 that induced Plaintiffs to withhold conducting their own independent investigation and/or filing suit
7 against said Defendants. By virtue of the fact that Defendants were the developers, contractors and
8 sellers of the subject property and aware of the particular nature of the project, including its design,
9 composition, and component parts, and when said Defendants represented that Defendants would
10 repair the defects and, in fact, some works of repair were commenced, Plaintiffs were justified in
11 relying on said representations and conduct by said Defendants in permitting them to investigate and
12 repair the defects. As a result of Defendants' conduct, Plaintiffs' obligation to commence an action
13 against Defendants for the defects and/or damages set forth above was tolled pursuant to NRS 40.668.
14
15

16 On numerous occasions Defendants represented to Plaintiffs that the defective systems and
17 materials were not inadequate, and that repairs had been successfully performed thereby inducing
18 reasonable reliance thereupon by Plaintiffs that conditions were not in need of repairs, therefore,
19 Defendants are estopped from asserting any potentially applicable statutes of limitations. Damage
20 has also occurred at various times in the past, including progressive damage.
21

22 10. Within the last year, Plaintiffs have discovered that the subject property has and is
23 experiencing additional defective conditions, in particular, there are damages stemming from, among
24 other items, defectively built roofs, leaking windows, dirt coming through windows, drywall
25 cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and
26 other poor workmanship which would extend the statute of limitations an additional two (2) years
27 pursuant to NRS 11.203(2)..
28

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract and Breach of Express Warranties as Against**

3 **All Defendants and Does 1 through 500)**

4
5 11. Plaintiffs reallege and incorporate by reference paragraphs 1 through 10 of the Complaint
6 as though fully set forth herein.

7 12. On or about various dates commencing in 2004, and continuing thereafter in the City of
8 Henderson, County of Clark, State of Nevada, the Plaintiffs and each of them or their predecessors in
9 interest, entered into contracts in writing with Defendants for the purchase from said Defendants of
10 one or more of the units in the subject property.
11

12 13. At the time of negotiations of said contracts, but before said contracts were executed
13 between the Plaintiffs and/or their predecessors in interest and said Defendants, as an inducement to
14 the Plaintiffs and/or their predecessors in interest to purchase said units, and as a part of the basis of
15 the bargain of the parties that culminated in the making of the contracts, said Defendants expressly
16 warranted to Plaintiffs and/or their predecessors in interest that said units were constructed in
17 conformity with the applicable building codes and the specific codes and regulations of Clark County,
18 the approved plans and specifications, and that said structures were and are sound and safe, and
19 would remain so.
20
21

22 14. The Plaintiffs purchased said homes in reliance on the express warranties, affirmations of
23 fact, and promises made by Defendants. Plaintiffs, and each of them, have duly performed all the
24 conditions and covenants of said contracts on their part to be performed.

25 15. Certain Plaintiffs and/or homeowners of the subject property, notified Defendants of said
26 breach of contract and breach of warranties, and said Defendants have refused, and continue to refuse,
27 to remedy these defects.
28

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1 16. As a direct and proximate result of the breach of the express warranties (written and oral)
2 by Defendants, and each of them, as herein above alleged, Plaintiffs suffered damages stemming
3 from, among other items, defectively built roofs, leaking windows, dirt coming through windows,
4 drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation
5 slabs, and other poor workmanship.
6

7 17. Plaintiffs have suffered damages in an amount not fully known, but believed to be within
8 the jurisdiction of this Court in that they have been and will hereafter be required to perform works of
9 repair, restoration, and construction to portions of the structures to prevent further damage and to
10 restore the structures to their proper condition. Plaintiffs will establish the precise amount of such
11 damages at trial, according to proof.
12

13 18. Plaintiffs are entitled to all damages set forth at NRS 40.655.
14

15 **SECOND CAUSE OF ACTION**

16 **(Breach of Implied Warranties-Third Party Beneficiary**

17 **as against Does 1 through 500)**

18 19. Plaintiffs reallege and incorporate by reference paragraphs 1 through 18 of the Complaint
19 as though fully set forth herein.
20

21 20. Plaintiffs are informed and believe and on that basis allege that Defendants and Doe
22 defendants other than DEL WEBB COMMUNITIES, INC. entered into contracts with these entities
23 to perform certain services or work with regard to the design, construction and inspection of
24 construction of the residences at the subject property. Plaintiffs and/or their predecessors in interest
25 were third party beneficiaries of each and every such contract.
26

27 21. Further, said Doe defendants by entering into said contracts with DEL WEBB
28 COMMUNITIES, INC. and/or Plaintiffs and/or their predecessors in interest, impliedly warranted

1 that said homes would be of good and merchantable quality and would be at least a quality as would
2 be fit for the ordinary purpose for which such homes were to be used and would be habitable.
3 Further, said Doe defendants impliedly warranted the quality of construction of the homes and
4 common areas as provided in NRS 116.4114.
5

6 22. The Plaintiffs purchased their homes in reliance on the implied warranties and promises
7 made by Doe defendants, and each of them. Plaintiffs have duly performed all of the covenants and
8 conditions of said contracts on their part to be performed.
9

10 23. Certain Plaintiffs and/or Homeowners at the subject property have notified Doe
11 defendants of said breach of implied warranties and said Doe defendants have refused and continue to
12 refuse to remedy these defects.

13 24. As a direct and proximate result of the breach of the implied warranties by Doe
14 defendants and each of them as herein above alleged, Plaintiffs suffered damages stemming from,
15 among other items, defectively built roofs, leaking windows, dirt coming through windows, drywall
16 cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and
17 other poor workmanship. Numerous additional defective conditions exist as more particularly
18 described in Plaintiffs' expert reports. Plaintiffs are presently unaware of the precise amount of
19 damages, but will establish the same at trial according to proof, and in accordance with NRS 40.655.
20
21

22 ///

23 ///

24 ///

As to All Defendants, and Does 1 through 500)

28. Said Defendants, and each of them, breached their duty owed to Plaintiffs, failed and neglected to perform the work, labor and services properly or adequately in that each said Defendants so negligently, carelessly, recklessly and in an unworkmanlike manner designed, constructed and inspected the subject property and performed the aforesaid work, labor and/or services, such that the subject premises and subject structures as described herein were designed, engineered and/or constructed improperly, negligently, carelessly and/or in an unworkmanlike manner, thereby breaching the duty owed to Plaintiffs. Further, Defendants' sellers knew or should have known that the premises were constructed in an unworkmanlike manner.

29. Defendants' negligence alleged above includes the failure to meet the applicable building codes and ordinances which were in effect. Plaintiffs' members and their predecessors in interest were members of the class of persons which the building codes and ordinances were designed to protect. Such violations are negligence per se on the part of Defendants, and each of them.

30. As a direct and proximate result of the foregoing negligence and negligence per se, carelessness and unworkmanlike conduct, actions and/or omissions by said Defendants, and each of them, Plaintiffs have suffered damages in an amount in excess of \$10,000.00. Plaintiffs are presently unaware of the precise amount of damages needed in order to correct the defective conditions of the subject property and subject structures, but will establish the same at trial according to proof.

31. Plaintiffs are also entitled to the damages set forth at NRS 40.655.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Habitability as to All Defendants and Does 1 through 500)

32. Plaintiffs reallege and incorporate by reference paragraphs 1 through 31 of the Complaint, as though fully set forth herein.

33. All Defendants each impliedly warranted that said homes would be of good and merchantable quality, would be habitable, and would be completed in a workmanlike manner. Further, said Defendants impliedly warranted the quality of construction of the homes and common areas as provided in NRS 116.4114.

34. The Plaintiffs purchased their homes in reliance on the implied warranties and promises made by Defendants, and each of them. Plaintiffs have duly performed all of the covenants and conditions of said contracts on their part to be performed.

1 35. Certain Plaintiffs and/or Homeowners at the subject property have notified Defendants of
2 said breach of implied warranties and said Defendants have refused and continue to refuse to remedy
3 these defects.
4

5 36. As a direct and proximate result of the breach of the implied warranties by Defendants and
6 each of them as herein above alleged, Plaintiffs suffered damages stemming from, among other items,
7 defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco
8 cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor
9 workmanship. Plaintiffs are presently unaware of the precise amount of damages, but will establish
10 the same at trial according to proof.
11

12 ///

13 ///

14 ///

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For general and special damages in excess of \$10,000.00 including but not limited to, costs of repair, loss of market value, loss of use, loss of investment and out-of-pocket expenses to be determined at time of trial;
2. For damages in an amount according to proof;
3. For reasonable attorneys fees and costs according to proof.
4. For prejudgment and post-judgment interest on all sums awarded, according to proof at the maximum legal rate;
5. For all damages pursuant to NRS 40.600 through 40.695; in particular 40.650 and 40.655;
6. For costs of suit incurred;
7. For such other and further relief as the Court may deem just and proper.

DATED this 6th day of March, 2015

By /s/ Courtney K. Lee
Duane E. Shinnick, Esq.
Bar No. 7176
Courtney K. Lee, Esq.
Bar No. 8154
SHINNICK, RYAN & RANSAVAGE P.C.
4001 Meadows Lane
Las Vegas, NV 89107

Attorneys for Plaintiffs

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

ROBERT M. DYKEMA, individually; and
RONALD TURNER, individually,
Appellants,

vs.

DEL WEBB COMMUNITIES, INC., an
Arizona corporation,
Respondent.

No. 69335

Electronically Filed
Dec 29 2015 10:03 a.m.

Tracie K. Lindeman
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Judicial District Department XXII
County Clark Judge Susan Johnson
District Ct. Case No. A-15-714632-D

2. Attorney filing this docketing statement:

Attorney Courtney K. Lee Telephone (702) 631-8014
Firm Shinnick Ryan & Ransavage, P.C.
Address 4001 Meadows Lane
Las Vegas, Nevada 89107

Client(s) Robert M. Dykema, and Ronald Turner

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jason W. Williams, Richard D. Young, Jr Telephone (702) 853-5500
Firm Koeller, Nebeker, Carlson & Haluck, LLP
Address 300 South Fourth Street, Suite 500
Las Vegas, Nevada 89101

Client(s) Del Webb Communities, Inc.

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input checked="" type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>barred by statute of repose</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None known.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a construction defect case involving sixty-two (62) single-family homes located in the Anthem Highlands development in Henderson, Nevada. Del Webb Communities, Inc. ("Del Webb") was the developer of the Anthem Highlands community.

There were legislative revisions to NRS Chapter 40 and statute of repose/limitations related thereto effective February 25, 2015. However, the claims at issue accrued prior to the effective date, and the district court applied the former 10 year statute of repose/statute of limitations with the 2 year savings clause pursuant to NRS 11.203.

Del Webb sought dismissal of six (6) sets of Plaintiffs in the state district court action. The current appeal concerns the district court's dismissals/summary adjudication of only two (2) Plaintiffs/Appellants Robert M. Dykema ("Dykema") and Ronald Turner ("Turner") by application of the statute of repose.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the district court erred in determining that Plaintiffs', Dykema and Turner, claims were barred by application of the statute of repose.

Specifically:

a. whether the district court erred in defining "issuance" of the notice of completion date as the date written on the notice of completion by developer instead of the recorded date of the notice of completion.

b. whether the district court erred in failing to consider that discovery is still in the early stages and ongoing, and that the claims of Dykema and Turner may further be extended by an additional 2 years pursuant to NRS 11.203(2).

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Nevada has a "basic underlying policy to have each case decided on its merits." Price v. Dunn, 787 P.2d 785 (Nev. 1990), overruled on other grounds by NC-DSH, Inc. v. Garner, 102909 NVSC, 49029; see also Sealed Unit Parts Co. v. Alpha Gamma Ch., 99 Nev. 641, 643, 668 P.2d 288, 289 (1983). A state district court's dismissal of certain claims with prejudice/summary judgment, and without proper consideration - conducting discovery, or determining whether an additional 2 years would be added to the 10 year statute of repose under NRS 11.203, would be contrary to Nevada's public policy of deciding claims on the merits.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

NRAP 17(a)(14) states that the Supreme Court should retain the matter as it is of statewide public importance. NRS Chapter 40 was formulated to protect homeowners from residential construction defects as well as offer developers an opportunity to repair claims prior to litigating issues, inter alia. It is important to clarify the date (the stated date of completion from developer or recorded date) from which a statute of repose or limitation is to begin for NRS Chapter 40 construction defects claims pursuant to NRS 11.2055.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 12/24/15, 11/25/15

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 12/24/15, 11/25/15

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing NA

☐ NRCP 52(b) Date of filing NA

☐ NRCP 59 Date of filing NA

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion NA

(c) Date written notice of entry of order resolving tolling motion was served NA

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed 12/2/15, 12/28/15 (amended notice)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Robert M. Dykema December 2, 2015, December 28, 2015 (amended)

Ronald Turner December 2, 2015, December 28, 2015 (amended)

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order: Pursuant to NRAP 3A(b)(1), an appeal may be taken from "[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." In the present matter, Appellants Dykema and Turner are appealing the district court's final judgment entered December 24, 2015 dismissing/summarily adjudicating their claims as barred by the statute of repose as decided in the district court's order dated November 25, 2015.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Please see that attached supplement labeled "22(a) Parties" as the field is not large enough to list all parties.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The remaining Plaintiffs are not involved in this appeal as they were not subject to Del Webb's Motion to Dismiss, the dismissals were without prejudice and/or Plaintiffs did not oppose such dismissals.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs: First Claim for Relief - breach of contract and express warranties, Second Claim for Relief - breach of implied warranties, Third Claim for Relief - negligence and negligence per se, and Fourth Claim for Relief, breach of implied warranty of habitability.

No formal or final dispositions of claims other than the claims of Dykema and Turner, which have essentially been summarily adjudicated, or barred.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

All claims remain except for the claims of Dykema and Turner.

(b) Specify the parties remaining below:

All other parties listed in 22(a) Parties, except Dykema and Turner, and the dismissed Plaintiffs as noted.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The district court order is independently appealable under NRAP 3A(b)(1). The district court order was final pursuant to NRCP 54(b) as to claimants Dykema and Turner. The basis for seeking appellate review is so that this court may review whether Dykema's and Turner's claims were unfairly and improperly barred, precluding any recovery for Dykema and Turner.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

22(a) Parties.

Plaintiffs:

SCOTT PHILLIPS, individually; TEODORO H. and ROSA-LINDA R. BAUTISTA, individually; BROWER FAMILY TRUST; CHARLES COLUCCI, individually; HARRY E. CROSBY REVOCABLE TRUST; DR. KAREN FELDMAN, individually; COLLEEN T. SAN FILIPPO, individually; THE GILLES FAMILY LIVING TRUST, DATED JANUARY 14, 2010; DAVID M. GORDON, individually; CHARLES and MARIA HEARN, individually; THOMAS C. and KATHLEEN A. JOHNSON, individually; AARON KNUDSON, individually; LORRAINE JOHNSON, individually; JOLEAN JONES, individually; YOUNG KYOON KIM and INOK KIM, individually; MIKE and TALIA LAQUITARA, individually; JAMES and ANDRONICKIE LAUTH, individually; LEPORE FAMILY TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT, individually; ROGER A. MARTIN AND VIRGINIA C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY 24, 2011; THOMAS MEYERS and MARY C. MONICA-MEYERS, individually; MARK MONACO, individually; SAMIR FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13, 2013; BUD O'BRIEN and ROSALIE O'BRIEN, individually; DAVID L. POWELL and JUNE D. COOPER, individually; RANDALL and NICOLE ROEDECKER, individually; EUGENIUSZ and ZOFIA SUCHECKI, individually; GARY G. TON, individually; ROY and SHARON VAN SLYKE, individually; LAUREL YVONNE WEAVER, individually; SCOTT M. ZIPKIN and ROBERT A. & ELLEN R. ZIPKIN, individually; MICHAEL J. and GLORIA NAN CONNOLLY, individually; ROBERT and CONCETTA GAYNOR, individually; HECTOR G. and ROSARIO GARCIA, individually; JAMES A. HENDERSON JR., individually; HOWARD S. and ROBERTA P. LEVINE, individually; KURT FIELD and CRISTEN BOLANDER-FIELD, individually; BOBBIE SMITH, individually; CHAD and ALLICIA TOMOLO, individually; WILLIAM and CONNIE MCDERMOTT, individually; SYDNEY WOO, individually; PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC, a Nevada Limited-Liability Company; VEROL R. and DEBRA A. BELLINFANTE, individually; ALFREDO and ILUMINADA CAMPOS, individually; WYNSIE MARIE CHAN, individually; ROBERT M. DYKEMA, individually; BROCK and REANNA FOSTER, individually; J C F FAMILY TRUST; WI JO KANG and CHONG-JA KANG, individually; TAKESHI NAKAYA, individually (dismissed); DIONISIO ONG, individually (dismissed); POURZIAEE ERAJ AND SEDI POURZIAEE JOINT LIVING TRUST; JOSEPH and MILAGROS RIVERA, individually; SALISBURY FAMILY TRUST; WILLIAM A. and CYNTHIA J. SHOOP, individually; RONALD TURNER, individually (dismissed); BRENT and SARA URE, individually; WILLIAM R. and NANCY WALLEY, JR., individually; KIEL YOST, individually; STEVEN and MARIA MOORE, individually (dismissed without prejudice).

Defendant:

DEL WEBB COMMUNITIES, INC., an Arizona Corporation


VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Robert M. Dykema, Ronald Turner
Name of appellant

Courtney K. Lee
Name of counsel of record

Dec 29, 2015
Date


Signature of counsel of record

Nevada, Clark
State and county where signed

CERTIFICATE OF SERVICE

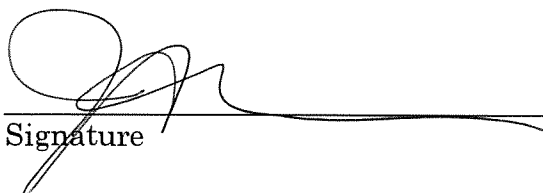
I certify that on the 29th day of December, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jason W. Williams, Esq.
Richard D. Young, Esq.
Koeller Nebeker Carlson & Haluck LLP
300 South Fourth Street, Suite 500
Las Vegas, Nevada 89101

Settlement Judge Robert F. Saint-Aubin
P.O. Box 3645
Dana Point, California 92629

Dated this 29th day of December, 2015


Signature