

Electronically Filed
Apr 05 2016 10:42 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE NO. 69134
Clerk of Supreme Court

) Eighth Judicial District Case
) No. A-15-714632-D

1

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Attorneys for Appellants

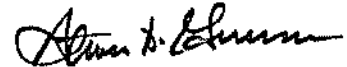
Attorneys for Respondent

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3/6/15	Plaintiffs' First Amended Construction Defect Complaint	1	JA00014- JA00029
5/5/15	Affidavit of Service-Del Webb Communities, Inc.	1	JA00030- JA00032
5/19/15	Del Webb Communities, Inc.'s Motion to Dismiss	1	JA00033- JA00105
6/5/15	Plaintiffs' Limited Opposition to Del Webb Communities, Inc.'s Motion to Dismiss	1	JA00106- JA00185
6/17/15	Del Webb Communities, Inc.'s Reply in Support of its Motion to Dismiss	1	JA00186- JA00197
6/23/15	Recorder's Transcript of Hearing re: Del Webb Communities, Inc.'s Motion to Dismiss	1	JA00198- JA00218
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CLERK OF THE COURT

COMPC

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Bar No. 7176

Courtney K. Lee, Esq.

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.)

ARBITRATION EXEMPTION CLAIMED:
involves an amount in issue in excess of
\$50,000 exclusive of interest and costs

CONSTRUCTION DEFECT COMPLAINT

{00219496.DOC}

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; inclusive,

21 Plaintiffs,

22 v.

23 DEL WEBB COMMUNITIES, INC., an Arizona
24 Corporation; and DOES 1 through 500, inclusive,
25 Defendants.
26
27
28

29 COMPLAINT FOR DAMAGES

30 Comes Now Plaintiffs,

31 PLAINTIFF	32 ADDRESS
33 SCOTT PHILLIPS	34 2527 Findlater Street Henderson, NV 89044
35 TEODORO H. BAUTISTA 36 ROSA-LINDA R. BAUTISTA	37 2694 Bothwell Place Henderson, NV 89044
38 BROWER FAMILY TRUST	39 2668 Lochleven Way Henderson, NV 89044
40 CHARLES COLUCCI	41 2588 Lochleven Way Henderson, NV 89044
42 HARRY E. CROSBY REVOCABLE TRUST	43 2580 Dirleton Place

{00219496.DOC}

	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. MARTIN JOINT LIVING TRUST	2591 Dirleton Place 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

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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. Henderson, NV 89044
PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC	2723 Cramond Street 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 11.190.
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 **THIRD CAUSE OF ACTION**

23 **(Negligence and Negligence per se**

24 **As to All Defendants, and Does 1 through 500)**

25 25. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24 of the Complaint
26 as though fully set forth herein.
27

28 ///

1 26. Plaintiffs allege that Defendants, and each of them, knew or should have known that if the
2 subject structure and subject premises were not properly or adequately designed, engineered,
3 marketed, supervised and/or constructed, that the owners and users would be substantially damaged
4 thereby, and that the subject structures would be defective and not of merchantable quality.
5

6 27. Plaintiffs allege that the Defendants, and each of them, named herein were under a duty to
7 exercise ordinary care to avoid reasonably foreseeable injury to users and purchasers of the subject
8 premises and structures, and knew or should have foreseen with reasonable certainty that purchasers
9 and/or users would suffer the monetary damages set forth herein, if said Defendants, and each of
10 them, failed to perform their duty to cause the subject premises and subject structures to be designed,
11 engineered and completed in a proper and workmanlike manner and fashion.
12

13 28. Said Defendants, and each of them, breached their duty owed to Plaintiffs, failed and
14 neglected to perform the work, labor and services properly or adequately in that each said Defendants
15 so negligently, carelessly, recklessly and in an unworkmanlike manner designed, constructed and
16 inspected the subject property and performed the aforesaid work, labor and/or services, such that the
17 subject premises and subject structures as described herein were designed, engineered and/or
18 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner, thereby
19 breaching the duty owed to Plaintiffs. Further, Defendants' sellers knew or should have known that
20 the premises were constructed in an unworkmanlike manner.
21
22

23 29. Defendants' negligence alleged above includes the failure to meet the applicable building
24 codes and ordinances which were in effect. Plaintiffs' members and their predecessors in interest
25 were members of the class of persons which the building codes and ordinances were designed to
26 protect. Such violations are negligence per se on the part of Defendants, and each of them.
27

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1 30. As a direct and proximate result of the foregoing negligence and negligence per se,
2 carelessness and unworkmanlike conduct, actions and/or omissions by said Defendants, and each of
3 them, Plaintiffs have suffered damages in an amount in excess of \$10,000.00. Plaintiffs are presently
4 unaware of the precise amount of damages needed in order to correct the defective conditions of the
5 subject property and subject structures, but will establish the same at trial according to proof.
6

7 31. Plaintiffs are also entitled to the damages set forth at NRS 40.655.
8

9 **FOURTH CAUSE OF ACTION**

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

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

13 33. All Defendants each impliedly warranted that said homes would be of good and
14 merchantable quality, would be habitable, and would be completed in a workmanlike manner.
15 Further, said Defendants impliedly warranted the quality of construction of the homes and common
16 areas as provided in NRS 116.4114.
17

18 34. The Plaintiffs purchased their homes in reliance on the implied warranties and promises
19 made by Defendants, and each of them. Plaintiffs have duly performed all of the covenants and
20 conditions of said contracts on their part to be performed.
21

22 35. Certain Plaintiffs and/or Homeowners at the subject property have notified Defendants of
23 said breach of implied warranties and said Defendants have refused and continue to refuse to remedy
24 these defects.

25 36. As a direct and proximate result of the breach of the implied warranties by Defendants and
26 each of them as herein above alleged, Plaintiffs suffered damages stemming from, among other items,
27 defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco
28

1 cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor
2 workmanship. Plaintiffs are presently unaware of the precise amount of damages, but will establish
3 the same at trial according to proof.
4

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

- 7 1. For general and special damages in excess of \$10,000.00 including but not limited to,
8 costs of repair, loss of market value, loss of use, loss of investment and out-of-pocket
9 expenses to be determined at time of trial;
- 10 2. For damages in an amount according to proof;
- 11 3. For reasonable attorneys fees and costs according to proof.
- 12 4. For prejudgment and post-judgment interest on all sums awarded, according to proof
13 at the maximum legal rate;
- 14 5. For all damages pursuant to NRS 40.600 through 40.695; in particular 40.650 and
15 40.655;
- 16 6. For costs of suit incurred;
- 17 7. For such other and further relief as the Court may deem just and proper.

18 DATED this 27th day of February, 2015
19

20 By /s/ Courtney K. Lee

21 Duane E. Shinnick, Esq.

22 Bar No. 7176

23 Courtney K. Lee, Esq.

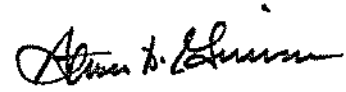
24 Bar No. 8154

25 SHINNICK, RYAN & RANSAVAGE P.C.

26 4001 Meadows Lane

27 Las Vegas, NV 89107
28

Attorneys for Plaintiffs


CLERK OF THE COURT

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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) PLAINTIFF'S FIRST AMENDED
FILIPPO, individually; THE GILLES FAMILY) CONSTRUCTION DEFECT COMPLAINT
LIVING TRUST, DATED JANUARY 14, 2010;)
DAVID M. GORDON, individually; CHARLES and)
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KATHLEEN A. JOHNSON, individually; AARON)
KNUDSON, individually; LORRAINE JOHNSON,)
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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
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3 ZOFIA SUCHECKI, individually; GARY G. TON,
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7 & ELLEN R. ZIPKIN, individually; MICHAEL J.
8 and GLORIA NAN CONNOLLY, individually;
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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.

{00219975.DOC}

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	VEROL R. BELLINFANTE	2535 Brachhead Lane
2	DEBRA A. BELLINFANTE	Henderson, NV 89044
3	ALFREDO CAMPOS	2648 Dirleton Place
4	ILUMINADA CAMPOS	Henderson, NV 89044
5	WYNSIE MARIE CHAN	2568 Dirleton Place
		Henderson, NV 89044
6	ROBERT M. DYKEMA	2818 Craigton Drive
		Henderson, NV 89044
7	BROCK FOSTER	2679 Lochleven Way
8	REANNA FOSTER	Henderson, NV 89044
9	J C F FAMILY TRUST	2545 Lockerbie Street
		Henderson, NV 89044
10	WI JO KANG	2644 Dirleton Place
11	CHONG-JA KANG	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	2683 Lochleven Way
	POURZIAEE JOINT LIVING TRUST	Henderson, NV 89044
15	JOSEPH RIVERA	2755 Strathblane Ave.
16	MILAGROS RIVERA	Henderson, NV 89044
17	SALISBURY FAMILY TRUST	2798 Lochleven Way
		Henderson, NV 89044
18	WILLIAM A. SHOOP	2836 Blythswood Square
19	CYNTHIA J. SHOOP	Henderson, NV 89044
20	RONALD TURNER	2844 Blythswood Square
		Henderson, NV 89044
21	BRENT URE	2711 Cramond Street
22	SARA URE	Henderson, NV 89044
23	WILLIAM R. WALLEY, JR.	2764 Strathblane Ave.
24	NANCY WALLEY	Henderson, NV 89044
25	KIEL YOST	2715 Lochleven Way
		Henderson, NV 89044
26	STEVEN MOORE	2647 Dirleton Place
27	MARIA MOORE	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 Brachhead 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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2. Pursuant to NRS 40.600 through 40.695 inclusive, Plaintiffs seek recovery for damages suffered by each unit owner as to their separate interests as delineated by law.

3. The property and buildings thereupon will hereinafter sometimes be referred to as the "subject property."

5. The Defendants are identified as follows: Plaintiffs allege that Defendant DEL WEBB COMMUNITIES, INC., an Arizona Corporation, authorized to do business in the State of Nevada and has conducted and/or now does conduct business within the County of Clark, State of Nevada, including but not limited to development, construction, improvement, conversion and/or sale of the subject property.

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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 ///

1 **THIRD CAUSE OF ACTION**

2 (Negligence and Negligence per se

3 **As to All Defendants, and Does 1 through 500)**

4
5 25. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24 of the Complaint
6 as though fully set forth herein.

7 26. Plaintiffs allege that Defendants, and each of them, knew or should have known that if the
8 subject structure and subject premises were not properly or adequately designed, engineered,
9 marketed, supervised and/or constructed, that the owners and users would be substantially damaged
10 thereby, and that the subject structures would be defective and not of merchantable quality.

11
12 27. Plaintiffs allege that the Defendants, and each of them, named herein were under a duty to
13 exercise ordinary care to avoid reasonably foreseeable injury to users and purchasers of the subject
14 premises and structures, and knew or should have foreseen with reasonable certainty that purchasers
15 and/or users would suffer the monetary damages set forth herein, if said Defendants, and each of
16 them, failed to perform their duty to cause the subject premises and subject structures to be designed,
17 engineered and completed in a proper and workmanlike manner and fashion.

18
19 28. Said Defendants, and each of them, breached their duty owed to Plaintiffs, failed and
20 neglected to perform the work, labor and services properly or adequately in that each said Defendants
21 so negligently, carelessly, recklessly and in an unworkmanlike manner designed, constructed and
22 inspected the subject property and performed the aforesaid work, labor and/or services, such that the
23 subject premises and subject structures as described herein were designed, engineered and/or
24 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner, thereby
25 breaching the duty owed to Plaintiffs. Further, Defendants' sellers knew or should have known that
26 the premises were constructed in an unworkmanlike manner.
27
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1 29. Defendants' negligence alleged above includes the failure to meet the applicable building
2 codes and ordinances which were in effect. Plaintiffs' members and their predecessors in interest
3 were members of the class of persons which the building codes and ordinances were designed to
4 protect. Such violations are negligence per se on the part of Defendants, and each of them.
5

6 30. As a direct and proximate result of the foregoing negligence and negligence per se,
7 carelessness and unworkmanlike conduct, actions and/or omissions by said Defendants, and each of
8 them, Plaintiffs have suffered damages in an amount in excess of \$10,000.00. Plaintiffs are presently
9 unaware of the precise amount of damages needed in order to correct the defective conditions of the
10 subject property and subject structures, but will establish the same at trial according to proof.
11

12 31. Plaintiffs are also entitled to the damages set forth at NRS 40.655.
13

14 **FOURTH CAUSE OF ACTION**

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

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

18 33. All Defendants each impliedly warranted that said homes would be of good and
19 merchantable quality, would be habitable, and would be completed in a workmanlike manner.
20 Further, said Defendants impliedly warranted the quality of construction of the homes and common
21 areas as provided in NRS 116.4114.
22

23 34. The Plaintiffs purchased their homes in reliance on the implied warranties and promises
24 made by Defendants, and each of them. Plaintiffs have duly performed all of the covenants and
25 conditions of said contracts on their part to be performed.
26
27
28

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 ///

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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


CLERK OF THE COURT

AOS
Duane E. Shinnick, Esq.
Bar No. 7176
SHINNICK, RYAN & RANSAVAGE P.C.
4001 Meadows Lane
Las Vegas, NV 89107
Tel. (702) 631-8014
Fax (702) 631-8024
dshinnick@ssllplaw.com

Attorneys for Plaintiffs

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; 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,) CASE NO. A-15-714632-D) DEPT. NO. XXII) AFFIDAVIT OF SERVICE-DEL WEBB COMMUNITIES, INC.
--	--

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

v.

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

Defendants.

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

Clark County District Court

Case Number: A-15-714632-D

Plaintiff:

SCOTT PHILLIPS, individually; et al.,

vs

Defendant:

DEL WEBB COMMUNITIES, INC., an Arizona Corporation; et al.,

For

Duane E. Shinnick

Shinnick, Ryan & Ransavage P.C.

4001 Meadows Lane

Las Vegas, NV 89107

Received by Legal Express on the 28th day of April, 2015 at 4:51 pm to be served on Del Webb Communities, Inc, Registered Agent, 2215-B Renaissance Drive, Las Vegas, NV 89119

I, John Nicholson, being duly sworn, depose and say that on the 29th day of April, 2015 at 11:44 am, I:

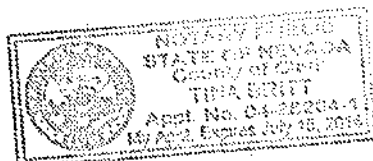
SERVED an authorized entity by delivering a true copy of the Summons-Civil, Construction Defect Complaint, Plaintiff's First Amended Construction Defect Complaint to Cayla Denney as Customer Service Specialist, pursuant to NRS 14.020 as a person of suitable age and discretion at the address of the Registered Agent's office.

Said service was made at the address of: Registered Agent, 2215-B Renaissance Drive, Las Vegas, NV 89119

Affiant is, and was, a citizen of the United States, over 18 years of age, and not a party to, nor interested in, the proceeding in which this affidavit is made

SIGNED and SWORN TO before me on the 30
day of April, 2015 by the affiant who
is personally known to me.

NOTARY PUBLIC



John Nicholson
Process Server

Legal Express
Nevada License 999/999a
911 South 1st Street
Las Vegas, NV 89101
(702) 877-0200
Our Job Serial Number: 2015000553
Ref: 3283
Service Fee: \$42.50


CLERK OF THE COURT

1 **MDSM**

2 JASON W. WILLIAMS, ESQ.

3 Nevada Bar No. 8310

4 RICHARD D. YOUNG, ESQ.

5 Nevada Bar No. 11331

6 KOELLER NEBEKER CARLSON & HALUCK, LLP

7 300 S. Fourth St., Suite 500

8 Las Vegas, NV 89101

9 jason.williams@knehlaw.com

10 Phone: (702) 853-5500

11 Fax: (702) 853-5599

12 Attorneys for Defendant

13 Del Webb Communities, Inc.

9 **DISTRICT COURT**

10 **CLARK COUNTY NEVADA**

11 SCOTT PHILLIPS, individually; TEODORO H.) **CASE NO.: A714632**

12 and ROSA-LINDA R. BAUTISTA, individually;) **DEPT. NO.: XXII**

13 BROWER FAMILY TRUST, individually;)

14 CHARLES COLUCCI, individually; HARRY E.)

15 CROSBY REVOCABLE TRUST; DR. KAREN)

16 FELDMAN, individually; COLLEN T. SAN)

17 FILIPPO, individually; THE GILLES FAMILY) **DEL WEBB COMMUNITIES,**

18 LIVING TRUST, DATED JANUARY 14, 2014;) **INC.'S MOTION TO DISMISS**

19 DAVID M. GORDON, individually; CHARLES)

20 and MARIA HEARN, individually; THOMAS)

21 C. and KATHLEEN A. JOHNSON,)

22 individually; AARON KNUDSON, individually;)

23 LORRAINE JOHNSON, individually; JOLEAN)

24 JONES, individually; YOUNG KYOON KIM)

25 and INOK KIM, individually; MIKE and TALIA)

26 LAQUITARA, individually; JAMES and)

27 ANDRONICKIE LAUTH, individually;)

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

24 Plaintiffs

25 vs.

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

27 Defendants.
28

1 COMES NOW Defendant Del Webb Communities, Inc. (hereinafter "Del Webb"), by
2 and through its attorneys, Koeller, Nebeker, Carlson & Haluck, and hereby submits this motion
3 to dismiss.

4 This motion is supported by the attached memorandum of points and authorities, the, the
5 pleadings and papers filed with the court, and any oral argument presented to the court at the
6 time of hearing upon this motion.

7 DATED this 19th day of May, 2015.

8
9 KOELLER NEBEKER CARLSON
& HALUCK, LLP

10 /S/ Richard D. Young

11 BY:

12 RICHARD D. YOUNG, ESQ.
13 Nevada Bar No. 11331
14 300 S. Fourth St., Suite 500
15 Las Vegas, NV 89101
16 Phone: (702) 853-5500
17 Fax: (702) 853-5599
18 Attorney for Defendant
19 Del Webb Communities, Inc.
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PLEASE TAKE NOTICE that the undersigned will bring the above-motion on for hearing on the 23 day of June 2015 at 10:30 a.m.

KOELLER NEBEKER CARLSON
& HALUCK, LLP

BY:

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a construction defect case brought by 62 Plaintiff groups related to single family
4 residences located in Del Webb's Anthem Highlands development. For the reasons set forth
5 herein, this motion seeks an order dismissing 6 of these Plaintiff groups.

6 First, the claims of Plaintiffs Salisbury Family Trust, Ronald Turner, Robert Dykema
7 and Takeshi Nakaya should be dismissed because they are precluded by operation of the
8 applicable statute(s) of repose. Each of these Plaintiffs first asserted claims against Del Webb
9 more than 10 years after the date of substantial completion of their respective properties.
10 Accordingly, the claims of these 4 Plaintiffs are time-barred, which necessitates dismissal.

11 Second, Plaintiffs Dionisio Ong and Takeshi Nakaya sold their respective properties
12 prior to the initial complaint being filed. These Plaintiffs lack standing to pursue the claims
13 alleged, and they also lack the ability to recover any of the damages alleged. For these reasons,
14 these 2 Plaintiffs should be dismissed.

15 Third, the claims of Plaintiffs Steven and Maria Moore are precluded because the
16 Moores have failed to comply with any of the pre-litigation requirements of NRS 40.600 et seq..
17 Notable, the Moore's purported notice of defects was served under the new version of Chapter
18 40, but it has failed to comply with any of the current requirements, e.g., the verification
19 requirement and the specificity requirement. The Moores have also failed to comply with the
20 remaining pre-litigation requirements of NRS 40.600 et seq. This failure necessitates dismissal
21 of their claims.

22 For the reasons previewed above, and discussed in greater detail below, Del Webb
23 submits the claims of the aforementioned Plaintiffs must be dismissed for failing to state a claim
24 upon which relief could be granted.

25 **II. STATEMENT OF FACTS**

26 This motion is limited to a request for dismissal of the claims of 6 Plaintiff groups. The
27 following section is limited to a statement of the relevant facts specific to the 6 Plaintiffs at
28 issue..

1 **A. Certificates of Occupancy for Plaintiffs' Properties**

2 • The single family residence located at 2798 Lochleven Way, Henderson Nevada
3 – owned by Plaintiff Salisbury Family Trust – was issued a Certificate of Occupancy by the
4 City of Henderson Department of Building and Safety on November 23, 2004. *See, Exhibit*
5 **“A”**

6 • The single family residence located at 2844 Blythswood Square, Henderson
7 Nevada – owned by Plaintiff Ronald Turner – was issued a Certificate of Occupancy by the City
8 of Henderson Department of Building and Safety on December 6, 2004. *See, Exhibit “B”*

9 • The single family residence located at 2818 Craighton Drive, Henderson Nevada
10 – owned by Plaintiff Robert Dykema – was issued a Certificate of Occupancy by the City of
11 Henderson Department of Building and Safety on November 2, 2004. *See, Exhibit “C”*

12 • The single family residence located at 2450 Antrim Irish Drive, Henderson
13 Nevada – owned by Plaintiff Takeshi Nakaya – was issued a Certificate of Occupancy by the
14 City of Henderson Department of Building and Safety on July 6, 2004. *See, Exhibit “D”*

15 **B. NRS 40.645 Purported Notices of Defects Served by Plaintiffs**

16 • Plaintiff Salisbury Family Trust served Del Webb with a purported Notice of
17 Defects dated December 30, 2014 forwarding allegations of construction defects at the 2798
18 Lochleven Way property. *See, Exhibit “E”*

19 • Plaintiff Ronald Turner served Del Webb with a purported Notice of Defects
20 dated December 22, 2014 forwarding allegations of construction defects at the 2844
21 Blythswood Square property. *See, Exhibit “F”*

22 • Plaintiff Robert Dykema served Del Webb with a purported Notice of Defects
23 dated December 2, 2014 forwarding allegations of construction defects at the 2818 Craighton
24 Drive property. *See, Exhibit “G”*

25 • Plaintiff Takeshi Nakaya served Del Webb with a purported Notice of Defects
26 dated July 8, 2014, forwarding allegations of construction defects at the 2450 Antrim Irish
27 Drive property. *See, Exhibit “H”*

1 • Plaintiffs Steven and Maria Moore served Del Webb with a purported Notice of
2 Defects dated February 26, 2015, forwarding allegations of construction defects at the 2647
3 Dirleton Place property. *See*, Exhibit “I”

4 **C. Ownership History**

5 • Plaintiff Takeshi Nakaya sold the property located at 2450 Antrim Irish Drive in
6 Henderson, Nevada to non-party Shirley Banks on December 24, 2014. *See*, Grant, Bargain and
7 Sale Deed, attached hereto as Exhibit “J”.

8 • Plaintiff Dionisio Ong sold the property located at 2707 Cramond Street in
9 Henderson, Nevada to non-party Hsiao-Wei Chen on January 28, 2015. *See*, Grant, Bargain
10 and Sale Deed, attached hereto as Exhibit “K”.

11 **D. Procedural History**

12 • Plaintiffs’ complaint was filed on February 27, 2015. *See*, complaint, on file
13 herein.

14 • Plaintiffs’ first amended complaint – their operative pleading – was filed on
15 March 6, 2015. *See*, Plaintiffs’ First Amended Construction Defect Complaint attached hereto
16 for ease of reference as Exhibit “J”.

17 • Del Webb’s first appearance in this litigation is by way of the instant motion to
18 dismiss.

19 **III. LEGAL ARGUMENT**

20 **A. Standard for Motion to Dismiss**

21 NRCP 12(b)(5) provides for dismissal of actions or claims when the Plaintiff has failed
22 to state a claim upon which relief can be granted. “A complaint should only be dismissed if it
23 appears beyond a reasonable doubt that the plaintiff could prove no set of facts, which, if true,
24 would entitle him to relief.” *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 441 (2002).
25 Dismissal is proper where the allegations are insufficient to establish the elements of a claim for
26 relief. *Id.*

27 The Nevada Supreme Court has recognized that federal decisions involving the Federal
28 Rules of Civil Procedure provide persuasive authority when examining the State rules. *Nelson*

1 v. *Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005). Recently, the United States Supreme
2 Court, in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), expanded on its interpretation of the pleading
3 requirements when it held, “the tenet that a court must accept as true all of the allegations made
4 in the complaint is inapplicable to legal conclusions.” *Iqbal* at 678. The Court further held that
5 it is not “bound to accept as true a legal conclusion couched as a factual allegation.” *Id.*

6 Pursuant to this standard and the following arguments, Del Webb is entitled to a
7 dismissal of the Plaintiffs whose claims are precluded by operation of statute of repose because
8 there are no set of facts upon which these claims are valid. Del Webb is also entitled to a
9 dismissal of the Plaintiffs who do not own the properties that are subject to this litigation
10 because these Plaintiffs sold their properties prior to the filing of the complaint, and also
11 because these Plaintiffs are unable to recover any damages for the costs to repair conditions at
12 properties they do not own. Finally, Del Webb is entitled to a dismissal of Plaintiffs Steven and
13 Maria Moore because they have not complied with Chapter 40’s pre-litigation requirements.

14 **B. The claims of 4 Plaintiffs are barred by the applicable statutes of repose**

15 The claims forwarded by Plaintiffs Salisbury, Turner, Dykema and Nakaya are
16 precluded by operation of statute of repose. Whether the 8-year or 10-year period of repose
17 applies, these claims are precluded because each of the aforementioned Plaintiffs did not serve
18 Del Webb with a Chapter 40 Notice until more than 10 years after the date of substantial
19 completion of their respective properties.

20 **1. Statutes of repose applicable to construction defect claims in Nevada**

21 Nevada Revised Statutes 11.203 – 11.205 provide the statutes of repose applicable to
22 actions based in construction defect. In general terms, NRS 11.203 provides that actions based
23 on deficiencies known, or through reasonable diligence should have been known, to the builder
24 must be brought within 10 years after substantial completion. NRS 11.204 provides that actions
25 based on latent deficiencies – not apparent by reasonable inspection – must be brought within 8
26 years after substantial completion. NRS 11.205 provides that actions based on patent
27 deficiencies – apparent by reasonable inspection – must be brought within 6 years after
28 substantial completion.

1 To determine the date of substantial completion, NRS 11.205.5 instructs us to review the
2 Certificate of Occupancy. Once a residence has been "substantially completed" the owner of
3 the residence has certain limitations placed on him or her to bring claims of construction defect.
4 As discussed above the benchmarks for these limitations are 6 years, 8 years and 10 years. The
5 10 year benchmark acts as a complete preclusion of any claims. Del Webb submits there is an
6 absence of allegations in the operative complaint to apply the 10-year period of repose, and that
7 therefore the 8-year period applies to these claims. However, under application of either period,
8 the subject claims are still precluded.

9 **2. The claims of 4 Plaintiffs have been brought more than ten years after the**
10 **respective dates of substantial completion of their properties**

11 For purposes of this motion, Del Webb will assume the 10-year period of repose applies.
12 However, Del Webb notes for the record that it believes a lesser period is the appropriate
13 metric. Nevertheless, under the 10-year period there are 4 Plaintiffs who are time-barred. To
14 determine whether a claim is time-barred, one must first look to the date of substantial
15 completion. To this end, Del Webb has obtained the Certificate of Occupancy for each of the 4
16 properties that are subject to this motion.

17 Per NRS 11.203, Del Webb then added 10 years to the date of substantial completion of
18 each property. This calculation provided the final date by which the owner of that particular
19 property must bring a construction defect claim to avoid the preclusive effect of NRS 11.203.

20 Finally, Del Webb determined the first time that each Plaintiff homeowner initiated a
21 claim against Del Webb via NRS 40.645 Notice of Defects. If the date of initiation of a
22 Plaintiff's claim fell after the 10-year cut-off date, then that Plaintiff homeowner's claim is
23 time-barred.

24 The table that follows details the specific Plaintiff homeowners whose claims Del Webb
25 seeks to have dismissed as they are time barred. The table provides: (1) the name of the
26 Plaintiff who has forwarded precluded claims; (2) the address of the property that is the subject
27 of the precluded claims; (3) the date of substantial completion of the subject property and
28 citation to the source for same; (4) the date by which that Plaintiff must have brought a claim to

1 avoid preclusion pursuant to NRS 11.203; and (5) the date on which that Plaintiff first brought a
2 claim against Del Webb, as documented in the Statement of Facts section of this motion, *supra*.
3 The table reveals that the claims of each of the following Plaintiffs are, indeed, time-barred by
4 NRS 11.203, and should be dismissed, with prejudice.

	Plaintiff	Address	Date of Substantial Completion	Date Claims are barred by NRS 11.203	Date of First Claim
5					
6					
7	1. Salisbury	2798 Lochleven Way	11/23/04 Exhibit "A"	11/23/14	12/30/14
8	2. Turner	2844 Blythswood Sq.	12/6/04 Exhibit "B"	12/06/14	12/22/14
9	3. Dykema	2818 Craighton Dr.	11/2/04 Exhibit "C"	11/02/14	12/02/14
10	4. Nakaya	2450 Antrim Irish Dr.	7/06/04 Exhibit "D"	07/06/14	07/08/14
11					

12 **C. Plaintiffs Nakaya and Ong must be dismissed because they sold their respective**
13 **properties prior to the filing of Plaintiffs' complaint**

14 Del Webb is entitled to a dismissal of the claims alleged by Plaintiffs Takeshi Nakaya
15 and Dionisio Ong because these Plaintiffs lack standing to pursue the claims alleged in the
16 operative complaint due to the fact they sold their respective properties before the original
17 complaint was even filed. Pursuant to NRS 40.610, to pursue a claim for construction defect a
18 "claimant" must actually be the owner of the property at issue. As is set forth in the Statement
19 of Facts section of this motion, *supra*, and more specifically in Exhibits "J" and "K".

20 An essential element of these Plaintiffs' claims for relief is the existence of damages.
21 The absence of damages requires dismissal of these claims. See, *Richardson v. Jones*, 1 Nev.
22 405 (1865) (An essential element of any breach of contract claim is that the plaintiff sustained
23 damages as result of the breach of contract.); see, *Scialabba v. Brandise Construction Co.*, 112
24 Nev. 965, 968, 921 P.2d. 928, 930 (1996) ("to prevail on a negligence theory, a plaintiff must
25 generally show that: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant
26 breached that duty; (3) the breach was the legal cause of the plaintiff's injury; and (4) the
27 plaintiff suffered damages.").

1 In the instant matter, Plaintiff Nakaya and Plaintiff Ong are entirely incapable of
2 suffering any damages for future repair expenses arising from any alleged constructional defect.
3 These Plaintiffs no longer own the properties involved in the instant matter and as such will not
4 incur the expense for repairs to the subject properties in order to remedy any alleged
5 constructional defects. Therefore, Plaintiff Nakaya and Plaintiff Ong should be dismissed, with
6 prejudice.

7 **D. Plaintiffs Steven and Maria Moore have failed to comply with NRS 40.645**

8 On February 26, 2015, Plaintiffs Steven and Maria Moore mailed to Del Webb a
9 purported notice of defects pursuant to NRS 40.645 (hereinafter "February 26, 2015 letter").
10 Prior to that, on February 24, 2015, amendments to NRS 40.600 et seq. ("Chapter 40") went
11 into effect. These amendments include revisions to NRS 40.645. Under the new version of the
12 law – which was applicable to the Moores' claims – a notice of defects must "include a signed
13 statement, by each named owner of a residence or appurtenance in the notice, that each such
14 owner verifies that each such defect, damage and injury specified in the notice exists in the
15 residence or appurtenance owned by him or her." See, NRS 40.645(2)(d). Here, the February
16 26, 2015 letter does not include this verification. See, **Exhibit "I"**. The Moore's failure to
17 comply with this pre-litigation requirement necessitates dismissal of the Moore's complaint.

18 Furthermore, NRS 40.645 requires that each notice must identify "in specific detail each
19 defect, damage and injury to each residence or appurtenance that is subject of the claim,
20 including, without limitation, the exact location of each such defect, damage and injury." See,
21 NRS 40.645(2)(d). Here, the February 26, 2015 letter fails to present the required, specific
22 detail. Review of the February 26, 2015 letter informs that Del Webb was only served with
23 photographs and a purported photograph log. There is no specificity as to the location of the
24 alleged defects, nor is there specificity as to the extent of the damage or what it is the
25 homeowners want repaired. These fatal flaws further preclude the Moores from maintaining a
26 lawsuit against Del Webb until such time as they present Del Webb with a compliant notice of
27 defects pursuant to NRS 40.645, and otherwise fully comply with the pre-litigation
28 requirements of Chapter 40.

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IV. CONCLUSION

For the foregoing reasons, Del Webb seeks the following relief:

1. Dismissal, with prejudice, of Plaintiffs Salisbury Family Trust, Ronald Turner, Robert Dykema and Taskeshi Nakaya because their claims are precluded by NRS 11.204 and NRS 11.203.

2. Dismissal, with prejudice, of Plaintiffs Dionisio Ong and Takeshi Nakaya, because these Plaintiffs sold their respective properties prior to filing the complaint and therefore lack standing to pursue claims related to those properties, and they lack the ability to recover damages against Del Webb related to those properties.

3. Dismissal of Plaintiffs Steven and Maria Moore due to their failure to comply with the pre-litigation requirements of NRS 40.600 et seq.

DATED this 19th day of May, 2015.

KOELLER NEBEKER CARLSON
& HALUCK, LLP

/s/ Richard D. Young

BY: _____

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

EXHIBIT “A”



KOELLER · NEBEKER · CARLSON · HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

#240

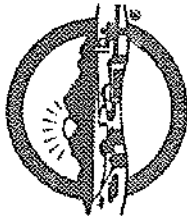
CITY OF HENDERSON

Department of Building & Safety

240 Water Street

Henderson, NV 89015

(702) 267-3620



A Place to Grow

CERTIFICATE OF OCCUPANCY

This certificate is issued to Section 309 of the 1997 Uniform Administrative Code.

At the time of issuance, this building was deemed to be in substantial compliance with fire, safety and structural provisions of the adopted building codes based upon periodic inspections of work during construction. This certificate of occupancy should not be relied upon as evidence that the construction is in actual compliance with all applicable building codes or that the construction meets the minimum standards of a specific industry.

2798 LOCHLEVEN WY

Situs Address

BRB2 2004011126

Building Permit Number

IRC SFD

Occupancy Group

IRC NS

Construction Type

DH

Zone Code

DEVELOPMENT HOLDING

Description

November 23, 2004
Date

Michael W. Bovee
Building Official

WEBB DEL COMMUNITIES INC
8 DEL WEBB CORP
11500 S EASTERN AVE
HENDERSON NV 890526447

POST IN A CONSPICUOUS PLACE

EXHIBIT “B”



KOELLER · NEBEKER · CARLSON · HALUCK LLP

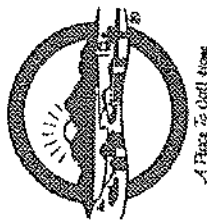
300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00047

#1/2

CITY OF HENDERSON
Department of Building & Safety
240 Water Street
Henderson, NV 89015
(702) 267-3620



CERTIFICATE OF OCCUPANCY

This certificate is issued to Section 309 of the 1997 Uniform Administrative Code.

At the time of issuance, this building was deemed to be in substantial compliance with fire, safety and structural provisions of the adopted building codes based upon periodic inspections of work during construction. This certificate of occupancy should not be relied upon as evidence that the construction is in actual compliance with all applicable building codes or that the construction meets the minimum standards of a specific industry.

2844 BLYTHSWOOD SQ

Situs Address

BRB2 2004011679

Building Permit Number

IRC SFD

Occupancy Group

IRC NS

Construction Type

RS-6

Zone Code

LOW DENSITY RES: 6 UNITS/AC

Description

December 6, 2004
Date

Michael W. Boyle
Building Official

WEBB DEL COMMUNITIES INC
% DEL WEBB CORP
11500 S EASTERN AVE
HENDERSON NV 890526447

POST IN A CONSPICUOUS PLACE

EXHIBIT "C"

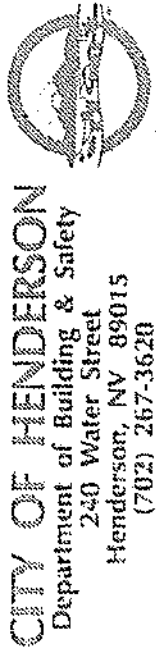


KOELLER NEBECKER CARLSON HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

#1
71



CERTIFICATE OF OCCUPANCY

This certificate is issued to Section 309 of the 1997 Uniform Administrative Code.

At the time of issuance, this building was deemed to be in substantial compliance with fire, safety and structural provisions of the adopted building codes based upon periodic inspections of work during construction. This certificate of occupancy should not be relied upon as evidence that the construction is in actual compliance with all applicable building codes or that the construction meets the minimum standards of a specific industry.

2018 CREATION OR

Site Address

SHR 2004008670

Building Permit Number

SEC SPD

Occupancy Group

SEC NS

Construction Type

PS-6

Zone Code

LOW DENSITY RES: 6 UNITS/AC

Description

November 2, 2004
Date

Michael W. Brown
Building Official

WEBB DEL COMMUNITIES INC
WEBB DEL CORP
11500 S EASTERN AVE
HENDERSON NV 890526437

POST IN A CONSPICUOUS PLACE

EXHIBIT “D”



KOELLER · NEBECKER · CARLSON · HALUCK LLP

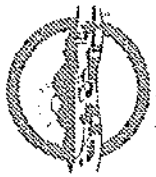
300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00051

See 1001

CITY OF HENDERSON
Department of Building & Safety
240 Water Street
Henderson, NV 89015
(702) 565-2332



CERTIFICATE OF OCCUPANCY

This certificate is issued to Section 309 of the 1997 Uniform Administrative Code.

At the time of issuance, this building was deemed to be in substantial compliance with fire, safety and structural provisions of the adopted building codes based upon periodic inspections of work during construction. This certificate of occupancy should not be relied upon as evidence that the construction is in actual compliance with all applicable building codes or that the construction meets the minimum standards of a specific industry.

2450 ANTRIM IRISH DR

Site Address

BR2 2004000055

IRC SED

IRC MS

MP

MASTER DEVELOPMENT PLAN OVER

Building Permit Number

Occupancy Group

Construction Type

Zone Code

Description

July 6, 2004

Date

Michael W. Burt

Building Official

WEBB DEL COMMUNITIES INC
4000 WEBB CORP
11500 S EASTERN AVE
HENDERSON NV 890506447

POST IN A CONSPICUOUS PLACE

EXHIBIT “E”



KOELLER : NEBEKER : CARLSON : HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101



SHINNICK, RYAN & RANSAVAGE P.C.

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December 30, 2014

VIA CERTIFIED MAIL - RETURN RECEIPT

DEL WEBB COMMUNITIES, INC.

8345 West Sunset Rd.
Las Vegas, NV 89113

Re: Montrose/Avondale/Portpatrick

To Whom It May Concern:

This firm represents Salisbury Family Trust and Judith C. Salisbury, the Trustee of 2798 Lochleven Way, Henderson, NV 89044. Pursuant to Nevada law including Chapter 40 and section 40.645 of Nevada Revised Statutes, we are providing this notice of claims for constructional defects and breaches of warranty in this home and the Montrose/Avondale/Portpatrick development. Enclosed with this notice is a CD of photographs and a photo log and listing for the defects or damages to be repaired, mediated, and/or litigated.

Under the above Nevada law, this notice has certain consequences, such as inspections, a prompt response, and pre-filing mediation. We suggest that mediator James K. Eckmann be agreed upon for the handling of this pre-filing mediation.

Please let this letter also serve as notice of your duty to preserve any and all evidence that may be relevant to the present claim pursuant to GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323 (1995), including, but not limited to, any and all documents, photographs, telephone logs, electronic recordings, and computer database(s). Please be advised that any pre-litigation destruction can constitute spoliation when litigation is reasonably foreseeable with attending sanctions. Aiello v. Kroger Co., no 2:08-cv-01729-HDM-RJJ, 2010 WL 3522259, at *2 (D. Nev. 2010), citing Performance Chevrolet Inc. v. Market Scan Information, 2006 WL 1042359 (D. Idaho 2006)); see also Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 747 P.2d 911 (1987). Please contact the undersigned as soon as possible in order to discuss these matters. Please direct any and all future correspondence concerning this matter to my attention at the above address.

Very truly yours,

SHINNICK, RYAN & RANSAVAGE P.C.

Duane E. Shinnick
Attorney at Law

DEBI GREER

DEC 31 2014

DES/ac
Enclosures: Disc and Photo Log
(00210866.DOC)

JA00054

Montrose/Avondale/Portpatrick
Salisbury, 2798 Lochleven Way

Photo 1: overview of 2798 Lochleven Way.

Photo 2: close up of address.

Photo 3: separation of the side splash at the vanity located in the hall bathroom.

Photo 4: crack in the molding along the top of the closet doors in bedroom two.

Photo 5: no water hammer arrestors on the valves in the laundry box.

Photo 6: cracked concrete panel on the backside of the garage.

Photo 7: visible tape joints in the ceiling of the great room.

Photo 8: separation of the backsplash behind the kitchen sink.

Photo 9: two cracked floor tiles in the kitchen.

Photo 10: additional separation of the backsplash in the kitchen.

Photo 11 & 12: staining around the shower enclosure located in the master bathroom.

Photo 13: additional staining on the backside of the shower enclosure.

Photo 14: loose fixture in the master shower enclosure.

Photo 15: loose water closet in the master bathroom.

Photo 16: overview of the water closet in the master bathroom.

Photo 17: drywall crack in the master bedroom.

Photo 18: drywall crack and separation at bottom left corner of window.

Photo 19: overview of the exterior back.

Photo 20: crack coming off the top left corner of the single hung window outside the master bathroom. This crack continues up to the stucco eave.

Photo 21: deterioration of the concrete footing beneath that fixed window outside the master bedroom.

Photo 22: stucco cracks coming off the top right corner of the second single hung window outside the master bedroom. Also stucco spalling along the right jamb.

Photo 23: vertical stucco cracks coming off the top of the roof at the exterior back outside the master bedroom.

Photo 24: overview of the exterior left looking from the exterior back.

Photo 25: vertical stucco crack at the exterior back left corner.

Photo 26: deterioration along the footing at the exterior left.

Photo 27: block wall separating at the back left corner.

Photo 28: additional separation of the block wall at the exterior back left corner.

Photo 29: shows where the block wall is off set at the expansion joint.

Photo 30: overview of the exterior right looking from the backside.

Photo 31: stucco cracks coming off all four corners of the XO window outside the dining area.

Photo 32: deterioration along the concrete footing at the exterior right.

Photo 33: deterioration of the concrete at the rear patio.

Photo 34: vertical stucco cracks coming off the head and a crack coming off the top right of the slider at the exterior back.

Photo 35: horizontal stucco cracks coming off the right side of the slider and gap along the right jamb.

Photo 36: visible stucco foam and lath above the flashing for the valley at the front courtyard.

Photo 37: discoloration of the stucco and vertical cracks in the foam plant on at the front courtyard.

Photo 38: stucco cracking and visible stucco foam for the column for the side gate at the courtyard.

Photo 39: overview of the exterior left.

Photo 40: additional visible stucco foam and unpainted flashing at the roof line above the garage.

Photo 41: deterioration of the concrete footing along the exterior left.

Photo 42: additional deterioration of the concrete footing at the exterior left.

Photo 43: the weep hole for the XO window outside bedroom two is blocked with stucco.

Photo 44: rust color discharge staining the stucco and the footing beneath that primary condensate line.

Photo 45: the weep hole for the XO window outside the kitchen is blocked with stucco.

Photo 46: separation of the weather stripping trim on the left side of the two car garage.

Photo 47: separation of the trim on the right side of the two car garage.

Photo 48: overview of the exterior right looking from the front.

Photo 49: crack in the footing beneath the vent outside the garage.

Photo 50: rusted nails sticking out of the footing at the exterior right.

Photo 51: crack in the footing along the exterior right.

Photo 52: deterioration of the concrete footing along the exterior right. There are also rusting nails in this area.

Photo 53: stucco crack in the eave along the exterior right.

Photo 54: vertical stucco cracks and stucco spalling in the field area along the exterior right.

Photo 55: overview of the three fixed windows outside the great room. The fixed window on the far left has cracks coming off all four corners and vertical cracks coming off the bottom of the window frame. There is a gap between the stucco and window frame along the right jamb. The fixed window in the center has cracks coming off all four corners and vertical cracks in the field area beneath this window. The third fixed window also has cracks coming off all four corners of the window.

Photo 56: multiple vertical stucco cracks in the field area beneath the three windows.

Photo 57: deterioration of the concrete footing beneath those window.

Homeowner Notes:

1. Cracks in the stucco along the whole exterior of the unit.
2. Cracks observed in the foundation along the exterior front.
3. The front yard landscaping was done by the Builder or the Builder's subcontractors.
4. The side or rear yard water ponds.
5. The masonry fences are cracked.

6. There was frequent tripping of the circuit breakers throughout the unit so they had to be replaced.
7. There are problems with the toilets in the master and guest bathrooms.
8. There are problems with leaking shower enclosure in the master bathroom.
9. The shower enclosures are plastic/fiberglass.
10. The water heater has been replaced.
11. Have had to replace the hot and cold valve in the guest bathroom shower.
12. Have had to recharge the refrigerant.
13. The front/guest bedroom is too hot during the summer.
14. The ceramic tile floors are cracked in the kitchen.
15. The carpet is loose in the great room and master closet.
16. The carpet is stained in the great room.
17. There are problems with the cabinet construction in the kitchen.
18. The countertops in the kitchen and bathrooms have separated from the backsplash.
19. The gate in the front has eroded the stucco on the pillar.
20. Past repairs include; water heater, all GFI's, added Freon to the AC, the unfinished stucco above the entryway, and had to remove trees by association due to back wall leaning.

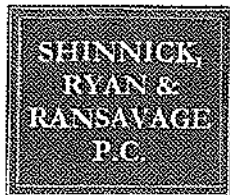
EXHIBIT “F”



KOELLER NEBECKER CARLSON HALUCK LLP

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December 22, 2014

VIA CERTIFIED MAIL - RETURN RECEIPT

DEL WEBB COMMUNITIES, INC.

8345 West Sunset Rd.

Las Vegas, NV 89113

Re: Portpatrick at Anthem Highlands

To Whom It May Concern:

This firm represents Ronald L. Turner, the owner of 2844 Blythswood Square, Henderson, NV 89044. Pursuant to Nevada law including Chapter 40 and section 40.645 of Nevada Revised Statutes, we are providing this notice of claims for constructional defects and breaches of warranty in this home and the Portpatrick at Anthem Highlands development. Enclosed with this notice is a CD of photographs and a photo log and listing for the defects or damages to be repaired, mediated, and/or litigated.

Under the above Nevada law, this notice has certain consequences, such as inspections, a prompt response, and pre-filing mediation. We suggest that mediator James K. Eckmann be agreed upon for the handling of this pre-filing mediation.

Please let this letter also serve as notice of your duty to preserve any and all evidence that may be relevant to the present claim pursuant to GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323 (1995), including, but not limited to, any and all documents, photographs, telephone logs, electronic recordings, and computer database(s). Please be advised that any pre-litigation destruction can constitute spoliation when litigation is reasonably foreseeable with attending sanctions. Aiello v. Kroger Co., no 2:08-cv-01729-HDM-RJJ, 2010 WL 3522259, at *2 (D. Nev. 2010), citing Performance Chevrolet Inc. v. Market Scan Information, 2006 WL 1042359 (D. Idaho 2006)); see also Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 747 P.2d 911 (1987). Please contact the undersigned as soon as possible in order to discuss these matters. Please direct any and all future correspondence concerning this matter to my attention at the above address.

Very truly yours,

SHINNICK, RYAN & RANSAVAGE P.C.

Duane E. Shinnick
Attorney at Law

DEBI GREEP

DEC 23 2014

DES/als

Enclosures: Disc and Photo Log

(00210257.DOC)

JA00060

**Portpatrick at Anthem Highlands
Turner, 2844 Blythwood Square**

Photo 1 (not numbered): overview of 2844 Blythwood Square.

Photo 2 (not numbered): close-up of address.

Photo 3: gap at the bottom right corner of the front door.

Photo 4: separation of the door casing at the top right corner of the front door.

Photo 5: separation of the right jamb sill of the XO window looking out towards the back in the great room.

Photo 6: separation along the head and left jamb of the slider going out to the backyard.

Photo 7 (not numbered): gap along the bottom of the backsplash behind the kitchen sink.

Photo 8: separation at the right jamb sill of the XO window looking out towards the exterior left in the kitchen nook. The vinyl window frame is actually cracked and broken at the bottom right corner.

Photo 9: no water hammer arrestors at the valves in the laundry box.

Photo 10: the GFI in the powder room tends to trip on a frequent basis. It will trip if you turn the light and the fan on at the same time.

Photo 11: no insulation on the supply lines for the water heater.

Notes: homeowner notes that the GFI in the kitchen tends to trip on a frequent basis.

Photo 12: drywall bead separating on the right side of the stairway.

Photo 13 (not numbered): separation at the right jamb sill of the XOX window looking out towards the back in the master bedroom.

Photo 14 (not numbered): additional separation at the left jamb sill of that same window.

Photo 15: separation at the right jamb sill of the XO window looking out towards the left in the upstairs hallway.

Photo 16: crack coming off the top right corner of the closet doors in upstairs bedroom two. This would be counting counterclockwise from the master bedroom.

Photo 17 (not numbered): separation at the right jamb sill of the XO window facing the street located in bedroom two.

Photo 18 (not numbered): stucco repair in the plant-on beneath the same window. It looks like some of the stucco was caving in and someone filled it in with putty.

Photo 19: separation of the right jamb sill of the XO window facing the street in upstairs bedroom three.

Photo 20 (not numbered): drywall bead beginning to separate at the bottom right corner of that same window.

Photo 21: cracked concrete panel at the front porch.

Photo 22: overview of the exterior right.

Photo 23: overview of the exterior back.

Photo 24: discoloration of the stucco and paint peeling off the flashing beneath the fixed window outside of the master bath.

Photo 25: discoloration of the stucco all along the exterior back.

Photo 26 (not numbered): paint overspray on the window frame outside of the master bedroom.

Photo 27: stucco cracks coming off the top left and bottom right corners of the window outside of the kitchen. There are horizontal stucco cracks coming off the left side of the window. There appears to have been a gap along the left jamb that someone filled in with some silicone caulking. There is also paint overspray on the window frame.

Photo 28: stucco cracking and discoloration outside of the kitchen.

Photo 29: the A/C disconnects are not properly labeled.

Photo 30: stucco cracks coming off the top corners of the slider at the exterior back.

Photo 31: stucco cracks coming off the bottom of the XO window outside of the great room.

Photo 32: two cracked concrete panels at the exterior back patio.

Photo 33: separation along the trim on the right side of the two-car garage.

Photo 34: separation along the left side of the two-car garage.

Photo 35: overview of the exterior left.

Photo 36: stucco cracks coming off the corners of the XO window at the exterior left. There is a gap between the stucco and the frame on the left side and paint overspray on the window frame. There is also discoloration of the stucco in the field area beneath this window.

Photo 37 (not numbered): crack in the stucco eave at the penetration for the secondary condensate line.

Photo 38: overview of the XO window at the exterior left. There is a gap between the stucco and the window frame on the right side and along the bottom. There are vertical stucco cracks coming off the bottom of the window frame and stucco/paint overspray on the window frame.

Homeowner notes:

1. Water stains on stucco at the rear of the unit.
2. Cracks or movement in front sidewalk or planters.

EXHIBIT “G”

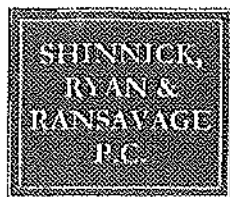


KOELLER : NEBEKER : CARLSON : HALLUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00064



SHINNICK, RYAN & RANSAVAGE P.C.

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December 2, 2014

VIA CERTIFIED MAIL – RETURN RECEIPT

DEL WEBB COMMUNITIES, INC.

8345 West Sunset Rd.

Las Vegas, NV 89113

Re: Portpatrick at Anthem Highlands

To Whom It May Concern:

This firm represents Robert M. Dykema, the owner of 2818 Craighton Dr., Henderson, NV 89044. Pursuant to Nevada law including Chapter 40 and section 40.645 of Nevada Revised Statutes, we are providing this notice of claims for constructional defects and breaches of warranty in this home and the Portpatrick at Anthem Highlands development. Enclosed with this notice is a CD of photographs and a photo log and listing for the defects or damages to be repaired, mediated, and/or litigated.

Under the above Nevada law, this notice has certain consequences, such as inspections, a prompt response, and pre-filing mediation. We suggest that mediator James K. Eckmann be agreed upon for the handling of this pre-filing mediation.

Please let this letter also serve as notice of your duty to preserve any and all evidence that may be relevant to the present claim pursuant to GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323 (1995), including, but not limited to, any and all documents, photographs, telephone logs, electronic recordings, and computer database(s). Please be advised that any pre-litigation destruction can constitute spoliation when litigation is reasonably foreseeable with attending sanctions. Aiello v. Kroger Co., no 2:08-cv-01729-HDM-RJJ, 2010 WL 3522259, at *2 (D. Nev. 2010), citing Performance Chevrolet Inc. v. Market Scan Information, 2006 WL 1042359 (D. Idaho 2006)); see also Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 747 P.2d 911 (1987). Please contact the undersigned as soon as possible in order to discuss these matters. Please direct any and all future correspondence concerning this matter to my attention at the above address.

Very truly yours,

SHINNICK, RYAN & RANSAVAGE P.C.

Duane E. Shinnick
Attorney at Law

DEBI GREER

DEC 03 2014

DES/ac

Enclosures: Disc and Photo Log

(00208074.DOC)

JA00065

**Portpatrick at Anthem Highlands
Dykema, 2818 Craigton Dr.**

Photo 1: overview of 2818 Craigton Dr.

Photo 2: close up of address.

Photo 3: exterior front left, bent vent frame.

Photo 4: exterior front, stucco crack at bottom left corner of garage door.

Photo 5: exterior front, weather stripping is separating at bottom right corner of garage door.

Photo 6: exterior front, bent weep screed at bottom right corner of garage door.

Photo 7: exterior front, stucco spalling at weep screed.

Photo 8: exterior front, stucco spalling above archway.

Photo 9: exterior front right, wall is uneven on left side of front door.

Photo 10: exterior front right, over pour of concrete at threshold for front door.

Photo 11: exterior front right, stucco crack in ceiling.

Photo 12: exterior back right, bent weep screed.

Photo 13: exterior back, gap between sliding glass door frame and stucco.

Photo 14: exterior back, over pour concrete at threshold to sliding glass door.

Photo 15: exterior back, gap between sliding glass door frame and stucco and over pour of concrete at threshold of sliding glass door.

Photo 16: exterior back, concrete crack at the back patio.

Photo 17: exterior back, concrete crack in back patio.

Photo 18: exterior back, penetration in stucco not sealed for hose bibb.

Photo 19 & 20: exterior back left, the AC disconnects are not sealed.

Photo 21: exterior back left, insulation missing for refrigerate line.

Photo 22: exterior back left, gap between window frame and stucco.

Photo 23: exterior back left, failed stucco repair.

Photo 24: exterior back left, gap between window frame and stucco.

Photo 25: exterior back, concrete crack in back patio.

Photo 26: exterior back, additional cracks in the concrete at the back patio.

Photo 27: garage, drywall crack in ceiling.

Photo 28: garage, drywall crack.

Photo 29: top of stairway, popping floor boards.

Photo 30: upstairs guest bathroom, drywall damage along plumbing side of bath tub.

Photo 31: master bathroom, water damage at bottom of shower enclosure.

Photo 32: master bathroom, rusted sink.

EXHIBIT “H”



KOELLER · NEBEKER · CARLSON · HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00068



SHINNICK, RYAN & RANSAVAGE P.C.

2881 BUSINESS PARK COURT, SUITE 210, LAS VEGAS, NEVADA 89128

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www.ssllplaw.com

July 8, 2014

VIA CERTIFIED MAIL - RETURN RECEIPT

Pulte Homes of Nevada
8345 West Sunset Rd., Suite 300
c/o B Llaughter
Las Vegas, NV 89113

Del Webb Communities, Inc.
8345 West Sunset Rd., Suite 300
Las Vegas, NV 89113

Re: Avondale

To Whom It May Concern:

This firm represents Takeshi Nakaya, the owner of 2450 Antrim Irish Dr., Henderson, NV 89044. Pursuant to Nevada law including Chapter 40 and section 40.645 of Nevada Revised Statutes, we are providing this notice of claims for constructional defects and breaches of warranty in this home and the Avondale development. Enclosed with this notice is a CD of photographs and a photo log and listing for the defects or damages to be repaired, mediated, and/or litigated.

Under the above Nevada law, this notice has certain consequences, such as inspections, a prompt response, and pre-filing mediation. We suggest that mediator James K. Eckmann be agreed upon for the handling of this pre-filing mediation.

Please let this letter also serve as notice of your duty to preserve any and all evidence that may be relevant to the present claim pursuant to GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323 (1995), including, but not limited to, any and all documents, photographs, telephone logs, electronic recordings, and computer database(s). Please be advised that any pre-litigation destruction can constitute spoliation when litigation is reasonably foreseeable with attending sanctions. Aiello v. Kroger Co., no 2:08-cv-01729-HDM-RJJ, 2010 WL 3522259, at *2 (D. Nev. 2010), citing Performance Chevrolet Inc. v. Market Scan Information, 2006 WL 1042359 (D. Idaho 2006)); see also Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 747 P.2d 911 (1987). Please contact the undersigned as soon as possible in order to discuss these matters. Please direct any and all future correspondence concerning this matter to my attention at the above address.

Very truly yours,

SHINNICK, RYAN & RANSAVAGE P.C.

Duane E. Shinnick
Attorney at Law

DEBI GREEN

JUL 09 2014

DES/als

Enclosures: Disc and Photo Log

(00189870.DOC)

JA00069

Avondale
Nakaya; 2450 Antrim Irish Dr.

Photo 1: overview of home at 2450 Antrim Irish Dr.

Photo 2: close up of address.

Photo 3: exterior front right, stucco crack at upper left corner of electrical meter.

Photo 4: exterior front, bent weep screed near bottom right corner of garage door.

Photo 5: exterior front, separation of weather stripping from stucco at bottom right corner of garage door.

Photo 6: exterior front, wide cracking control jointed at driveway.

Photo 7: exterior front, concrete spalling in driveway at bottom left corner of garage door.

Photo 8: exterior front, concrete crack in driveway.

Photo 9: exterior front, concrete spalling in driveway.

Photo 10: exterior front, stucco spalling on foam plant on below window this is near the right side of the single car garage door.

Photo 11: exterior front, gap between window frame and stucco this is near the right side of single car garage door.

Photo 12: courtyard, penetration in stucco not sealed for hose bib.

Photo 13: courtyard, stone veneer at gate has fallen off.

Photo 14 and 15: courtyard, cracks in footing at threshold to front door.

Photo 16: courtyard, damaged window frame and vinyl stops on window.

Photo 17: courtyard, stucco spalling on foam plant on below window.

Photo 18: courtyard, over spray of stucco on to window.

Photo 19: courtyard, gap between window frame and stucco.

Photo 20 and 21: exterior front, stucco cracks on right side of pot shelf.

Photo 22: exterior front, stucco crack in pot shelf.

Photo 23: exterior front, stucco spalling on pot shelf.

Photo 24-25: exterior front, stucco cracks on left side of pot shelf.

Photo 26: exterior front left, inadequate stucco repair.

Photo 27: exterior front left, stucco crack.

Photo 28: same description.

Photo 29 to 31: exterior front left, multiple vertical stucco cracks.

Photo 32: exterior back left, gap between window frame and stucco.

Photo 33: exterior back left, multiple stucco cracks at bottom left corner window.

Photo 34: exterior back left, vertical stucco crack.

Photo 35: exterior back left, gap between window frame and stucco and multiple stucco cracks at bottom right corner of window.

Photo 36: exterior back left, delamination of paint on foam plant on below window.

Photo 37: exterior back left, stucco crack below window.

Photo 38: exterior back left, gap between window frame and stucco and multiple stucco cracks at bottom left corner of window.

Photo 39: exterior back left, stucco crack.

Photo 40: exterior back left, bent weep screed.

Those 41 to 43: exterior back, efflorescence on block wall.

Photo 44: exterior back left, stairway cracking on block wall.

Photo 45: exterior back left at patio, crack and spalling concrete at footing at threshold to back door.

Photo 46: exterior back, stucco crack at bottom right corner of window.

Photo 47-48: exterior back right, cracks in masonry wall.

Photo 49: exterior back right, cracks in masonry wall.

Photo 50: exterior back right, stucco crack near bottom left corner of window. This is located behind the A/C unit.

Photo 51-52: exterior back right, A/C disconnects are not sealed.

Photo 53: exterior back right, gap between window frame and stucco.

Photo 54: kitchen, gap in back splash tiles and electrical out let.

Photo 55: floor tiles are not laid evenly.

Photo 56: dining room, moisture and cloudiness between dual pane windows.

Photo 57: bedroom 2, closet door does not slide properly.

Photo 58-bathroom 1 connected to bedroom 1, loose plumbing fixture in shower.

EXHIBIT “I”



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300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00072



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February 26, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT

DEL WEBB COMMUNITIES, INC.
8345 West Sunset Rd.
Las Vegas, NV 89113

Re: Montrose/Avondale/Portpatrick

To Whom It May Concern:

This firm represents Steven and Maria Moore, the owners of 2647 Dirleton Pl., Henderson, NV 89044. Pursuant to Nevada law including Chapter 40 and section 40.645 of Nevada Revised Statutes, we are providing this notice of claims for constructional defects and breaches of warranty in this home and the Montrose/Avondale/Portpatrick development. Enclosed with this notice is a CD of photographs and a photo log and listing for the defects or damages to be repaired, mediated, and/or litigated.

Under the above Nevada law, this notice has certain consequences, such as inspections, a prompt response, and pre-filing mediation. We suggest that mediator James K. Eckmann be agreed upon for the handling of this pre-filing mediation.

Please let this letter also serve as notice of your duty to preserve any and all evidence that may be relevant to the present claim pursuant to GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323 (1995), including, but not limited to, any and all documents, photographs, telephone logs, electronic recordings, and computer database(s). Please be advised that any pre-litigation destruction can constitute spoliation when litigation is reasonably foreseeable with attending sanctions. Aiello v. Kroger Co., no 2:08-cv-01729-HDM-RJJ, 2010 WL 3522259, at *2 (D. Nev. 2010), citing Performance Chevrolet Inc. v. Market Scan Information, 2006 WL 1042359 (D. Idaho 2006)); see also Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 747 P.2d 911 (1987). Please contact the undersigned as soon as possible in order to discuss these matters. Please direct any and all future correspondence concerning this matter to my attention at the above address.

Very truly yours,

SHINNICK, RYAN & RANSAVAGE P.C.

Duane E. Shinnick
Attorney at Law

DEBI C...

MAR 02 2015

DES/ac
Enclosures: Disc and Photo Log

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JA00073

**Montrose/Avondale/Portpatrick
Moore, 2647 Dirleton Pl.**

Photo 1: overview of 2647 Dirleton Pl.

Photo 2: close up of address.

Photo 3: cracked concrete panel at the front walkway.

Photo 4: no water hammer arrestors on the valves in the laundry box.

Photo 5 & 6: two cracked concrete panels on the backside of the garage.

Photo 7: drywall crack in the ceiling of the garage.

Photo 8: cracked concrete panel on the bottom right side of the two car garage. Someone has attempted to repair the crack by filling it in but the repair has failed.

Photo 9: additional cracked concrete panel on the front left side of the two car garage.

Photo 10 & 11: the water is leaking at the pressure control valve at the water main in the garage. There is rust color stain beneath it.

Photo 12: cracked tile in the hallway outside bedroom two.

Photo 13: cracked floor tile at the shower enclosure in the master bathroom.

Photo 14: staining around the joints in the shower enclosure in the master bathroom.

Photo 15: cracked floor tile at the threshold in the master bathroom.

Photo 16: moisture in between the panes on the operable panel of the slider leading out to the backyard.

Photo 17: additional separation at the right jamb of that slider.

Note: homeowner has had to replace a number of GFIs throughout the unit because they trip on a daily basis.

Photo 18: gap between the countertop and the backsplash in the kitchen.

Photo 19: overview of the exterior right looking from the backside.

Photo 20: discoloration and staining around the stucco eaves along the exterior right.

Photo 21: additional vertical stucco cracks and staining of the stucco eave at the exterior right.

Photo 22: deterioration of the concrete panel for the AC unit.

Photo 23: rust color discharge coming out of the primary condensate line which is staining the stucco and ground beneath it.

Photo 24: overview of the fixed window at the exterior right. Stucco cracks coming off all four corners of the window and gap along the right and left jambs.

Photo 25: additional staining in the eaves and vertical crack by the secondary condensate line.

Photo 26: overview of the fixed window outside the great room. The weep hole at the bottom left corner is blocked with stucco and a gap along the right jamb. Stucco cracks coming off the top left and bottom right corners.

Photo 27: additional staining and cracking of the stucco at the eaves above those two fixed windows.

Photo 28: number not used.

Photo 29: efflorescence and staining along the block wall at the exterior back.

Photo 30: vertical stucco crack at the eave at the exterior back right side.

Photo 31: cracking and holes in the footing at the slider.

Photo 32: additional cracking and holes in the footing at the slider.

Photo 33: stucco cracks coming off the top corners of the slider.

Photo 34: stucco cracks outside the master bedroom.

Photo 35: discoloration of the stucco around the fixed window outside the master bedroom. Additional cracks coming off the bottom corners and stucco spalling within those cracks.

Photo 36: overview of the single hung window outside the master bedroom. The weep hole at the bottom right corner is blocked with stucco and cracks coming off the top right and bottom right corner. Also stucco spalling on the side of that window.

Photo 37: deterioration along the base of the block wall at the exterior back.

Photo 38: overview of the exterior back.

Photo 39: overview of the exterior left looking from the backside.

Photo 40: discoloration of the stucco along the eaves at the exterior left.

Photo 41: vertical stucco cracks in the field area outside the master bathroom.

Photo 42: overview of the block window outside the master bathroom. Cracks coming off the corners and gap along the left jamb.

Photo 43: cracking around the access panel beneath that window.

Photo 44: deterioration of the footing at the exterior left.

Photo 45: overview of the XO window outside bedroom two. Cracks coming off all four corners and gap along the left jamb. There is stucco spalling within those cracks. Also the weep hole at the bottom right corner is blocked with stucco.

Photo 46: overview of the XO window outside bedroom one. Stucco cracks coming off the four corners and the cracks coming off the bottom corners run down to the weep screed. Also gaps along the right jamb.

Photo 47: additional deterioration of the concrete footing beneath those windows.

Photo 48: the expansive material is coming out of the block wall at the exterior back.

Photo 49: deterioration of the concrete footing along the front courtyard.

Photo 50: deterioration of the footing at the column on the far right of the courtyard.

Photo 51: stucco cracking and visible stucco foam at the top of that column.

Photo 52: discoloration and possible staining along the eaves at the exterior right.

Photo 53: overview of the fixed window at the exterior right. Stucco cracks coming off all four corners of the window.

Photo 54: visible stucco foam and lath on the top of those wall of the courtyard at the exterior right.

Photo 55: additional visible stucco foam and lath on the top of those wall of the courtyard at the exterior right.

Photo 56: multiple cracks outside the two car garage.

Photo 57: horizontal stucco cracking to the left of the two car garage.

Photo 58: vertical stucco cracking at the exterior front left corner.

Photo 59: deterioration of the concrete footing at the exterior left.

Photo 60: additional cracking in the eaves at the exterior left.

Photo 61: stucco cracks coming off the electrical panel and other access panels at the exterior left.

Photo 62: cracking around the garage vent at the exterior left.

Photo 63: vertical stucco cracks in the field area at the exterior left.

Photo 64: additional deterioration of the concrete footing at the exterior left.

EXHIBIT “J”



KOELLER | NEBEKER | CARLSON | HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00078

A.P.N.: 191-24-611-086
File No: 116-2476349 (ST)
R.P.T.T.: \$2,014.50

Inst #: 20141224-0001421
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$2014.50 Ex: #
12/24/2014 08:59:46 AM
Receipt #: 2282393
Requestor:
FIRST AMERICAN TITLE PASEO
Recorded By: KRISM Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded Mail To: Mail Tax Statements To:
Shirley A. Banks
2450 Antrim Irish Drive
Henderson, NV 89044

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Takeshi Nakaya, Trustee of the Takeshi Nakaya Revocable Trust dated July 10, 2014

do(es) hereby *GRANT, BARGAIN and SELL* to

Shirley A. Banks, an unmarried woman

the real property situate in the County of Clark, State of Nevada, described as follows:

PARCEL I:

LOT ONE HUNDRED (100) IN BLOCK SIX (6) OF ANTHEM HIGHLANDS UNIT 3, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 114, OF PLATS, PAGE 42, AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED JANUARY 26, 2007 IN BOOK 20070126 AS DOCUMENT NO. 04598 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

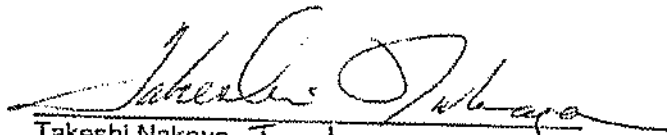
A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON ELEMENT LOTS AS SHOWN ON THE MAP REFERENCED TO ABOVE, AND AS FURTHER SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ANTHEM HIGHLANDS, RECORDED JULY 25, 2003 IN BOOK 20030725 AS DOCUMENT NO. 01651 OF OFFICIAL RECORDS, AND AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

Subject to

1. All general and special taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.


TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: 12/01/2014

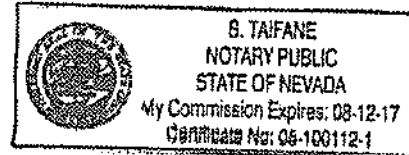

Takeshi Nakaya, Trustee

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on
December 18, 2014 by
Takeshi Nakaya.



Notary Public
(My commission expires: 8/12/2017)



This Notary Acknowledgement is attached to that certain Grant, Bargain Sale Deed dated
12/15/2014 under Escrow No. 116-2476349

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 191-24-611-086
b) _____
c) _____
d) _____

2. Type of Property

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a) Total Value/Sales Price of Property: \$395,000.00
b) Deed in Lieu of Foreclosure Only (value of (\$))
c) Transfer Tax Value: \$395,000.00
d) Real Property Transfer Tax Due: \$2,014.50

4. If Exemption Claimed:

- a. Transfer Tax Exemption, per 375.090, Section: _____
b. Explain reason for exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: [Signature]
Signature: _____

Capacity: Agent
Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Takeshi Nakaya Revocable Trust
Print Name: dated July 10, 2014
Address: 2467 Antrim Irish Drive
City: Henderson
State: NV Zip: 89044

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Shirley A. Banks
Address: 2450 Antrim Irish Drive
City: Henderson
State: NV Zip: 89044

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

First American Title Insurance
Print Name: Company
Address: 2500 Paseo Verde Parkway, Suite 120
City: Henderson

File Number: 116-2476349 ST/ST
State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT “K”



KOELLER | NEBEKER | CARLSON | HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00083

Inst #: 20150128-0003244
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$1111.80 Ex: #
01/28/2015 02:22:27 PM
Receipt #: 2295825
Requestor:
LAWYERS TITLE OF NEVADA - R
Recorded By: ANI Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN:191-24-310-014
ESCROW NO: 03009770-300-CQ2
WHEN RECORDED MAIL TO and
MAIL TAX STATEMENT TO:

Hsiao-Wei Chen
11445 Miro Circle
San Diego, CA 92131

GRANT, BARGAIN, SALE DEED

R.P.T.T. \$1,111.80

THIS INDENTURE WITNESSETH: That

Dionisio G. Ong, a married man as his sole and separate property

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby
acknowledged, do(es) hereby Grant, Bargain, Sell and Convey to

Hsiao-Wei Chen, a single man

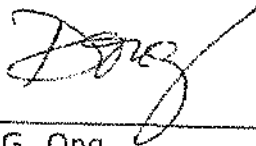
all that real property situated in the County of Clark, State of Nevada,
described as follows:

For legal description of the real property, see Exhibit A attached hereto
and made a part hereof.

SUBJECT TO: 1. Taxes for the fiscal year 2014 - 2015
2. Rights of Way, reservations, restrictions, easements,
and conditions of record.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand this 20 day of January, 2015.



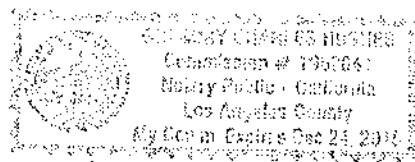
Dionisio G. Ong

~~California~~
STATE OF ~~NEVADA~~
COUNTY OF Los Angeles

} ss:

On 1-20-2015, personally appeared before me, a Notary Public in and for said County and State, Dionisio G. Ong, who acknowledged to me that he executed the same.

WITNESS my hand and official seal.



Gregory Charles Hughes
NOTARY PUBLIC in and for said County and State.
Los Angeles California

Gregory Charles Hughes
#1962041
Exp. 12/24/2015

Exhibit "A"

LOT FOURTEEN (14) IN BLOCK ONE (1) OF ANTHEM HIGHLANDS UNIT 5 AS SHOWN BY MAP THEREOF ON FILE IN BOOK 116 OF PLATS, PAGE 8, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)

- a. 191-24-310-014
b. _____
c. _____
d. _____

2. Type of Property:

- a. ☐ Vacant Land b. ☒ Single Fam Res
c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
g. ☐ Agricultural h. ☐ Mobile Home
☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY	
Book: _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a. Total Value/Sales Price of Property:

\$218,000.00

b. Deed in Lieu of Foreclosure Only (value of property)

(\$ _____)

c. Transfer Tax Value:

\$218,000.00

d. Real Property Transfer Tax Due:

\$1,111.80

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity Grantor/Seller

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Dionisio G. Ong
Address: 513 N. Bronson Avenue
City/State/Zip: Los Angeles, CA 90004

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Hsiao-Wel Chen
Address: 11445 Miro Circle
City/State/Zip: San Diego, CA 92131

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Lawyers Title of Nevada
777 N. Rainbow Blvd. #100
Las Vegas, NV 89107

Escrow #: 3009770-300-CQ2
Escrow Officer: Christy Quedding

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Michele W. Shafe, Assessor

PARCEL OWNERSHIP HISTORY

APPLICABLE DESCRIPTION
ANDREWS HIGHLANDS UNIT 5 PLAT BOOK 116 PAGE 8 LOT 14 BLOCK 1

CURRENT PARCEL NO.	CURRENT OWNER	%	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DIST	EST SIZE	COMMENTS
191-24-310-014	CHEN HSIAG-WEI		20150128-03244	1/28/2015	NS	516	.09 AC	

PARCEL NO.	PREVIOUS OWNER(S)	%	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DIST	EST SIZE	COMMENTS
191-24-310-014	ONG DIOMISSO O		20050127-02122	01/27/2005	NS	516	SUBDIVIDED LOT	
191-24-310-014	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	SUBDIVIDED LOT	
191-24-701-004	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	22.57 AC	A-20070126-4599
191-24-701-003	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	92.75 AC	
191-24-701-002	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	121.76 AC	
191-24-701-001	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	154.34 AC	.01A CDR
191-24-801-003	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	207.63 AC	
191-24-801-002	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	232.97 AC	.07A CDR
191-24-801-001	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	305.29 AC	
191-24-000-008	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	377.33 AC	
190-18-701-003	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	873.68 AC	+5.62A CDR; 7.32A TO RD 20030213-1299
190-18-701-002	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	877.19 AC	3.31A TO RD 20021218-2017
190-18-701-001	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	964.13 AC	.03A CDR PM 102-32
190-18-301-001	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	1344.35 AC	5.18A TO RD 20011204-1139
190-18-201-005	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	1490.41 AC	
190-18-201-004	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	516	1515.60 AC	16.44A TO RD 20010417-979
190-18-201-003	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	507	1536.41 AC	2.60A TO RD 20010403-1143
190-18-201-002	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	507	1543.36 AC	.01A CDR
191-13-101-004	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	507	1728.96 AC	
191-13-101-003	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	507	1737.56 AC	4 FR 191-24-000-2,4,5; PT- 20080309-770; +27.64C
191-13-101-002	WEBB DEL COMMUNITIES INC		19980527-01006	05/27/1998	NS	507	1709.92 AC	FR 190-18-201-001, 191-13-101- 002, 14-000-003

Note: Only documents from September 15, 1999 through present are available for viewing.

NOTE: THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED
AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.

EXHIBIT “L”




KOELLER | NEBEKER | CARLSON | HALUCK LLP

300 South Fourth Street, Suite 500

Las Vegas, NV 89101

JA00089



CLERK OF THE COURT

1 **FAC**
2 Duane E. Shinnick, Esq.
3 Bar No. 7176
4 Courtney K. Lee, Esq.
5 Bar No. 8154
6 SHINNICK, RYAN & RANSAVAGE P.C.
7 4001 Meadows Lane
8 Las Vegas, NV 89107
9 Tel. (702) 631-8014
10 Fax (702) 631-8024
11 dshinnick@sslplaw.com
12 clcc@sslplaw.com

13 Attorneys for Plaintiffs

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28
DISTRICT COURT
CLARK COUNTY, NEVADA

12 SCOTT PHILLIPS, individually; TEODORO H. and) CASE NO. A-15-714632-D
13 ROSA-LINDA R. BAUTISTA, individually;)
14 BROWER FAMILY TRUST, individually;) DEPT. NO. XXII
15 CHARLES COLUCCI, individually; HARRY E.)
16 CROSBY REVOCABLE TRUST; DR. KAREN) PLAINTIFF'S FIRST AMENDED
17 FELDMAN, individually; COLLEEN T. SAN) CONSTRUCTION DEFECT COMPLAINT
18 FILIPPO, individually; THE GILLES FAMILY)
19 LIVING TRUST, DATED JANUARY 14, 2010;)
20 DAVID M. GORDON, individually; CHARLES and)
21 MARIA HEARN, individually; THOMAS C. and)
22 KATHLEEN A. JOHNSON, individually; AARON)
23 KNUDSON, individually; LORRAINE JOHNSON,)
24 individually; JOLEAN JONES, individually;)
25 YOUNG KYOON KIM and INOK KIM,)
26 individually; MIKE and TALIA LAQUITARA,)
27 individually; JAMES and ANDRONICKIE LAUTH,)
28 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.)

{09219975.DOC}

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.

[00219975.DOC]

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

(00219275.DOC)

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

{80219975.DOC}

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

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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

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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.
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1 **THIRD CAUSE OF ACTION**

2 **(Negligence and Negligence per se**

3 **As to All Defendants, and Does 1 through 500)**

4
5 25. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24 of the Complaint
6 as though fully set forth herein.

7 26. Plaintiffs allege that Defendants, and each of them, knew or should have known that if the
8 subject structure and subject premises were not properly or adequately designed, engineered,
9 marketed, supervised and/or constructed, that the owners and users would be substantially damaged
10 thereby, and that the subject structures would be defective and not of merchantable quality.

11
12 27. Plaintiffs allege that the Defendants, and each of them, named herein were under a duty to
13 exercise ordinary care to avoid reasonably foreseeable injury to users and purchasers of the subject
14 premises and structures, and knew or should have foreseen with reasonable certainty that purchasers
15 and/or users would suffer the monetary damages set forth herein, if said Defendants, and each of
16 them, failed to perform their duty to cause the subject premises and subject structures to be designed,
17 engineered and completed in a proper and workmanlike manner and fashion.

18
19 28. Said Defendants, and each of them, breached their duty owed to Plaintiffs, failed and
20 neglected to perform the work, labor and services properly or adequately in that each said Defendants
21 so negligently, carelessly, recklessly and in an unworkmanlike manner designed, constructed and
22 inspected the subject property and performed the aforesaid work, labor and/or services, such that the
23 subject premises and subject structures as described herein were designed, engineered and/or
24 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner, thereby
25 breaching the duty owed to Plaintiffs. Further, Defendants' sellers knew or should have known that
26 the premises were constructed in an unworkmanlike manner.

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1 29. Defendants' negligence alleged above includes the failure to meet the applicable building
2 codes and ordinances which were in effect. Plaintiffs' members and their predecessors in interest
3 were members of the class of persons which the building codes and ordinances were designed to
4 protect. Such violations are negligence per se on the part of Defendants, and each of them.
5

6 30. As a direct and proximate result of the foregoing negligence and negligence per se,
7 carelessness and unworkmanlike conduct, actions and/or omissions by said Defendants, and each of
8 them, Plaintiffs have suffered damages in an amount in excess of \$10,000.00. Plaintiffs are presently
9 unaware of the precise amount of damages needed in order to correct the defective conditions of the
10 subject property and subject structures, but will establish the same at trial according to proof.
11

12 31. Plaintiffs are also entitled to the damages set forth at NRS 40.655.
13

14 FOURTH CAUSE OF ACTION

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

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

18 33. All Defendants each impliedly warranted that said homes would be of good and
19 merchantable quality, would be habitable, and would be completed in a workmanlike manner.
20 Further, said Defendants impliedly warranted the quality of construction of the homes and common
21 areas as provided in NRS 116.4114.
22

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

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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 & RANSVAGE P.C.
4001 Meadows Lane
Las Vegas, NV 89107

Attorneys for Plaintiffs


CLERK OF THE COURT

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Attorneys for Plaintiffs

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; 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,

CASE NO. A-15-714632-D
DEPT. NO. XXII
PLAINTIFFS' LIMITED OPPOSITION TO DEL WEBB COMMUNITIES INC.'S MOTION TO DISMISS
Hearing Date: June 23, 2015
Hearing Time: 10:30 a.m.

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

v.

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

Defendants.

1 TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT PLAINTIFFS SCOTT PHILLIPS et al. hereby file this
3 Limited Opposition ("Opposition") to Defendant Del Webb Communities, Inc.'s ("Del Webb") Motion
4 to Dismiss ("Motion"). The hearing is set for June 23, 2015 at 10:30 a.m. in Department XXII of the
5 District Court of Clark County, Nevada.
6

7 This Opposition is based upon NRCP 12, NRCP 56, NRS 40.600 et seq., NRS 11.200 et seq., the
8 following Memorandum of Points and Authorities, Affidavit of Courtney Lee, Esq, exhibit(s) attached
9 hereto, any pleadings and exhibits already on file, and any oral argument at the hearing of the Motion.
10

11 DATED this 5th day of June, 2015.

12 Respectfully Submitted,

13 SHINNICK, RYAN & RANSAVAGE P.C.

14
15 By: 

16 Duane E. Shinnick, Esq.

17 Bar No. 7176

18 Courtney K. Lee, Esq.

19 Bar No. 8154

20 4001 Meadows Lane

21 Las Vegas, NV 89107

22 Attorneys for Plaintiffs
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **BACKGROUND**

4 This is a construction defect case involving sixty-two (62) single family homes in the Anthem
5 Highlands development located in Henderson, Nevada ("Subject Homes"). The development consists of
6 homes that were constructed and sold by Defendant Del Webb from 2005-2006. The Chapter 40 notices
7 were sent from Plaintiffs to Del Webb beginning January 2014. See Del Webb's Motion, Exhibits "E",
8 "F", "G", and "H". Plaintiffs filed their original construction defect Complaint on February 27, 2015.
9 Plaintiffs filed their First Amended Complaint on March 6, 2015.
10

11 Del Webb seeks to dismiss six (6) sets of Plaintiffs based upon the application of the statutes of
12 repose for four (4) sets of Plaintiffs Salisbury Family Trust ("Salisbury Trust"), Ronald Turner
13 ("Turner"), Robert Dykema ("Dykema") and Takeshi Nakaya ("Nakaya").
14

15 Next, Del Webb seeks dismissal for Plaintiffs Dionisio Ong ("Ong") and Nakaya because they
16 sold their Subject Homes prior to the initial complaint being filed and lack standing. Plaintiffs'
17 Opposition to Del Webb's Motion is limited as Plaintiffs do not oppose the dismissals of Plaintiffs Ong
18 and Nakaya, but not because Plaintiffs Ong and Nakaya are former homeowners.
19

20 Lastly, Del Webb asserts that the claims of Plaintiffs Steven and Maria Moore ("Moore") are
21 precluded because the Plaintiffs Moore have failed to comply with the verification requirement and
22 specificity requirements of NRS 40.600 et seq.
23

24 Del Webb has not demonstrated, based on the foregoing alleged facts, and in its Motion
25 grounds to dismiss for failing to state a claim upon which relief may be granted or that there are no
26 issues of material fact that remain.
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II.

LEGAL STANDARDS

Del Webb brings the subject Motion pursuant to NRCP 12(b)(5). NRCP 12(b)(5) provides a defense to a pleading where there is a "failure to state a claim upon which relief can be granted." For the purposes of a 12(b)(5) motion the court must accept the charge of the complaint as true. Hansen-Neiderhauser, Inc. v. The Nevada State Tax Commission, 81 Nev. 307, 312 (1965); Professional & Business Men's Life Ins. Co. v. Bankers Life Co., 163 F.Supp. 274 (D.C. Mont. 1958).

Further, on a 12(b)(5) motion, if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment...and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion." NRCP 12(b).

Because the instant Motion is dependent on matters outside the pleadings, namely, the City of Henderson's Certificates of Occupancy, Clark County Recorder's Notice of Completion records, and Plaintiffs' NRS Chapter 40 letters/notices, etc., this Motion would need to be considered as a Motion for Summary Judgment under NRCP 56.

Pursuant to NRCP 56(c):

Motions for summary judgment and responses thereto shall include a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies.

Summary judgment is rendered if a moving party "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . An order granting summary judgment shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment." NRCP 56(c); see Borgerson v. Scanlon, 117 Nev. 216, 19 P.3d 236 (2001); see also Salas v. Allstate Rent-A-Car, Inc., 116 Nev. 1165, 14 P.3d 511 (2000). Trial judges are

1 to exercise great caution in granting summary judgment. Posadas v. City of Reno, 109 Nev. 448, 851
2 P.2d 438 (1993); Montgomery v. Ponderosa Constr., Inc., 101 Nev. 416, 705 P.2d 652 (1985). The
3 burden of establishing the non-existence of any genuine issues of fact is on the movant. Pacific Pools
4 Construction Co. v. McClain's Concrete, Inc., 101 Nev. 557, 559, 706 P.2d 849, 851 (1985). In
5 determining whether a genuine dispute exists, a district court does not make credibility determinations;
6 rather, the non-moving party is entitled to have all the evidence and all reasonable inferences accepted
7 as true. See Wiltsie v. Baby Grand Corp., 105 Nev. 291, 292, 774 P.2d 432, 433 (1989); see also
8 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505 (1986).

9
10
11 Del Webb cannot demonstrate that Plaintiffs have failed to state a claim for which relief can be
12 granted or that no material issues are in dispute. The running of the statute of repose and the start
13 date(s) for such calculation(s), or when the statute of repose are to be tolled were completely
14 misrepresented and/or omitted by Del Webb in its Motion.

15
16 NRS 40.668(2) provides in relevant part: "All statutes of limitations or repose applicable to a
17 claim governed by this section are tolled from the time the claimant notifies a contractor hired by the
18 subdivider or master developer of the claim." Plaintiffs' claims were tolled from the date that each
19 Plaintiff served his/her respective Chapter 40 notice to Del Webb. See Del Webb's Motion, Exhibits
20 "E", "F", "G", and "H"; see NRS 40.668; NRS 40.695.

21
22 NRCP 17(a) provides in relevant part, that "[e]very action shall be prosecuted in the name of the
23 real party in interest." The purpose of the rule is to allow the defendant all evidence and defenses
24 against the real party in interest, and to protect him against another suit on the same matter brought by
25 the real party in interest. See NAD, Inc. v. Eighth Judicial Dist. Ct., 115 Nev. 71, 76 (1999); Painter v.
26 Anderson, 96 Nev. 941, 943 (1980). This rule is intended to provide the defendant a fair trial; not to
27 allow the defendant to avoid trial altogether. NRS 40.610 provides, in relevant part, that "claimant"
28

1 means "1. An owner of a residence or appurtenance; . . . 3. Each owner of a residence or appurtenance
2 to whom a notice applies pursuant to subsection 4 of NRS 40.465." It is clear that the Plaintiffs who
3 Defendant seeks to dismiss were once owners of the Subject Homes when the Chapter 40 notices were
4 served. See Del Webb's Motion, Exhibits "H", and "J". However, Plaintiffs do not oppose the
5 dismissals of the former owners Nakaya and Ong, but not because they were former owners.
6

7 **III.**

8 **ARGUMENT**

9 **A. PLAINTIFFS', SALISBURY TRUST, TURNER, DYKEMA AND NAKAYA, 10 CLAIMS ARE ALL WITHIN THE STATUTE OF REPOSE/LIMITATIONS**

11 Del Webb argues that the "Plaintiffs Salisbury, Turner, Dykema and Nakaya are precluded by
12 operation of statute of repose." Del Webb's Motion, page 8, lines 15-16. Further, Del Webb contends
13 that whether the "8-year or 10-year period of repose applies," Plaintiffs "did not serve Del Webb with a
14 Chapter 40 Notice until more than 10 years after the date of substantial completions of their respective
15 properties." Del Webb's Motion, page 8, lines 16-19. However, Del Webb has miscalculated the running
16 of time for the statute of repose by misrepresenting and/or omitting the correct statutory definition of
17 "substantial completion". In addition, most of the Subject Homes have more than one applicable statute
18 of repose or limitation period depending on the nature of the particular list of defects. Del Webb has
19 failed to provide any competent or specific evidence that the defects were beyond the limitations period
20 of a latent defect, which as applied would be 8 years plus 2 years. See NRS 11.204. Moreover, NRS
21 11.203(2) states in relevant part that "if an injury occurs in the 10th year after the substantial completion
22 of such an improvement, an action for damages for injury to property or person, . . . damages for breach
23 of contract may be commenced within 2 years after the date of such injury. . . but in no event may an
24 action be commenced more than 12 years after the substantial completion of the improvement." Plaintiff
25 Salisbury has testified that she has discovered certain defects on or about the 10th years after substantial
26
27
28

1 completion of her home located at 2798 Lochleven Way, and Plaintiff Dykema produced repair receipts
2 in the 10th year after substantial completion of his home located at 2818 Craigton Drive. See true and
3 correct copies of Declaration of Plaintiff Judith Salisbury, as trustee of the Salisbury Family Trust,
4 including repair receipts for the property located at 2798 Lochleven Way, and Robert Dykema's repair
5 receipts for the property located at 2818 Craigton Drive attached hereto collectively as Exhibit "1".
6 Plaintiffs may apply the 12 year statute of limitations.
7

8 NRS 11.2055 provides that "the date of substantial completion of an improvement to real
9 property shall be deemed to be the date on which: (a) *The final building inspection* of the improvement
10 is conducted; (b) A *notice of completion* is issued for the improvement; or (c) A *certificate of*
11 *occupancy* is issued for the improvement, *whichever occurs later.*" (Emphasis added). It is clear that the
12 legislative intent was to utilize the last possible date to start the running of the statute of repose from the
13 later of the three possible starting dates – final building inspection, notice of completion, or certificate of
14 occupancy. In the present matter, Del Webb has only provided the certificates of occupancy for the
15 Subject Homes of Salisbury Trust, Turner, Dykema, and Nakaya. See Del Webb's Motion, Exhibits
16 "A", "B", "C", and "D". However, the certificates of occupancy are not the latest dates from which the
17 statute of repose should apply in the present matter. In the case at bar, the latest date would be the dates
18 the notices of completions ("NOC") were recorded, not the dates of the certificates of occupancy. See
19 true and correct copies of the Clark County Recorder's Office's recorded notices of completion for
20 (1) Salisbury Trust, 2798 Lochleven Way attached hereto as Exhibit "2"; (2) Turner, 2844 Blythswood
21 Square attached hereto as Exhibit "3", (3) Dykema, 2818 Craigton Drive attached hereto as Exhibit "4";
22 and (4) Nakaya, 2450 Antrim Irish Drive attached hereto as Exhibit "5"; NRS 11.2055.
23
24
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27 Pursuant to NRS 40.668(2), "All statutes of limitation or repose applicable to a claim governed
28 by this section are tolled from the time the claimant notifies a contractor hired by the subdivider or

1 master developer of the claim . . ." The Chapter 40 notices sent by Plaintiffs to Del Webb tolled the
2 statute of repose/limitations. See NRS 40.668; NRS 40.695; Del Webb's Motion, Exhibits "E", "F",
3 "G", and "H".

4
5 In addition, whether the defects were patent or discovered are questions of material fact that
6 would determine when the statute of limitation would start to run. Further, the characterization of each
7 of the defects would be determined by the experts.

8
9 In any event, if there is a substantial question of which of two (or more) conflicting statute of
10 limitation periods apply, the court should apply the longer. Guam Scottish Rite Bodies v. Flores, 486
11 F.2d 748, 750 (9th Cir. 1973) (applying longer statute of limitations when a claim had features of both an
12 action in trespass and an action in ejectment); Hughes v. Reed, 46 F.2d 435, 440 (10th Cir. 1931)
13 ("Where doubt exists as to the nature of the action, courts lean toward the application of the longer
14 period of limitations."). Applying the longest statute of limitations period of 12 years, all of Plaintiffs'
15 Subject Homes would be well within such limitations periods. Even the application of the shorter period
16 of 10 years, with tolling pursuant to NRS 40.668, all Subject Homes would still be within the statute of
17 repose or limitations periods. See Plaintiffs' Chart, which lists the name of the Plaintiff, the Plaintiff's
18 address, the date the Chapter 40 notice was served, which tolled the statute of repose/limitation pursuant
19 to NRS 40.668 and NRS 40.695, the date of substantial completion of the Subject Homes according to
20 NRS 11.2055, (it should be noted that the recorded date is utilized as opposed to the date the notice of
21 completion was signed, because the recorded date is the latest date that all parties are deemed to have
22 notice), the bar by 10 year statute of repose and the date of the 12 year statute of limitation, as follows:
23
24

25 ///

26 ///

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Plaintiff	Address	Chapter 40 notice served/tolled	Date of Substantial Completion per NRS 11.2055	10 year statute of repose bar	12 year statute of limitation bar
1. Salisbury Trust	2798 Lochleven Way	12/30/14	Recorded NOC 1/7/05	1/7/15	1/7/17
2. Turner	2844 Blythwood Square	12/22/14	Recorded NOC 12/23/04	12/23/14	12/23/16
3. Dykema	2818 Craigton Drive	12/2/14	Recorded NOC 12/8/04	12/8/14	12/8/16
4. Nakaya*	2450 Antrim Irish Drive	7/8/14	Recorded NOC 7/22/04	7/22/14	7/22/16

* The reason that Plaintiffs do not oppose the dismissal of Plaintiff Nakaya is not because his claims are barred by the statute of repose/limitation, but because he no longer wishes to be involved in the litigation. See Arguments, Section B., infra.

B. PLAINTIFFS DO NOT OPPOSE THE DISMISSALS OF FORMER HOMEOWNERS ONG AND NAKAYA

NRS 40.610 provides, in relevant part, that "claimant" means "1. An owner of a residence or appurtenance; . . . 3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of NRS 40.645." It is clear that the Plaintiffs Nakaya, and Ong were once owners of the Subject Homes when the Chapter 40 notices were sent. See Del Webb's Motion, Exhibits "J" and "K". Therefore, former homeowners were still within the defined term of "claimants" under NRS 40.610 as they were owners of a residence to whom a notice applied. It should be made clear that Plaintiffs are not divested of rights to pursue claims for construction defects solely because of transfer of ownership of the Subject Home(s). Former homeowners are still entitled to recover under NRS 40.655, including past out-of-pocket repair expenses, etc.

Notwithstanding, in the present matter, Plaintiffs do not oppose the dismissals of former owner Plaintiffs Nakaya and Ong, as they do not appear to have any past out of pocket repair expenses and/or no longer wish to be involved in the litigation.

1 **C. PLAINTIFFS MOORE HAVE COMPLIED WITH NRS 40.645**

2 Del Webb states that the Moore's February 26, 2015 notice did not include the necessary
3 verification under the new amendments to NRS 40.600 et seq. See Del Webb's Motion, page 11, lines
4 11-17; Exhibit "I". However, Plaintiffs have amended Plaintiff Moore's Chapter 40 notice to include the
5 verification. See a true and correct copy of the Amended Chapter 40 notice for Plaintiffs Moore, owners
6 of 2647 Dirleton Place attached hereto as Exhibit "6".
7

8 Del Webb next argues that the Moore notice must identify "in specific detail each defect, damage
9 and injury to each residence or appurtenance that is subject of the claim, including, without limitation,
10 the exact location of each such defect, damage and injury." Del Webb's Motion, page 11, lines 18-21,
11 citing NRS 40.645(2)(d). However, Plaintiffs have amended Plaintiffs Moore's Chapter 40 notice to
12 include particular details of each defect and each location. See Exhibit "6". The Chapter 40 notice needs
13 only describe either a "defect" or "damages" which are the "subject of the claim." NRS 40.645(2)(b).
14 The notice has to describe the cause of the defects "if the cause is known." NRS 40.645(2)(c). The
15 notice requires description to the "extent that is known of the damage or the injury resulting from the
16 defects and the location of each defect within each residence...*to the extent known.*" Id. (Emphasis
17 added). No expert report or analysis is required for a single family homeowner claimant. See id.
18
19

20 The Nevada Supreme Court in D.R. Horton, Inc. v. Eighth Judicial Dist. Ct. formulated the
21 "reasonable threshold test" with regard to NRS Chapter 40 notices. See D.R. Horton, Inc. v. Eighth
22 Judicial Dist. Ct., 123 Nev. 468, 168 P.3d 731 (2007). However, the reasonable threshold test applies
23 only to extrapolated notices which purport to make claims for an entire development, not for individual
24 homes. See id. The "reasonable threshold test" for extrapolated notices only applies to notices
25 extrapolated from units inspected and tested to units that were neither inspected nor tested. See id. In
26 the instant case, the notice applied to the particular Subject Home.
27
28

1 The D.R. Horton, Inc. case confirmed that the contractor has the burden to investigate and
2 verify whether alleged damage is due to a construction defect. Id. at 739. D.R. Horton, Inc. also
3 confirmed that NRS Chapter 40 notices are presumed to be valid. Id. at 741. Thus, if a claimant claims
4 a stucco crack as damage, then the notice is presumed to be valid and the contractor can inspect to
5 determine whether in the contractor's opinion the crack is due to a structural defect or to normal wear
6 and tear. Whether an item ultimately turns out to be a constructional defect or not is not the issue in a
7 notice of claim.
8

9
10 In the instant case, the locations of the damage, such as a drywall or stucco crack, are explained
11 by the photo logs accompanying the photographs in the Chapter 40 notice. See Exhibit "6". In any event,
12 the information provided clearly satisfies the requirement that the location be shown "to the extent
13 known." NRS 40.645(2)(c). The photographs of the damages clearly give Del Webb notice about what
14 damages exist. The accompanying photo log indicates the location of the particular damage or defect.
15 The current case is not like an extrapolated notice of common defects requiring an expert opinion in a
16 large project where the notice is supposed to be a representative sample providing "reasonable detail" of
17 defects and location. NRS 40.645(3); Cf. D.R. Horton, Inc. v. Eighth Judicial Dist. Ct., 123 Nev. 468,
18 168 P.3d 731 (2007) (reasonable threshold test applies only to extrapolated notices which purport to
19 make claims for an entire development in the Chapter 40 pre-litigation notice context, not for individual
20 homes).
21
22

23 In the circumstance that the Court finds that the NRS Chapter Notice, and/or that the pre-
24 litigation procedures for Plaintiffs Moore does not comply/were not satisfied, then Plaintiffs request a
25 mandated stay, rather than dismissal of Plaintiffs Moore. The Subject Home of Plaintiffs Moore is
26 approaching the bar date for the statute of repose/limitation. See NRS 40.647(b).
27
28

1 A motion for summary judgment would not be an appropriate remedy for failure to comply with
2 Chapter 40 notice, as the disposition would be with prejudice. The Chapter 40 remedy for an improper
3 notice would be, at worst, a dismissal without prejudice. See NRS 40.647. However, as previously
4 submitted, Plaintiffs request a mandated stay because of the statute of repose/limitations.
5

6 **IV.**

7 **CONCLUSION**

8 For all of the above reasons, Plaintiffs respectfully request that this Court deny Del Webb's
9 Motion to Dismiss Salisbury, Turner, Dykema, and Moore.
10

11 However, Plaintiffs do not oppose the dismissals of Plaintiffs Ong and Nakaya only.

12 DATED this 9th day of June, 2015.

13 Respectfully Submitted,

14 SHINNICK, RYAN & RANSAVAGE P.C.
15

16 By: 
17

18 Duane E. Shinnick, Esq.

19 Bar No. 7176

20 Courtney K. Lee, Esq.

21 Bar No. 8154

22 4001 Meadows Lane

23 Las Vegas, NV 89107
24

25 Attorneys for Plaintiffs
26
27
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I, COURTNEY K. LEE, being first duly sworn under oath, deposes and states under penalty of perjury that the following assertions are true and correct of my own personal knowledge unless stated upon information and belief:

- {00232544.DOC}
- PLAINTIFFS' LIMITED OPPOSITION TO DEL WEBB COMMUNITIES, INC.'S MOTION TO DISMISS**
- JA00119**

- 1 e. Exhibit "3" contains a true and correct copy of the Clark County Recorder's Office's
2 recorded Notice of Completion for Ronald Turner, owner of 2844 Blythswood Square,
3 Assessor's Parcel Number 191-24-310-021.
4
5 f. Exhibit "4" contains a true and correct copy of the Clark County Recorder's Office's
6 recorded Notice of Completion for Robert M. Dykema, owner of 2818 Craigton Drive,
7 Assessor's Parcel Number 191-24-710-046.
8
9 g. Exhibit "5" contains a true and correct copy of the Clark County Recorder's Office
10 recorded Notice of Completion for Takeshi Nakaya, former owner of 2450 Antrim Irish
11 Drive, Assessor's Parcel Number 191-24-611-086.
12
13 h. Exhibit "6" contains a true and correct copy of the Amended Chapter 40 Notice for
14 Plaintiffs Steven and Maria Moore, owners of 2647 Dirleton Place.

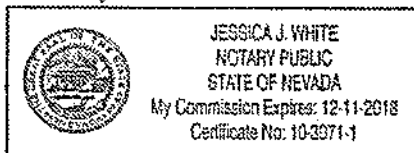
15 Further, Your Affiant Sayeth Naught.

16 Dated: 6/5/15


17 COURTNEY K. LEE, ESQ.
18 Attorney for Plaintiffs

19 SUBSCRIBED and SWORN to before
20 me this 5th day of June, 2015.

21 
NOTARY PUBLIC



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CERTIFICATE OF SERVICE

I, JESSICA WHITE, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 4001 Meadows Lane, Las Vegas, NV 89107.

On June 5th, 2015, I served the documents described as **PLAINTIFFS' OPPOSITION TO DEFENDANT DEL WEBB COMMUNITIES, INC.'S MOTION TO DISMISS** in Case No. A714632 on the following parties:

Jason W. Williams, Esq. Richard D. Young, Esq. KOELLER NEBEKER CARLSON & HALUCK, LLP 300 S. Fourth Street, Suite 500 Las Vegas, NV 89101

X VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to the above named attorney at the law offices of KOELLER NEBEKER CARLSON & HALUCK, LLP, counsel of record for Defendant Del Webb Communities, Inc.

X VIA E-SERVICE: on all counsel of record through the Clark County District Court Electronic Filing Program per Wiznet – Odyssey File and Serve.

I declare that the foregoing is true and correct.

Executed at Las Vegas, Nevada, on June 5th, 2015.

/s/ Jessica White
Jessica White
An Employee of SHINNICK, RYAN & RANSAVAGE P.C.

LIST OF EXHIBITS

Exhibit Number	Description	Bates Number
1	Declarations of Plaintiffs Judith Salisbury, as trustee of the Salisbury Family Trust, and Robert Dykema	PL0001-PL0006
2	Clark County Recorder's Office's recorded Notice of Completion for Salisbury Family Trust, owner of 2798 Lochleven Way, Assessor's Parcel Number 191-24-713-110	PL0007-PL0010
3	Clark County Recorder's Office's recorded Notice of Completion for Ronald Turner, owner of 2844 Blythswood Square, Assessor's Parcel Number 191-24-310-021	PL0011-PL0014
4	Clark County Recorder's Office's recorded Notice of Completion for Robert M. Dykema, owner of 2818 Craigton Drive, Assessor's Parcel Number 191-24-710-046	PL0015-PL0018
5	Clark County Recorder's Office recorded Notice of Completion for Takeshi Nakaya, former owner of 2450 Antrim Irish Drive, Assessor's Parcel Number 191-24-611-086	PL0019-PL0022
6	Amended Chapter 40 Notice for Plaintiffs Steven and Maria Moore, owners of 2647 Dirleton Place	PL0023-PL0057

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PLAINTIFFS' EXHIBIT "1"

DECLARATION OF JUDITH SALISBURY

I, JUDITH SALISBURY, DECLARE AS FOLLOWS:

- a. I am over the age of 18 and competent to testify as to the matters in this Declaration.
- b. I have personal knowledge of all matters stated herein and, if called as a witness, could and would testify competently thereto.
- c. I currently own the house located at 2798 Lochleven Way, Henderson, NV 89044 "subject property".
- d. On or about 2013, after moving into the property, there were GFCI outlets throughout the house that needed to be replaced. These GFCIs kept tripping the breaker.
- e. On or about August 2014, the leaning back block wall in the backyard became noticeable to the behind neighbor.
- f. On or about January 2014, the water heater, which is believed to have been original with this house, had to be replaced.
- g. On or about December 2014, the original dishwasher had to be replaced.
- h. There is a ceiling crack in the garage, sizeable stucco cracks at every side of the house especially by the windows, and gaps in the countertop that visibly have been getting worse. These issues were noticed during 2014.
- i. These statements are true to the best of my recollection and are made under the penalty of perjury.

Dated: June 2, 2015

Judith Salisbury Trustee
Judith Salisbury, Trustee of Salisbury Family Trust



Phone: 702-365-5665
Fax: 702-365-5262

5015 Bond Street
Las Vegas, NV
89118

www.plumbingpartscompany.com

INVOICE



Branch 01/NDW

Page 1/1

Sold To
WHOLESALE B CASH CUSTOMER

Ship To
WHOLESALE B CASH CUSTOMER

Tel

Customer	Order Dte	Order #	Batch #	Customer P/O #	Ship Via	Slmn
0000570	01/20/14	172878	01-2		Pick Up	RPM
Inv Date		Ship Dte	Freight	Job Number	Terms	
01/20/14		01/20/14	PREPAID		10th Prox	

Ln	Qty Ord	Qty Ship	Qty B/o	Qty Pick	Product Number	Description	Net Price	Extension
1	1	1	0		MIS036FBN	QUOTE : 006859 50 GALLON GAS FLAMMABLE VAPOR PROOF MIS03 Serial #	350.0000	\$350.00

Prior Payments Received	0.00
Prior Shipments	0.00
Deposit Available	0.00
Open Sales Order	350.00
Tax 28.35	378.35
Deposit Balance	0.00
Order Balance	0.00

(NDW) Paid by Cash \$378.35

Merchandise Amount	350.00
Freight	0.00
Misc Charge	
Sub-Total	350.00
Taxable Amount	350.00
Tax CC 8.100%	28.35
Invoice Total	\$378.35

Picked ___ Chkd ___ Packed ___ Truck Check ___ Delvrd ___ Date Ship ___/___/___

(P.O.S. Copy) 11:07:42 20 JAN 2014 Customer Signature X: _____

PL0002
JA00125

1174

AAA Handyman Services, LLC

8821 Bonta Ct.

Las Vegas, NV 89134

702-285-0349

aaahandyman@cox.net

Invoice

Date	Invoice #
3/13/2014	531

Bill To

RE/SYS Real Estate

Project Address

2818 Craigton Drive

Terms
Net 30

Item	Description	Amount
Labor	Replace GFCI outlets at kitchen on island and near sink, at master bath and garage. All resetting constantly.	155.00
Parts	Three 15 amp GFCI's and one 20 amp at garage.	74.00
Owner approved repairs & cost.		
Total		5229.00

JP

MAR 19 2014

PAID

PL0004
JAB0927



TempRite Air Conditioning
1111 Mary Crest Rd.
Suite O
Henderson NV 89074
Phone: 702-568-5081
Fax: 702-564-9708

INVOICE

DATE

10/15/2014

INVOICE #

0000028803

CUST #

0000843

BILL TO:

Re/sys Real Estate
6910 Edna Ave
Las Vegas NV 89117

SHIP TO:

2818 Craigton Dr
Henderson NV 89044

P.O. NUMBER		TERMS	SALES PERSON	
		1ST OF THE MONTH	0002	
QUAN	DESCRIPTION	PRICE EACH	AMOUNT	
1.00	Installation of new pressure reducing valve.	195.00	195.00	
Thank You For Your Business.				
TOTAL			\$195.00	

Customer Signature

Limited Warranty - All material, parts, and equipment are warranted by the manufacturers' or suppliers' written warranty only. All labor performed by TempRite is warranted for 1 year or as otherwise indicated in writing. TempRite makes no other warranties, express or implied, and its agents or technicians are not authorized to make any such warranties on behalf of TempRite.



WEST COAST RESIDENTIAL MAINTENANCE

Phone: (702)506-6069

Fax: (702)629-3135

Invoice #

2818 Craig

Date

10/6/2014

4321 Governors Hill St.
Las Vegas, NV 89129

e-mail: westcoastres@gmail.com

Invoice

Bill To:

RE/Sys
8910 Edna Avenue
Las Vegas, NV 89117

Attn: Ruben

Property Address: 2818 Craigton Dr

Description		Amount
Estimate to repair cracked fiberglass and resurface master shower tub.		395.00
Total Invoice		\$395.00
Payments/Credits		\$0.00
Balance Due		\$395.00

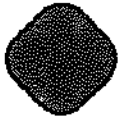
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PLAINTIFFS' EXHIBIT "2"



Clark County Recorder's Office

Record Date: 1/7/2005 9:04 AM
Number of Pages: 3
Book Type: OR
Document Type: (N) NOTICE
Modifier: COMPLETION
1st Party: DEL WEBB COMMUNITIES INC
2nd Party: NONE SHOWN
Parcel #: 191-24-713-110

Assessor's Parcel Number: 191-24-713-110
Escrow Number: 01401385BR

Recording Requested by:
Lawyers Title of Nevada, Inc.
Please mail tax statements to:

After Recording, mail to:
Del Webb Communities, Inc.
1635 Village Center Circle #250
Las Vegas, NV 89134
The area to the right is provided for the recorder's office

20050107-0000625

Fee: \$16.00
N/C Fee: \$0.00

01/07/2005 09:04:03
T20050004510

Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane BGN
Clark County Recorder Pgs: 3

NOTICE OF COMPLETION

Pursuant to N. R. S. 108.288, notice is hereby given that work of improvements was completed on the **30TH** day of **December**, 20 **04**.

The name, address and nature of the title of the owner and every person owning an interest in the following described property, as sole owner, tenant in common, or joint tenants is:

Del Webb Communities, Inc., an Arizona Corporation

the following described real property situate in the City of Henderson
County of Clark State of Nevada

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR THE COMPLETE LEGAL DESCRIPTION

Street Address of the premises is commonly known as:
2798 Lochleven Way
Henderson, NV 89044

Name of the Contractor (if any): NONE.

Dated this 30th day of December, 2004

Del Webb Communities, Inc., an Arizona Corporation.

Rosario J. Romano, Jr.
Rosario J. Romano, Jr., Lawful Agent

STATE OF NEVADA

COUNTY OF CLARK

On December 30, 2004 personally appeared
before me, a Notary Public, Rosario J. Romano Jr., Lawful Agent
personally known (or proved) to me to be the person
whose name is subscribed to the above instrument who
acknowledged that she executed the instrument.

D. Bergman
(NOTARY PUBLIC)

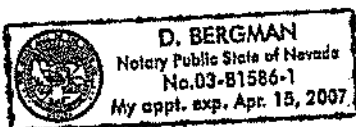


EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Parcel I:

Lot Two Hundred Ninety-Six (296) in Block Four (4) of ANTHEM HIGHLANDS UNIT 7 as shown by map thereof on file in Book 117 of Plats, page 27 in the Office of the County Recorder of Clark County, Nevada.

Reserving Therefrom, a non-exclusive easement for ingress and egress, use and enjoyment over the Common Elements as shown on the map referred to above and as set forth in that certain Declaration of Covenants and Easements for the Anthem Community recorded June 26, 1998 in Book 980626 of Official Records, as Document No. 03097 and that certain Declaration of Covenants, Conditions and Restrictions for Anthem Highlands, a planned community recorded July 25, 2003 in Book 20030725 of Official Records, as Document No. 01651.

Parcel II:

A non-exclusive easement for ingress and egress, use and enjoyment over the Common Elements as shown on the map referred to above and as set forth in that certain Declaration of Covenants and Easements for the Anthem Community recorded June 26, 1998 in Book 980626 of Official Records, as Document No. 03097 and that certain Declaration of Covenants, Conditions and Restrictions for Anthem Highlands, a planned community recorded July 25, 2003 in Book 20030725 of Official Records, as Document No. 01651, as may be amended from time to time.

Assessor's Parcel Number: **-191-24-713-110**

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PLAINTIFFS' EXHIBIT "3"



Clark County Recorder's Office

Record Date: 12/23/2004 9:06 AM
Number of Pages: 3
Book Type: OR
Document Type: (N) NOTICE
Modifier: COMPLETION
1st Party: DEL WEBB COMMUNITIES INC
2nd Party: NONE
Parcel #: 191-24-310-021

20041223-0000598

Assessor's Parcel Number: 191-24-310-021
Escrow Number: 01401032BR

Recording Requested by:
Lawyers Title of Nevada, Inc.
After Recording, mail to:
Del Webb Communities, Inc.
1635 Village Center Circle #250
Las Vegas, NV 89134

The area to the right is provided for the recorder's office

Fee: \$16.00
N/C Fee: \$0.00

12/23/2004 09:06:10
T20040157341

Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane JKA
Clark County Recorder Pgs: 3

NOTICE OF COMPLETION

Pursuant to N. R. S. 108.288, notice is hereby given that work of
improvements was completed on the 14th day of **December, 2004**.

The name, address and nature of the title of the owner and every person
owning an interest in the following described property, as sole owner,
tenant in common, or joint tenants is:

Del Webb Communities, Inc., an Arizona Corporation

the following described real property situate in the City of Henderson
County of Clark State of Nevada

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR THE
COMPLETE LEGAL DESCRIPTION


Street Address of the premises is commonly known as:
2844 Blythswood Square
Henderson, NV 89044

Name of the Contractor (if any): NONE.

PL00137

Dated this 14th day of DECEMBER, 2004.

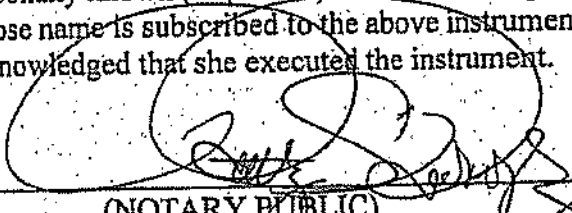
Del Webb Communities, Inc., an Arizona Corporation.


Rosario J. Romano, Jr., Lawful Agent

STATE OF NEVADA

COUNTY OF CLARK

On 12/14/04 personally appeared
before me, a Notary Public, Rosario J. Romano, Jr., Lawful Agent
personally known (or proved) to me to be the person
whose name is subscribed to the above instrument who
acknowledged that she executed the instrument.


(NOTARY PUBLIC)

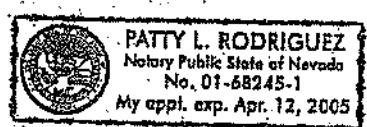


EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada,
described as follows:

Lot Twenty-One (21) in Block One (1) of ANTHEM HIGHLANDS UNIT 5 as shown by
map thereof on file in Book 116 of Plats, Page 8, in the Office of the County
Recorder of Clark County, Nevada.

Assessor's Parcel Number: 191-24-310-021

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PLAINITFFS' EXHIBIT "4"



Clark County Recorder's Office

Record Date: 12/8/2004 9:03 AM
Number of Pages: 3
Book Type: OR
Document Type: (N) NOTICE
Modifier: COMPLETION
1st Party: PN II INC
2nd Party: PULTE HOMES OF NEVADA
Parcel #: 191-24-710-046

20041208-0000718

Assessor's Parcel Number: 191-24-710-046
Escrow Number: 01401179GR

Recording Requested by:
Lawyers Title of Nevada, Inc.
Please mail tax statements to:

After Recording, mail to:
PN II, Inc.
1635 Village Center Circle #250
Las Vegas, NV 89134

The area to the right is provided for the recorder's office

Fee: \$16.00
N/C Fee: \$0.00

12/08/2004 09:03:58
T20040145550

Requestor:
LAWYERS TITLE OF NEVADA

Frances Deane PUN
Clark County Recorder Pgs: 3

NOTICE OF COMPLETION

Pursuant to N. R. S. 108.288, notice is hereby given that work of
improvements was completed on the 30th day of **November**, 2004.

The name, address and nature of the title of the owner and every person
owning an interest in the following described property, as sole owner,
tenant in common, or joint tenants is:

PN II, Inc. a Nevada Corporation d/b/a Pulte Homes of Nevada

the following described real property situate in the City of Las Vegas
County of Clark State of Nevada

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR THE
COMPLETE LEGAL DESCRIPTION

Street Address of the premises is commonly known as:


**2818 Craigton Drive
Henderson, NV 89044**

Name of the Contractor (if any): NONE.

PA0016

Dated this 30th day of November, 2004.

PN II, Inc. a Nevada Corporation d/b/a Pulte Homes of Nevada



Rosario J. Romano, Jr., Lawful Agent

STATE OF NEVADA

COUNTY OF CLARK

On November 30, 2004 personally appeared
before me, a Notary Public, Rosario J. Romano, Jr., Lawful Agent
personally known (or proved) to me to be the person
whose name is subscribed to the above instrument who
acknowledged that he executed the instrument.



(NOTARY PUBLIC)

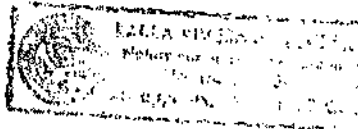


EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada,
described as follows:

Lot Seventy-One (71) in Block Three (3) of ANTHEM HIGHLANDS UNIT 5 as
shown by map thereof on file in Book 116 of Plats, Page 8, in the Office of the
County Recorder of Clark County, Nevada.

Assessor's Parcel Number: 191-24-710-046

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PLAINTIFFS' EXHIBIT "5"



Clark County Recorder's Office

Record Date:	7/22/2004 9:23 AM
Number of Pages:	3
Book Type:	DR
Document Type:	(N) NOTICE
Modifier:	COMPLETION
1st Party	DEL WEBB COMMUNITIES INC
2nd Party	NONE SHOWN
Parcel #:	191-24-611-086



20040722-0000993

Fee: \$15.00
07/22/2004 09:23:37 T200400265276
Req: LAWYERS TITLE OF NEVADA
Frances Deane
Clark County Recorder Pgs: 3

Assessor's Parcel Number: 191-24-611-086
Escrow Number: 04020236GR

Recording Requested by:
Lawyers Title of Nevada, Inc.
Please mail tax statements to:

After Recording, mail to:
Del Webb Communities, Inc.
1635 Village Center Circle #250
Las Vegas, NV 89134

The area to the right is provided for the recorder's office

NOTICE OF COMPLETION

Pursuant to N. R. S. 108.288, notice is hereby given that work of
improvements was completed on the 19th day of **July**, 2004.

The name, address and nature of the title of the owner and every person
owning an interest in the following described property, as sole owner,
tenant in common, or joint tenants is:

Del Webb Communities, Inc., an Arizona Corporation

the following described real property situate in the City of Henderson
County of Clark State of Nevada

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR THE
COMPLETE LEGAL DESCRIPTION

Street Address of the premises is commonly known as:
2450 Antrim Irish Drive
Henderson, NV 89052

Name of the Contractor (if any): NONE.

PL0029
JAN 14 2005

File No: 04020236

EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada,
described as follows:

Parcel I:

Lot One Hundred (100) in Block Six (6) of ANTHEM HIGHLANDS UNIT 3 as shown
by map thereof on file in Book 114 of Plats, Page 42, in the Office of the County
Recorder of Clark County, Nevada

Parcel II:

A non-exclusive easement for ingress, egress, use and enjoyment of the
Common Element Lots as shown on the map reference to above, and as further
set forth in the Declaration of Covenants, Conditions and Restrictions for Anthem
Highlands, recorded July 25, 2003 in Book 20030725 as Document No. 01651 of
Official Records, and as as the same may be amended from time to time.

Assessor's Parcel Number: **191-24-611-086**

Dated this 19 day of July, 2004.

Del Webb Communities, Inc., an Arizona Corporation.

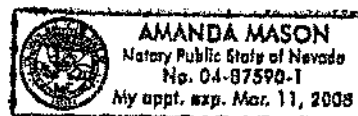
Robert Leonard
Robert Leonard Lawful Agent

STATE OF NEVADA

COUNTY OF CLARK

On 7/19/04 personally appeared
before me, a Notary Public, Robert Leonard, Lawful Agent
personally known (or proved) to me to be the person
whose name is subscribed to the above instrument who
acknowledged that she executed the instrument.

Amanda Mason
(NOTARY PUBLIC)



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PLAINTIFFS' EXHIBIT "6"



SHINNICK, RYAN & RANSAVAGE P.C.

4001 MEADOWS LANE, LAS VEGAS, NV 89107

TELEPHONE: (702) 631-8014

TOLL FREE: (800) 253-9741

FACSIMILE: (702) 631-8024

WEBSITE: www.ssslplaw.com

May 27, 2015

VIA CERTIFIED MAIL - RETURN RECEIPT

DEL WEBB COMMUNITIES, INC.
8345 West Sunset Rd.
Las Vegas, NV 89113

Re: Montrose/Avondale/Portpatrick

To Whom It May Concern:

This firm represents Steven & Maria Moore the owners of 2647 Dirleton Place, Henderson, NV 89044. Pursuant to Nevada law including Chapter 40 and section 40.645 of Nevada Revised Statutes, we are providing this notice of claims for constructional defects and breaches of warranty in this home located in the Montrose/Avondale/Portpatrick development. Enclosed with this notice is a true and correct copy of the Field Report/Photo Log, the Floor Plan Drawing, and a CD containing photographs prepared by Allen Group Architects, as well as a Homeowner Verification Statement signed by each owner of the above-referenced property.

Under the above Nevada law, this notice has certain consequences, such as inspections, a prompt response, and pre-filing mediation. We suggest that mediator James K. Eckmann be agreed upon for the handling of this pre-filing mediation.

Please let this letter also serve as notice of your duty to preserve any and all evidence that may be relevant to the present claim pursuant to GNLV Corp. v. Service Control Corp., 111 Nev. 866, 869, 900 P.2d 323 (1995), including, but not limited to, any and all documents, photographs, telephone logs, electronic recordings, and computer database(s). Please be advised that any pre-litigation destruction can constitute spoliation when litigation is reasonably foreseeable with attending sanctions. Aiello v. Kroger Co., no 2:08-cv-01729-HDM-RJJ, 2010 WL 3522259, at *2 (D. Nev. 2010), citing Performance Chevrolet Inc. v. Market Scan Information, 2006 WL 1042359 (D. Idaho 2006)); see also Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 747 P.2d 911 (1987). Please contact the undersigned as soon as possible in order to discuss these matters. Please direct any and all future correspondence concerning this matter to my attention at the above address.

Sincerely,
SHINNICK, RYAN & RANSAVAGE P.C.

Duane E. Shinnick
Attorney at Law

DES/kam
Enclosures: As stated above.

{00231786.DOC}

PL00933

7014 2120 0001 8207 5086

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Total Postage & Fees \$



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* Gender. Please print your name, address, and ZIP code in the box.

Shaw, Geo. & Company
New York, N.Y.
1897

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SENDER: COMPTON 333630110105

- Complete Items 1, 2, and 3. Also complete Item 4 if Registered Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the magazine, or on the front if space permits.

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Real Estate Solutions

Figure 1

☐ Agent
☒ Passenger
 Departed By (Previous Name) *Paula Seidman*
 Departed Embassy *Paula Seidman 9/27/74*

3. In making address changes, please use the following:

48

2024.09.25

- ☐ Registered Mail ☐ Registered Mail Express®
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Certified Mail Delivery

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..... 505-541-1114

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

[illegible]

PS Form 391, 4-72

2010年12月10日

PL0035

HOMEOWNER VERIFICATION STATEMENT

I, STEVEN J. MOORE, owner
Print Name

of 2647 DIRTLETON PL., HENDERSON Nevada
Property Address City

89044, verify on information and belief, that each defect, damage and
Zip Code

injury specified in the NRS 40.645 notice exists in this residence.

Signature: Steven J. Moore

HOMEOWNER VERIFICATION STATEMENT

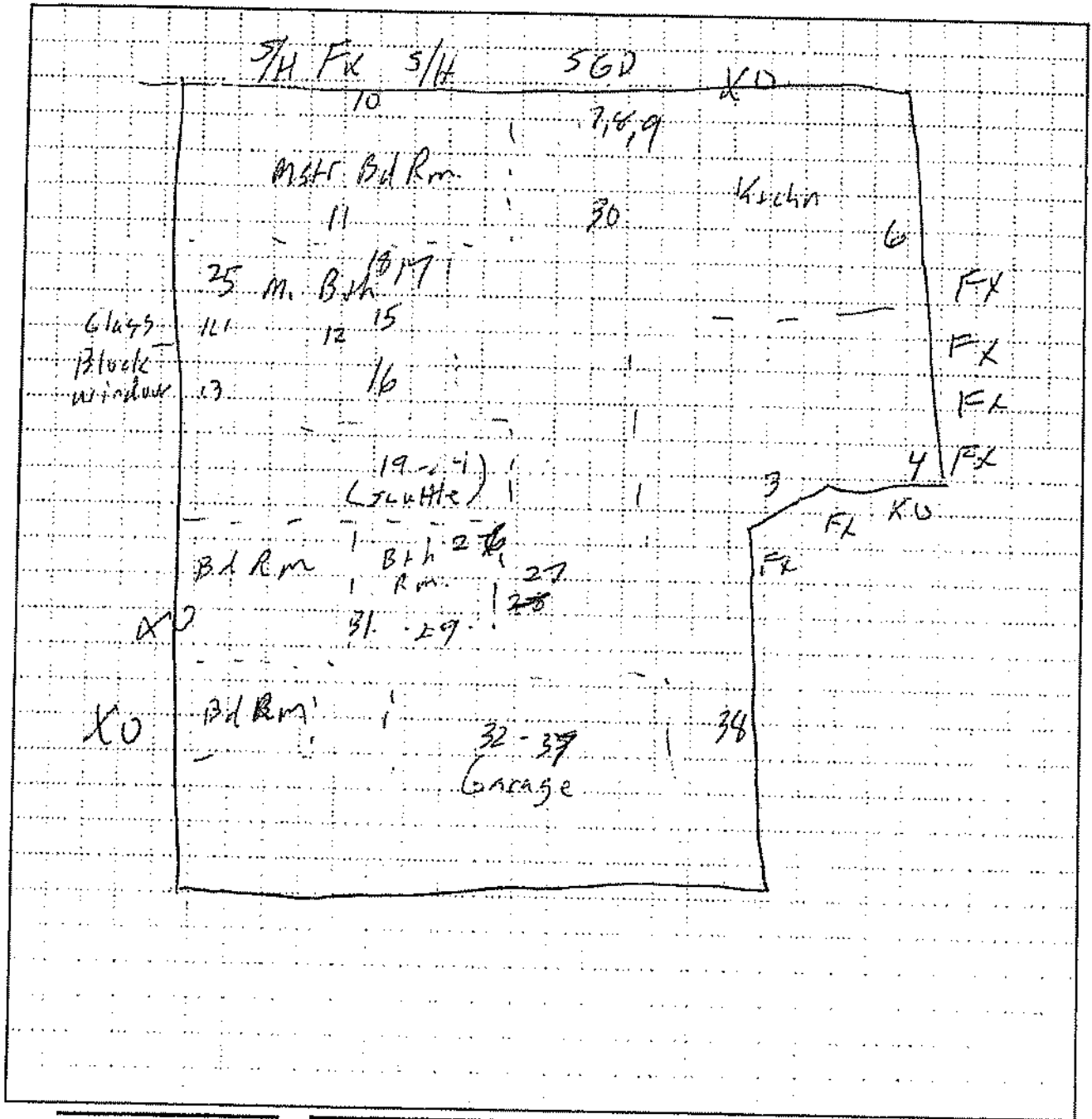
I, MARIA L. HOOKE, owner
Print Name

of 2647 DIRLETON PL., HENDERSON Nevada
Property Address City

89044, verify on information and belief, that each defect, damage and
Zip Code

injury specified in the NRS 40.645 notice exists in this residence.

Signature: Maria L. Hooke



ALLEN GROUP
ARCHITECTS INC

12700 L. EXAMINATOR
SUITE 110
SAN DIEGO, CALIFORNIA 92170
619.574.0000
619.574.0001 FAX

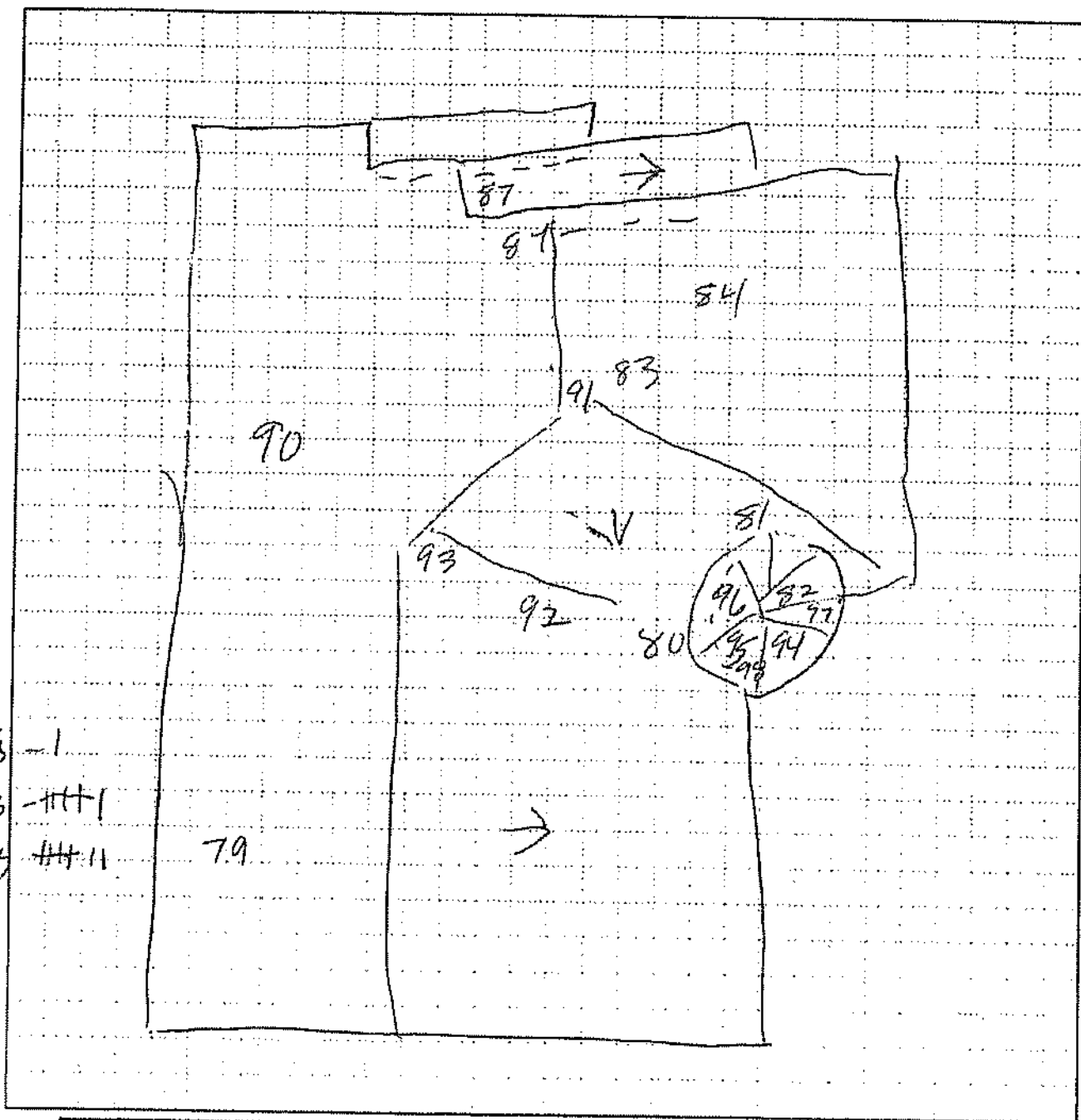
PROJECT NAME: **MONTRUSE**
Las Vegas, NV
ADDRESS: UNIT NUMBER:

2647 Dirleton

PERFORMED BY: **AJ**
PHOTOS: 1 TO: 38
PROJECT NO: **20464**
SCALE:
DATE: **5.22.15** TIME:

SHEET NO.: OF:

PL0028
JA00156



B's - 1
T's - 1111
P's - 1111



ALLEN GROUP
ARCHITECTS INC

12720 EL CAMINO REAL
SUITE 110
SAN DIEGO CALIFORNIA 92120
(619) 591-7800
(619) 594-0831 FAX

PROJECT NAME:

MONTROSE
Las Vegas, NV

ADDRESS:

UNIT NUMBER:

2647 Dirleton

PERFORMED BY:

148

PHOTOS:

776 TO 98

PROJECT NO.:

20464

SCALE:

DATE:

TIME:

5.22.15

SHEET NO.:

OF:

PL0029
JA00157

FIELD REPORT

Project: Montrose, Henderson, NV
Project No: 20464
Date: May 22, 2015
Time: 9:00 a.m.
Prepared By: Aaron Jamieson
Present: Allen Group Architects, Inc.
Aaron Jamieson
Shinnick, Ryan and Ransavage, PC
Kelly McCarthy
Observations: *Note:* This is a special Chapter 40 visual inspection.

2647 DIRLETON PLACE

Photo 1 shows the address.
Photo 2 shows the front elevation.
Photo 3 shows the top of the entry door not painted.
Photo 4 shows a drywall crack at the sill of the fixed window.
Photo 5 shows a kitchen overview.
Photo 6 shows no anti-tip clip on the range.
Photo 7 shows the sliding glass door off the dining room, difficult operation.
Photo 8 shows stains on the baseboard and the interior frame of the sliding glass door.
Photo 9 shows failed gasket on the insulated glass for the sliding glass door.
Photo 10 shows separation between the window frame and the drywall at the fixed window, master bedroom.
Photo 11 shows a homeowner complaint about an electrical problem in the master bedroom ceiling at the ceiling fan.
Photo 12 shows a master bathroom overview.
Photos 13 and 14 show some of the finish is off the lavatory sink hardware and also at the drain stopper.
Photo 15 shows a broken floor tile outside the master shower enclosure.
Photo 16 shows cracked floor tile, master toilet room.

ALLEN GROUP ARCHITECTS, INC.
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AJ/Field Report
Project No. 20464
May 22, 2015
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PL0030
JA00158

Photo 17 shows some stains on the exterior frame of the shower enclosure, hinge side.

Photo 18 shows a nick in the shower pan.

Photo 19 shows the attic scuttle. The attic scuttle measures 20x27-1/2 inches clear. Rough frame opening is 22-1/2x30 inches.

Photo 20 shows this is a conditioned attic.

Photo 21 shows a loose junction box for the wiring and exposed wiring for the fluorescent lights down below in the master closet.

Photo 22 shows an attic overview.

Photo 23 shows an attic overview, PEX piping installed.

Photo 24 shows an overview of the HVAC equipment in the attic. Note there is a pan installed.

Photo 25 shows a crack in the gel coat. This is outside the master shower enclosure, and this is at the tub intersection.

Photo 26 shows some of the finish is off the drain stopper at the tub.

Photo 27 shows the tops of the interior doors are not painted. This is a closet door.

Photo 28 shows all windows are identified as Milgard vinyl windows.

Photo 29 shows a drywall crack in the hall ceiling by the air return.

Photo 30 shows a homeowner complaint about a GFI receptacle in the kitchen. This had to be replaced because of nuisance tripping.

Photo 31 shows cracked floor tile in front of the bedroom.

Photo 32 shows a 10-foot slab crack, garage.

Photo 33 shows slab cracks in the garage.

Photo 34 shows slab cracks in the garage.

Photos 35 and 36 show drywall cracks in the ceiling of the garage that run the length of the garage.

Photo 37 shows a slab crack in the garage.

Photo 38 shows the homeowner relayed to me that they had to change the pressure valve and the incoming plumbing line to it.

Photo 39 shows a crack at the inside corner, hardscape.

Photo 40 shows some erosion on the edge of the garage slab.

Photo 41 shows thin stucco application, top of the wall. Reinforcement wire and the foam are visible. This is to the right of the entryway.

Photos 42 and 43 show more thin spots on top of the wall with exposed wire and foam. This is at the right side of the entryway.

Photo 44 shows cracks in the stucco at the decorative column caps.

Photo 45 shows all the damp-proofing on the CMU blocks is exposed at the retaining wall, right side.

Photo 46 shows cracks in the decorative column tops.

Photo 47 shows cracks at all four corners of the fixed window.

Photo 48 shows the right-hand elevation.

Photo 49 shows a stucco crack, top of the garage header.

Photo 50 shows a stucco crack, garage opening.

Photo 51 shows the left-hand elevation.

Photo 52 shows efflorescence noted on the left-hand retaining wall.

Photos 53 and 54 show stucco cracks around the electrical equipment.

Photo 55 shows the left-hand elevation.

Photos 56 and 57 show stucco cracks beneath the glass block window and also around the access panel. This is off the master bathroom.

Photo 58 shows stucco cracks at all four window corners.

Photos 59 and 60 show both sides of the window. The crack extends from the windowsill down to the weep screed.

Photo 61 shows the rear elevation.

Photo 62 shows stucco cracks at all four corners of the fixed window.

Photo 63 shows a 5-inch stucco crack.

Photo 64 shows stucco cracks at the window corners, single-hung window.

Photo 65 shows a stucco crack above the sliding glass door.

Photo 66 shows cracked concrete beneath the sliding glass door.

Photo 67 shows spider web type cracking next to the "XO" window.

Photo 68 shows stucco cracking, all four corners of the window.

Photo 69 shows a 1-foot stucco crack.

Photo 70 shows the right-hand elevation.

Photo 71 shows deteriorated line set insulation.

Photo 72 shows stucco cracks at all four corners of the fixed window.

Photo 73 shows stucco cracks in between the two fixed windows.

Photo 74 shows a 1-foot stucco crack starting beneath the fixed window.

ALLEN GROUP ARCHITECTS, INC.
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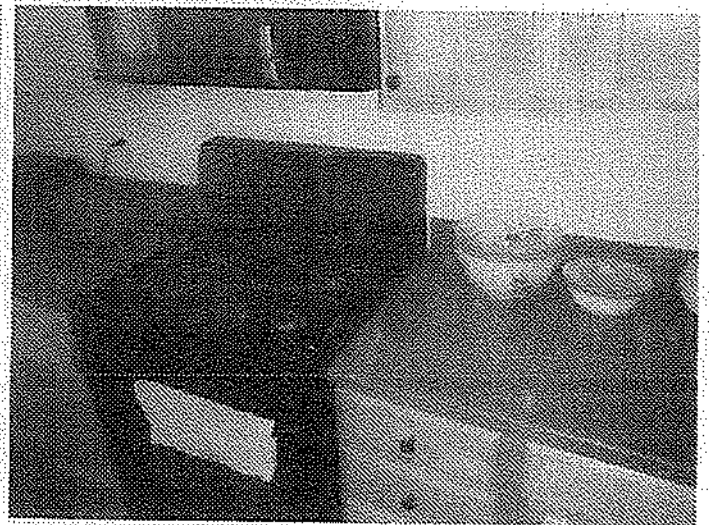
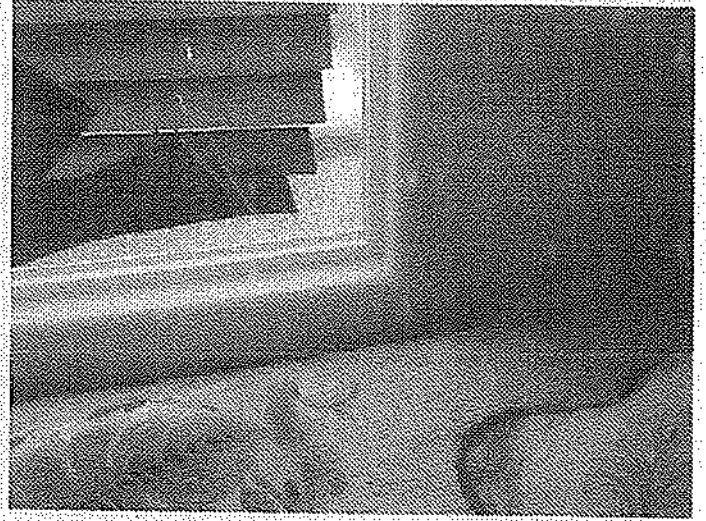
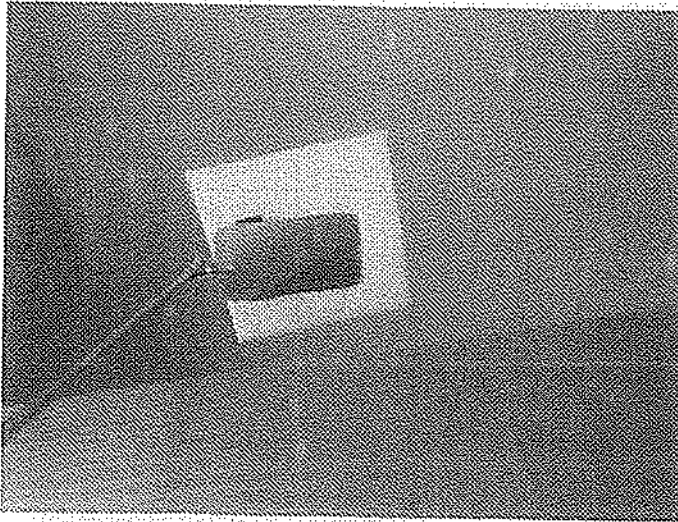
AJ/Field Report
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May 22, 2015
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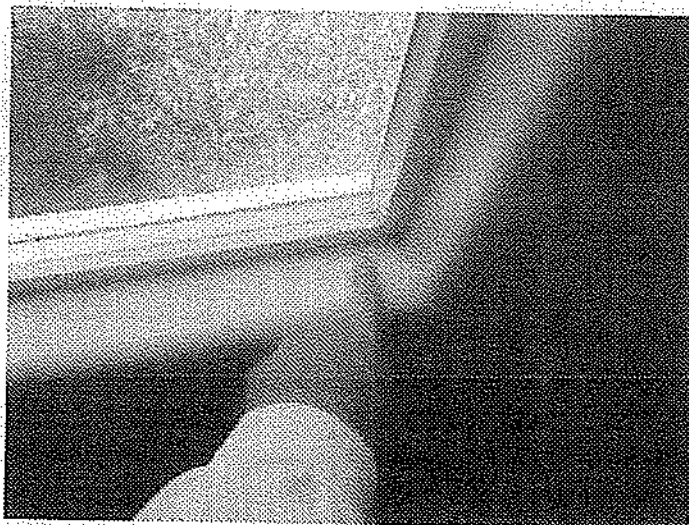
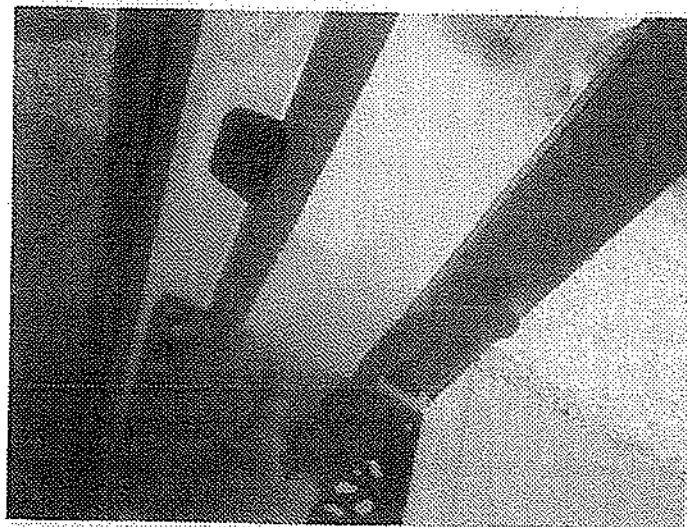
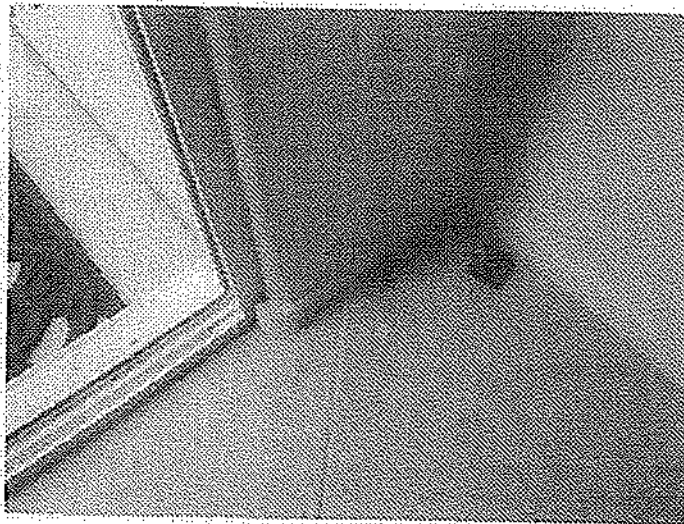
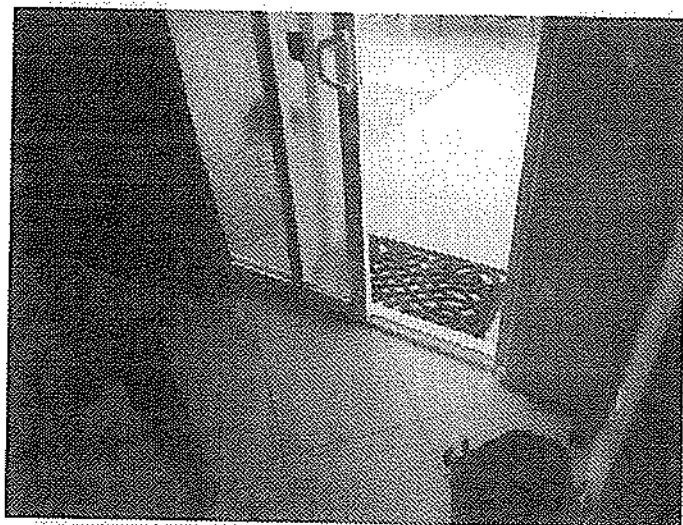
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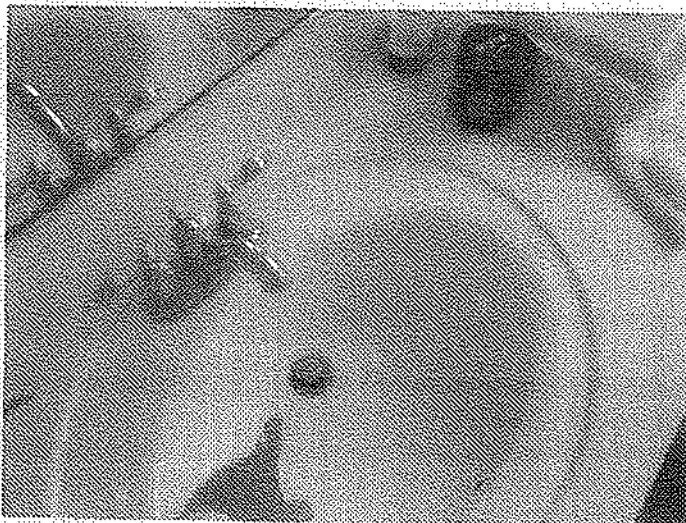
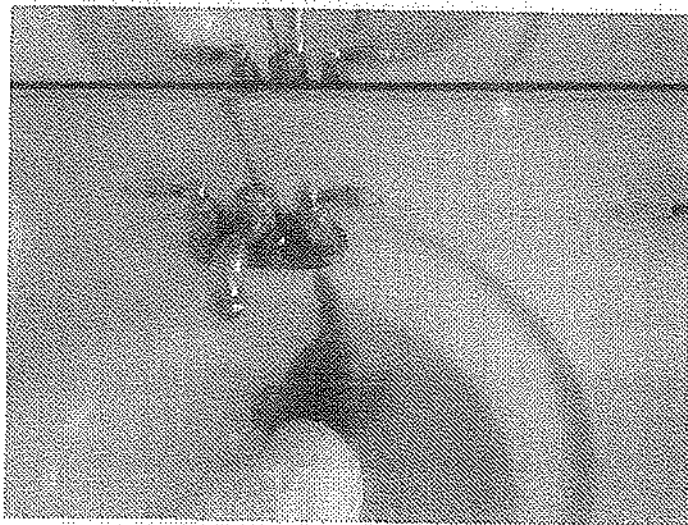
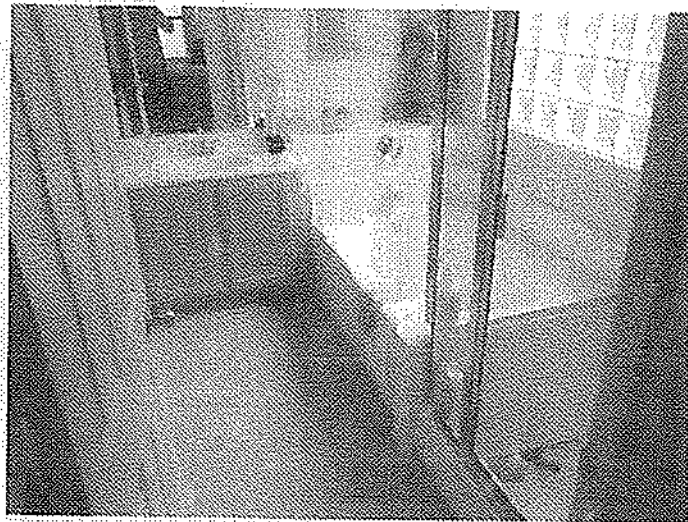
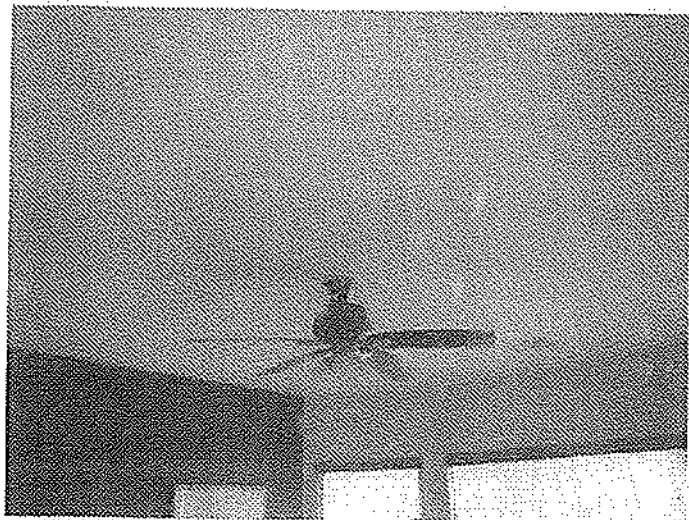
Photo 75 shows exposed damp-proofing, right side yard.
Photo 76 shows a 6-inch crack to the left of the entryway.
Photos 77 and 78 show overviews.
Photo 79 shows missing storm collar at the "B" vent.
Photo 80 shows the texture coat is coming off beneath the turret and stucco cracks. Also tiles are butted tightly, and note the debris buildup.
Photo 81 shows behind the turret was roofed-in with torched down, and tiles are butted tightly against the turret wall.
Photo 82 shows weatherblocking is cracked open.
Photo 83 shows failed sealant at the pipe collar.
Photo 84 shows a defective tile.
Photos 85 and 86 show overviews.
Photo 87 shows two overexposed tiles beneath the ridge.
Photo 88 shows an overview.
Photo 89 shows a broken rake tile.
Photo 90 shows pipe flashing not folded into the pipe.
Photo 91 shows weatherblocking is cracked open.
Photo 92 shows tight valleys.
Photo 93 shows weatherblocking is cracked open.
Photo 94 shows overexposed tiles, turret.
Photo 95 shows overexposed tiles at the turret.
Photo 96 shows overexposed tiles, turret. These overexposed tiles are the third course up from the eave line at the turret.
Photo 97 shows broken tile repaired with mastic.
Photo 98 shows improperly lapped tile at the side lap.

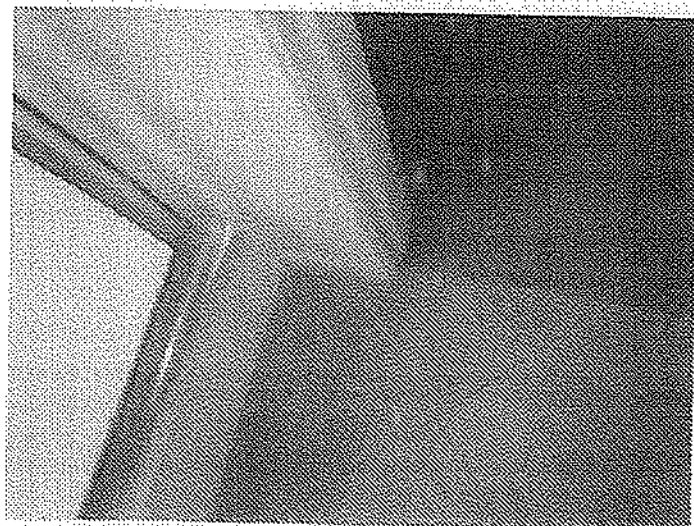
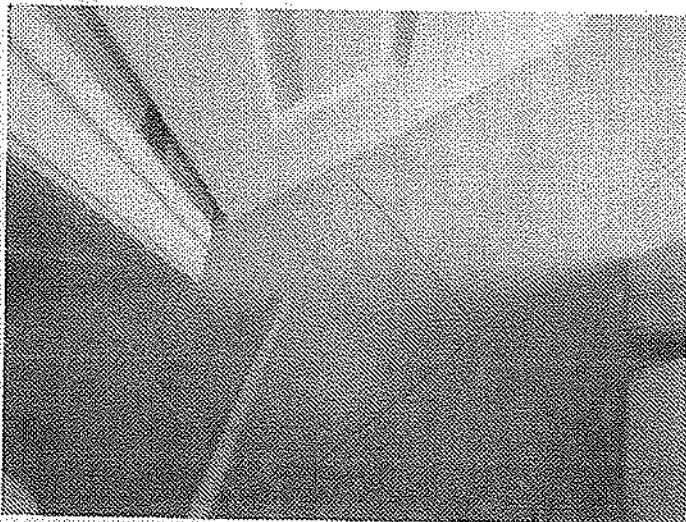
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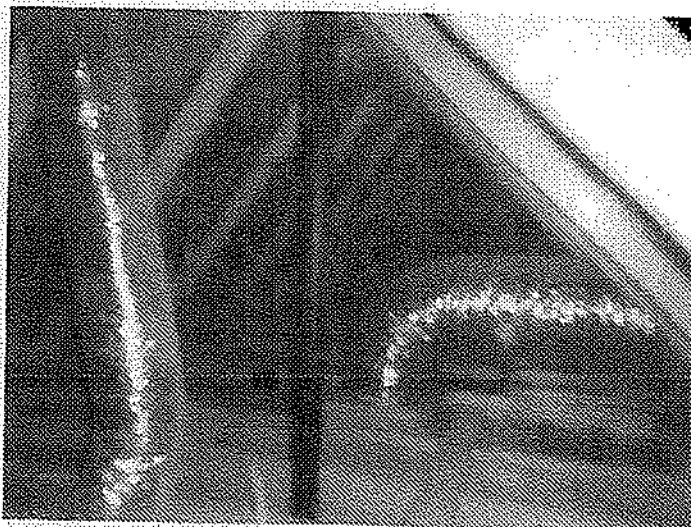
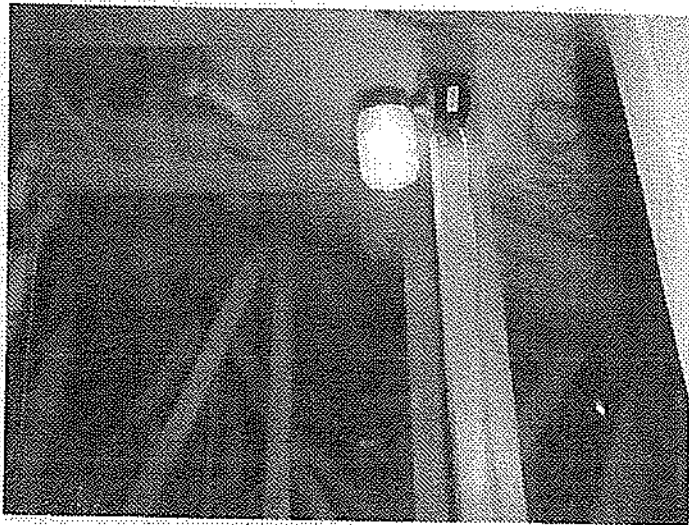
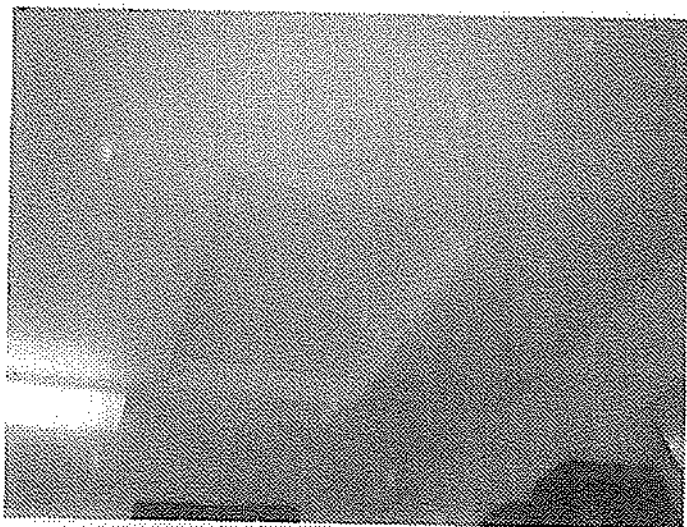
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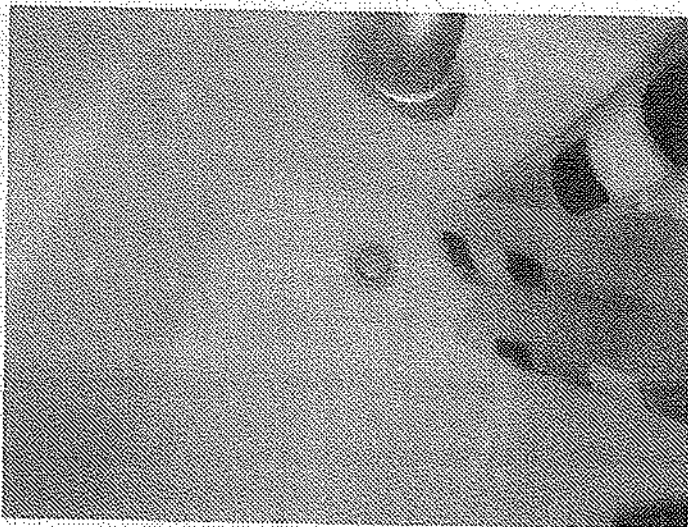
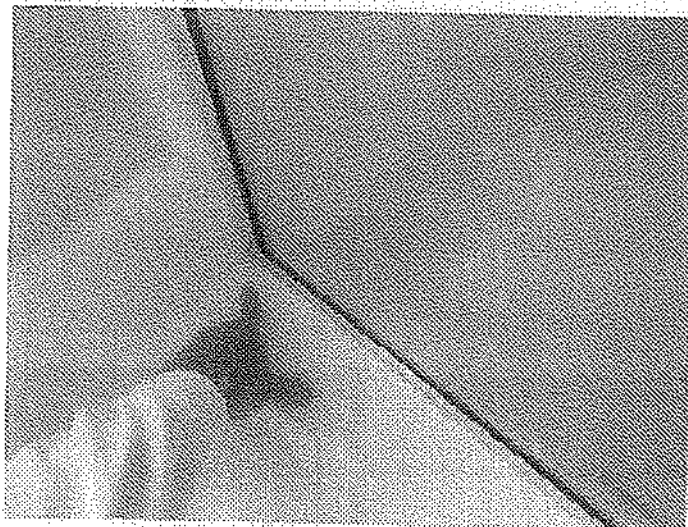


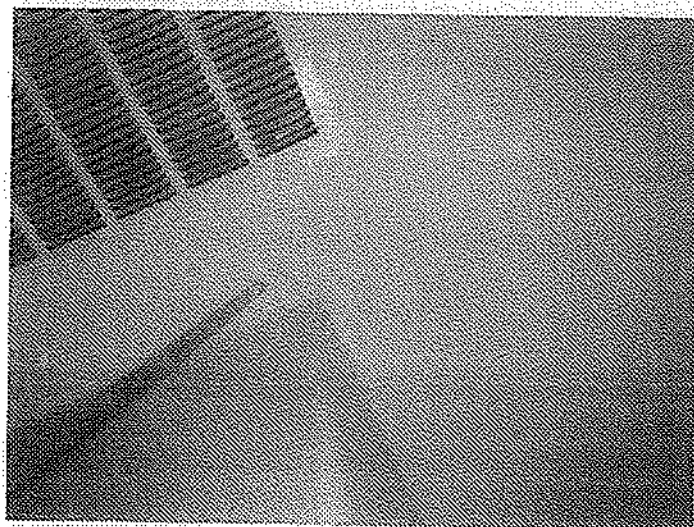
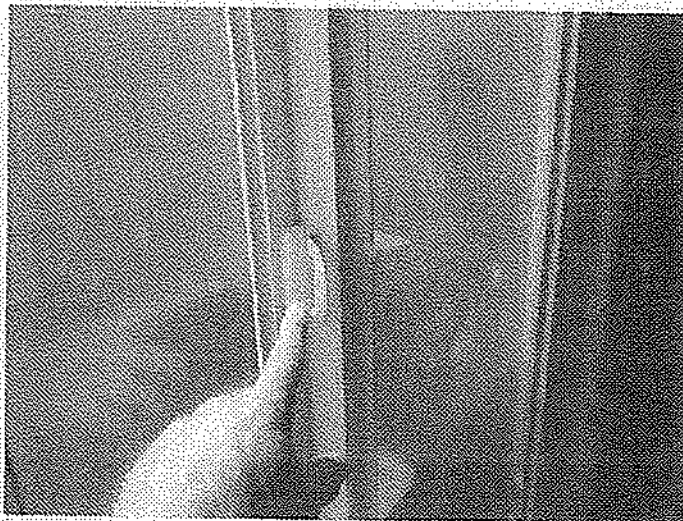
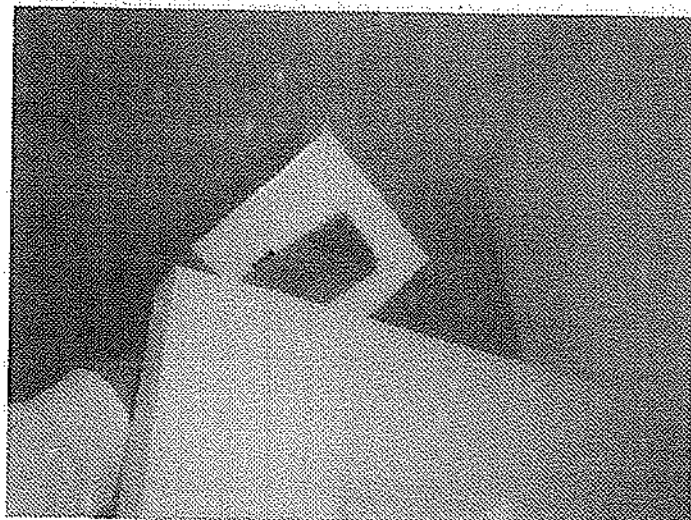


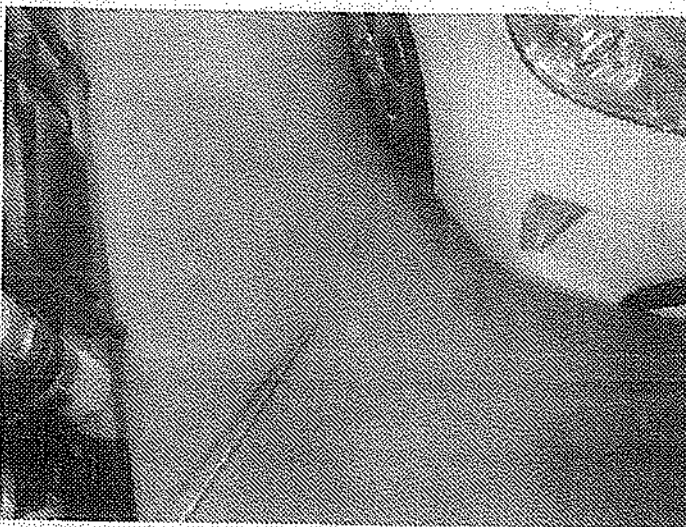
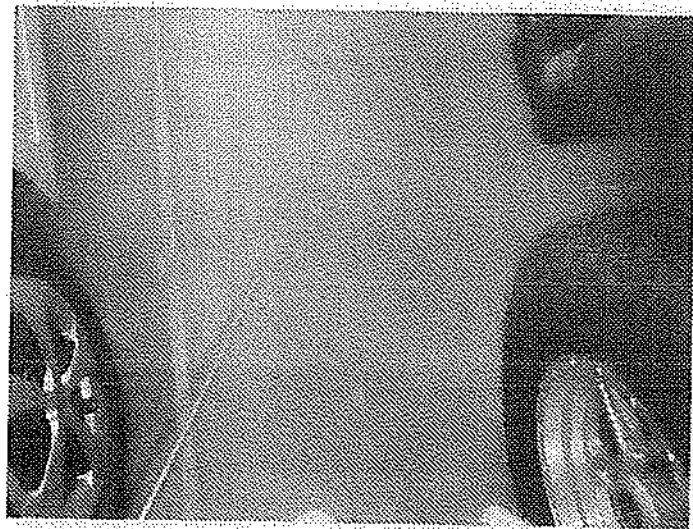
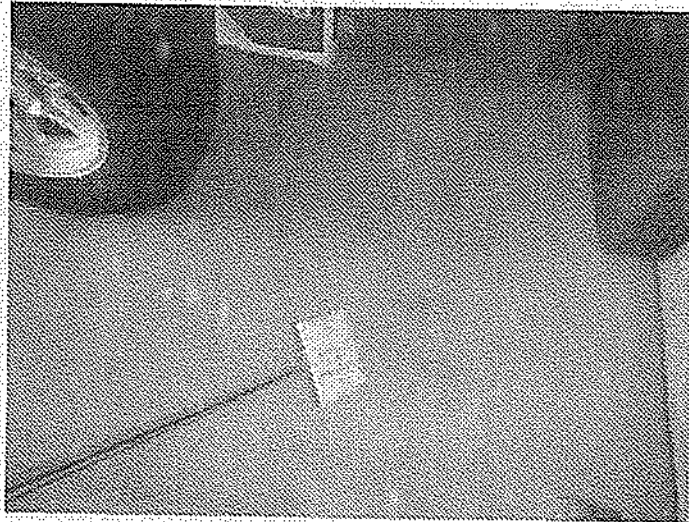
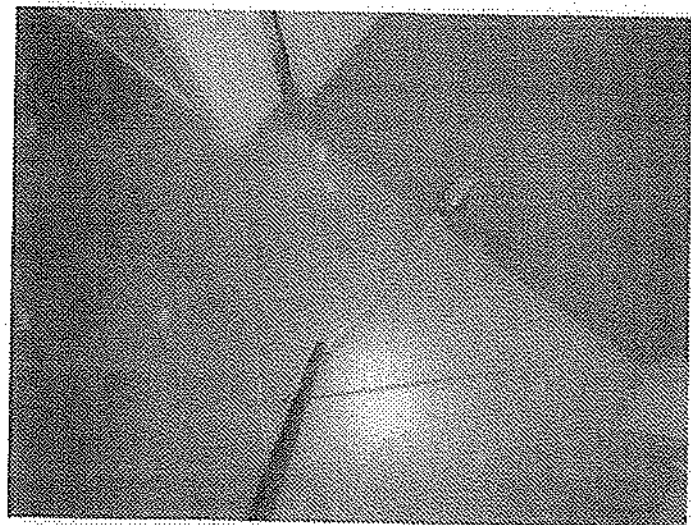


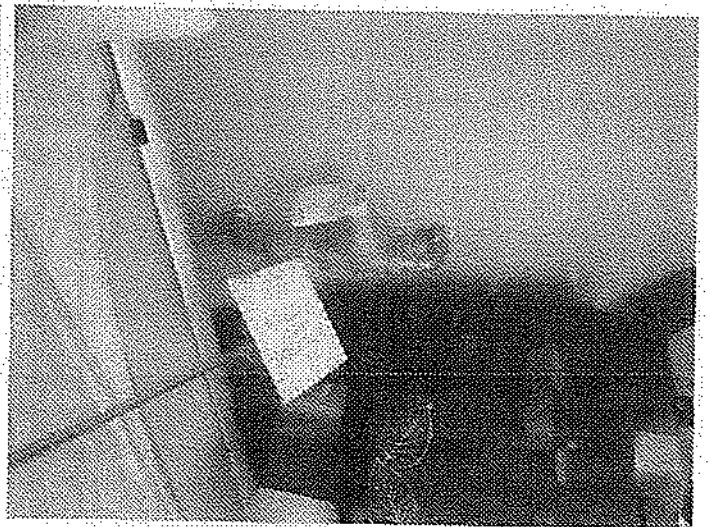
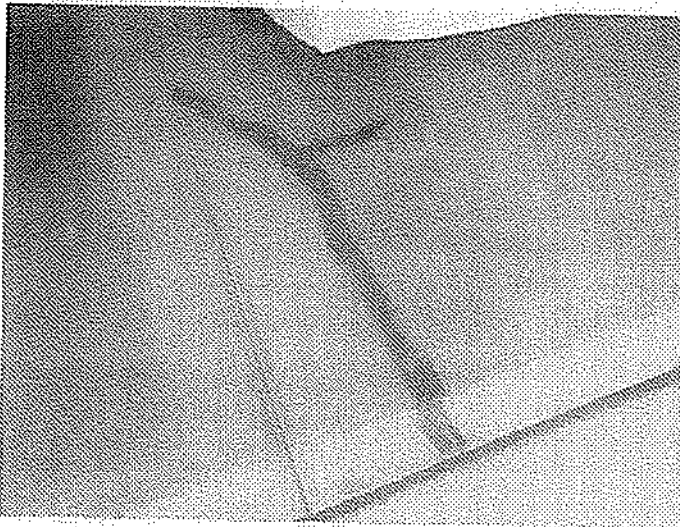
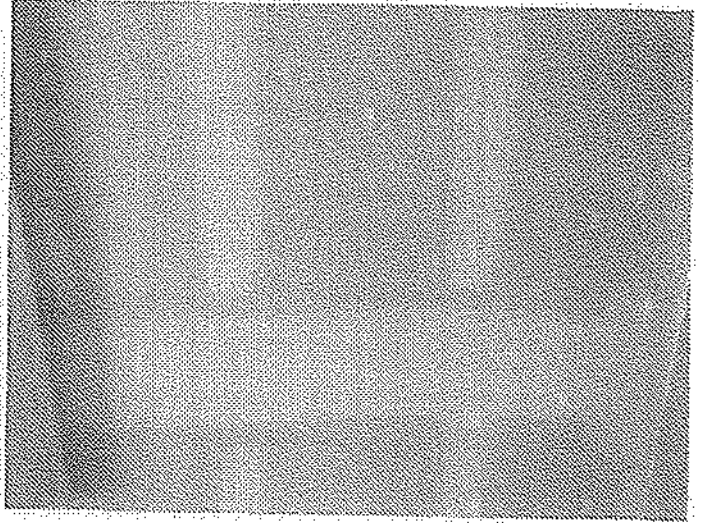
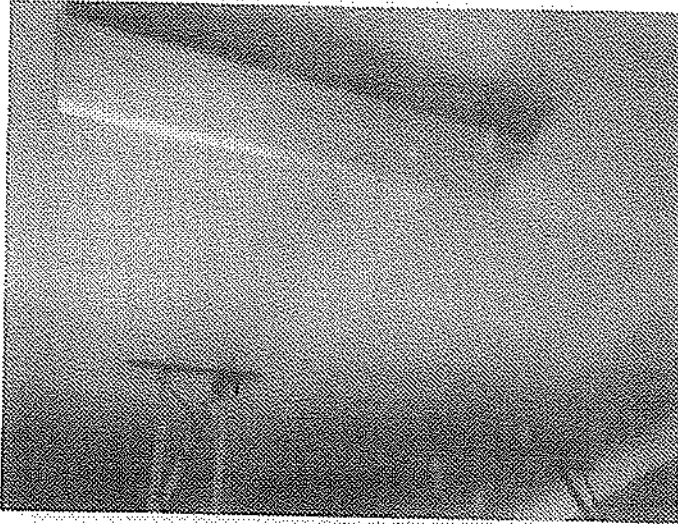


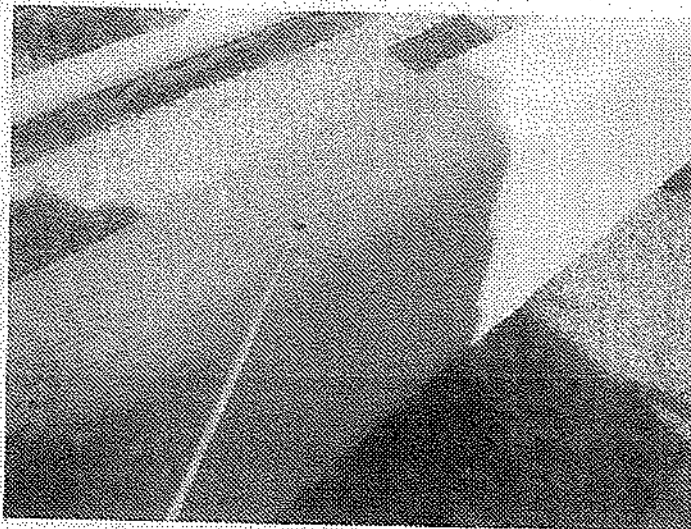
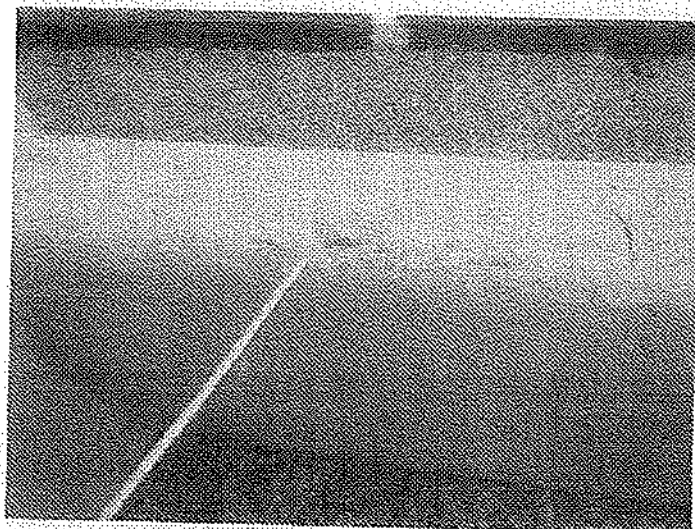
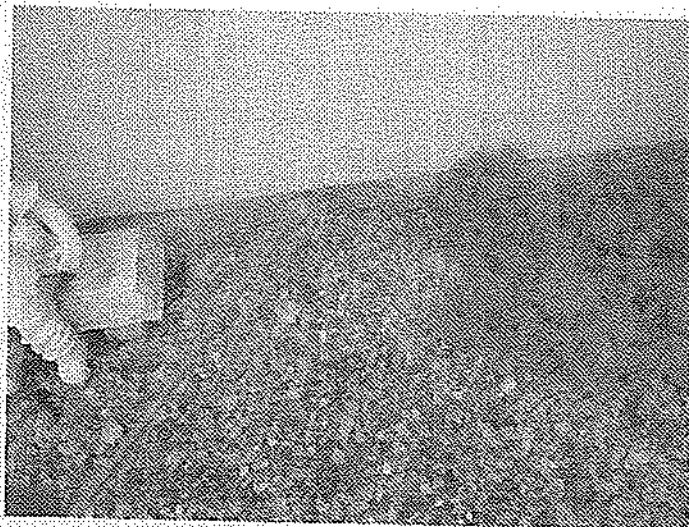
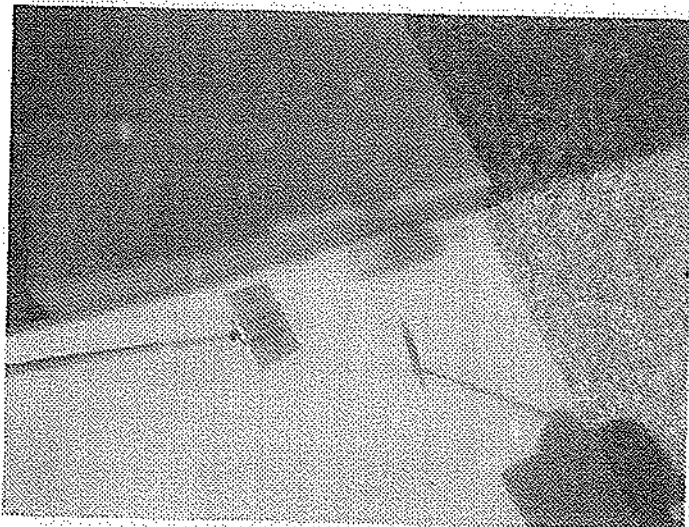


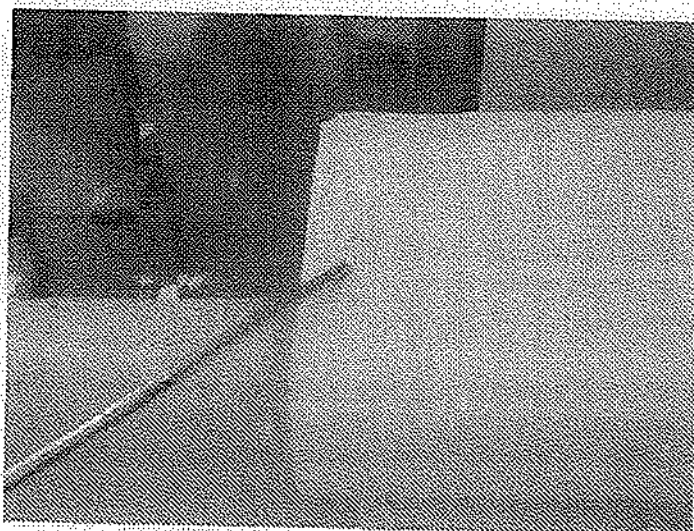
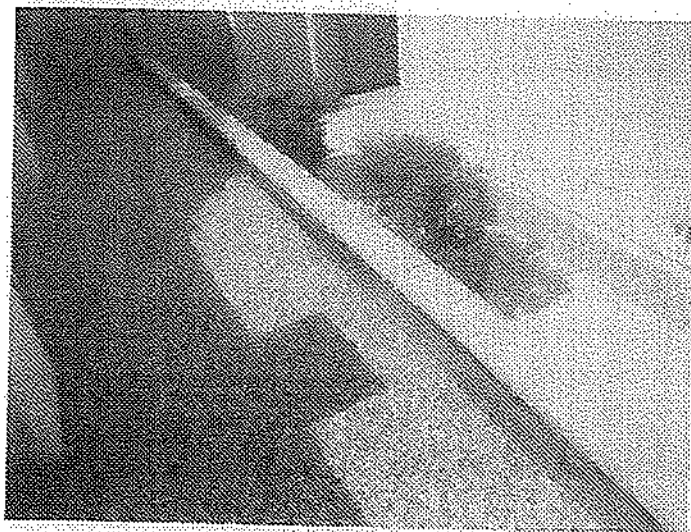
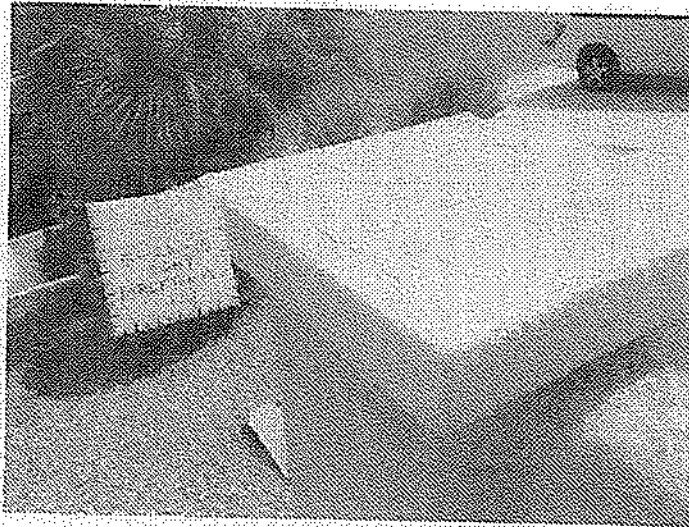
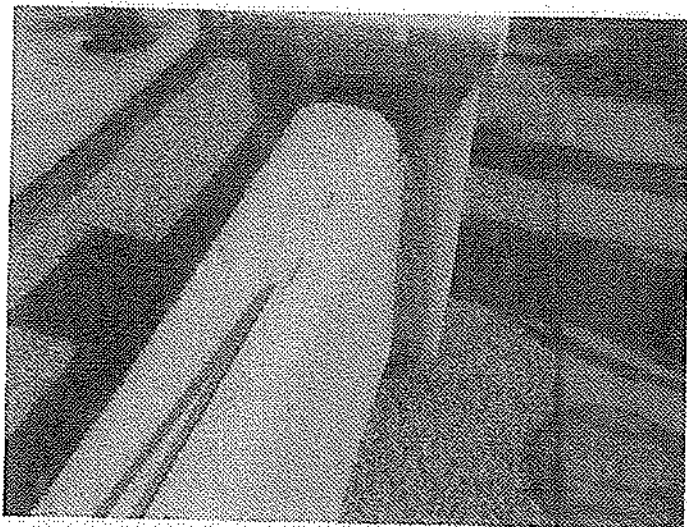


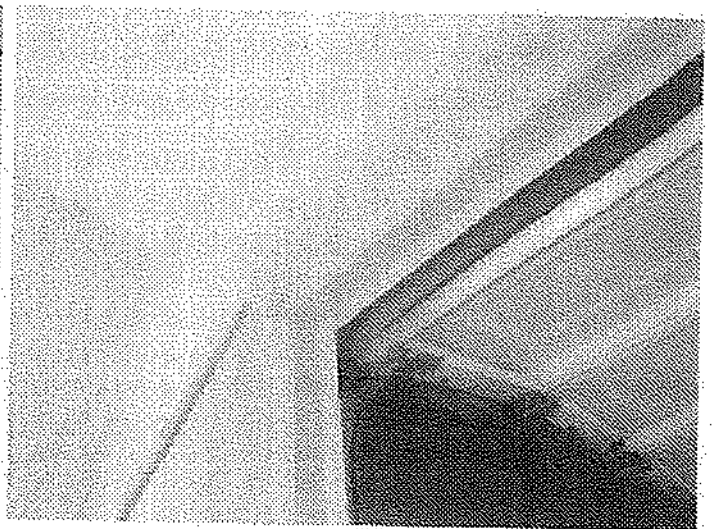
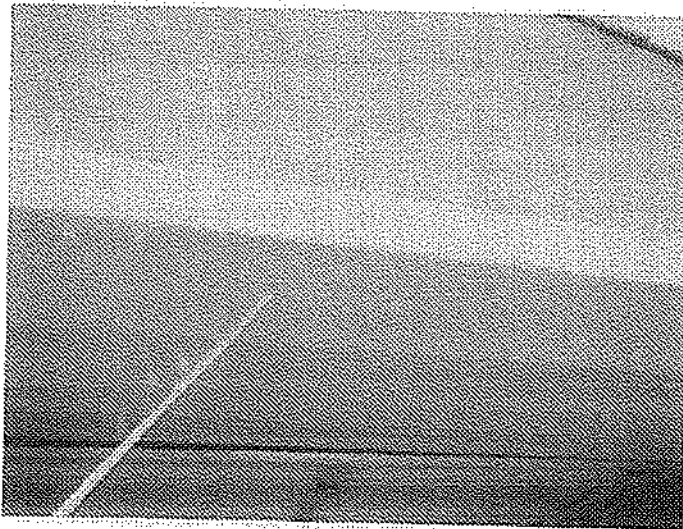
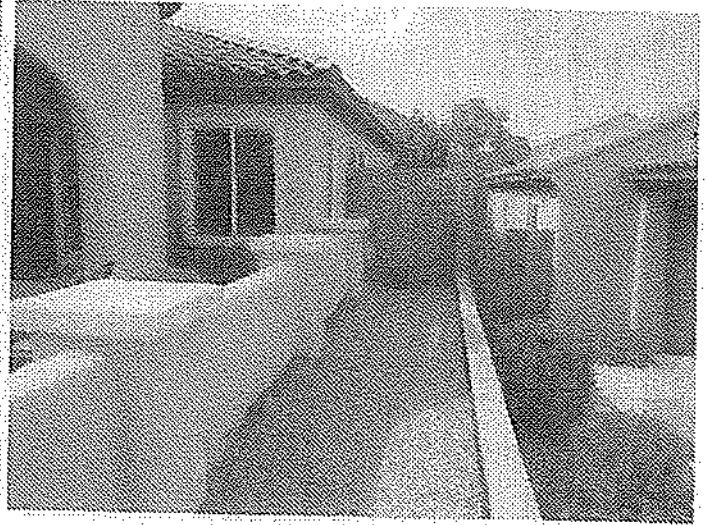
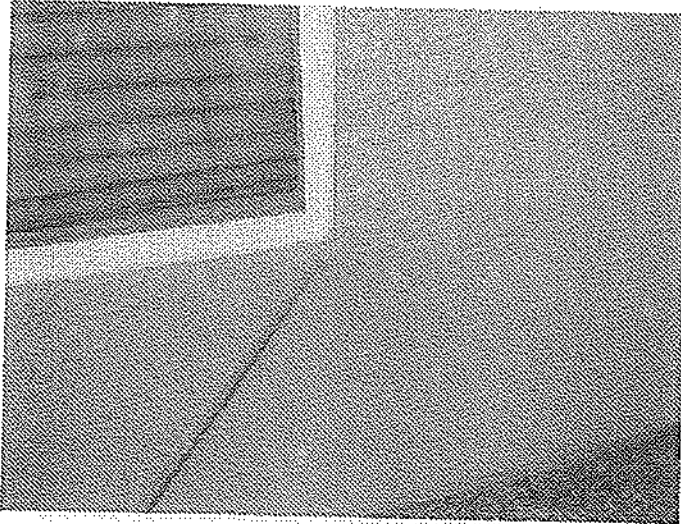


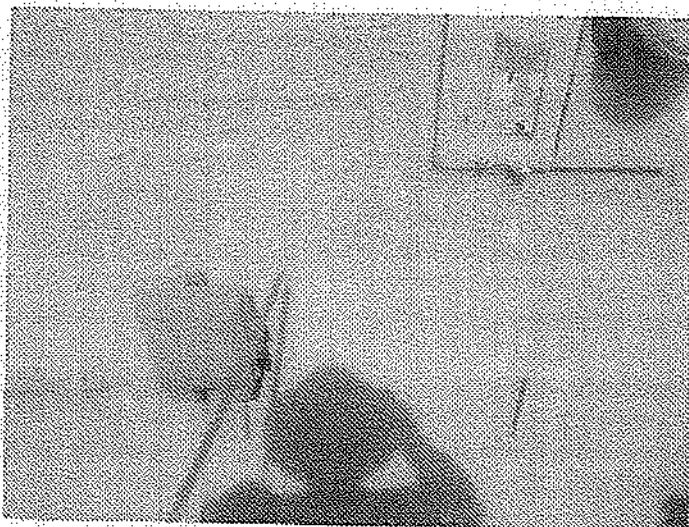
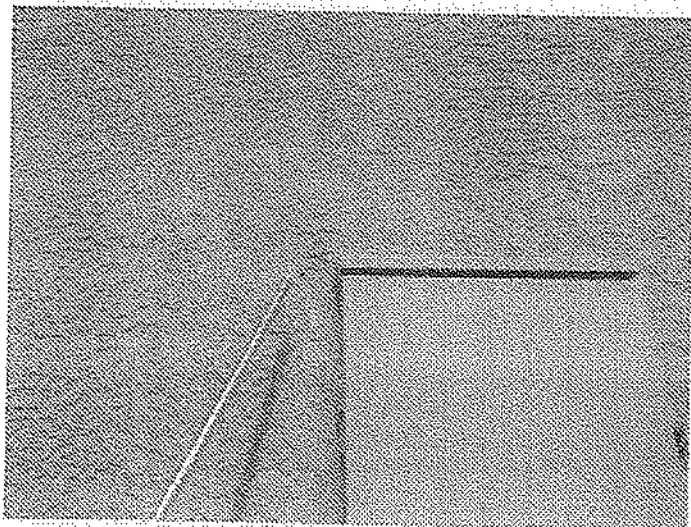
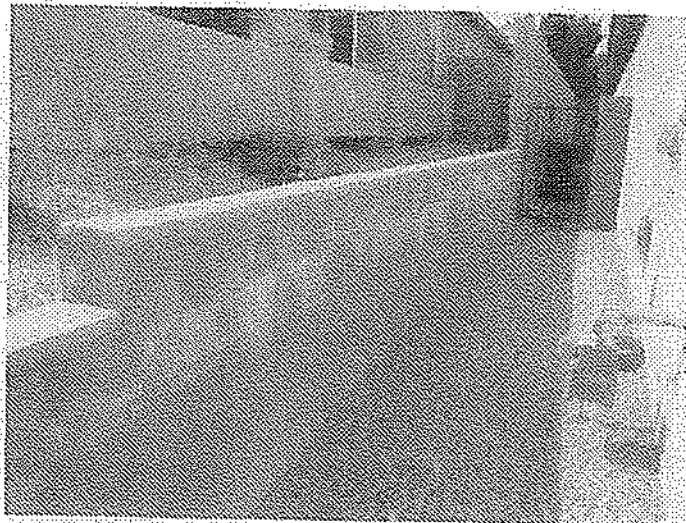
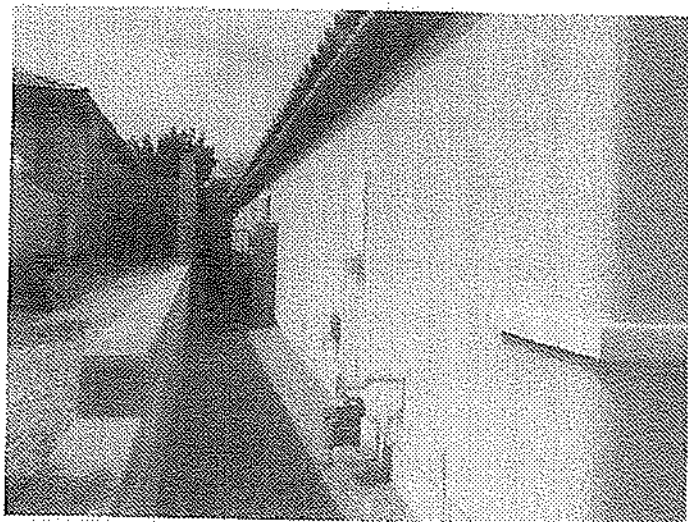


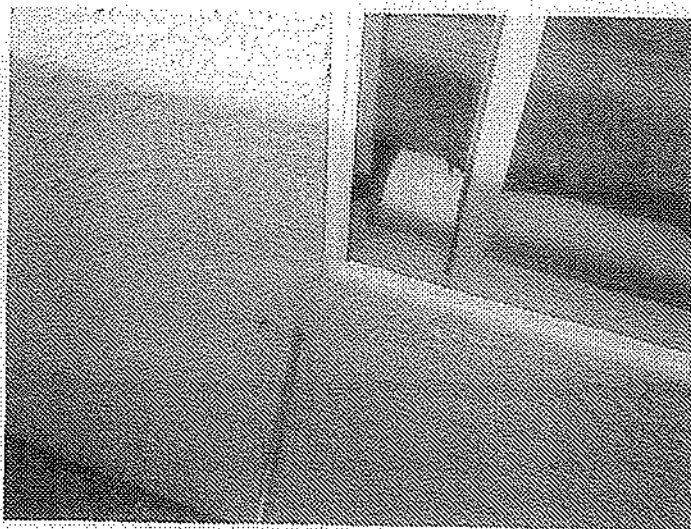
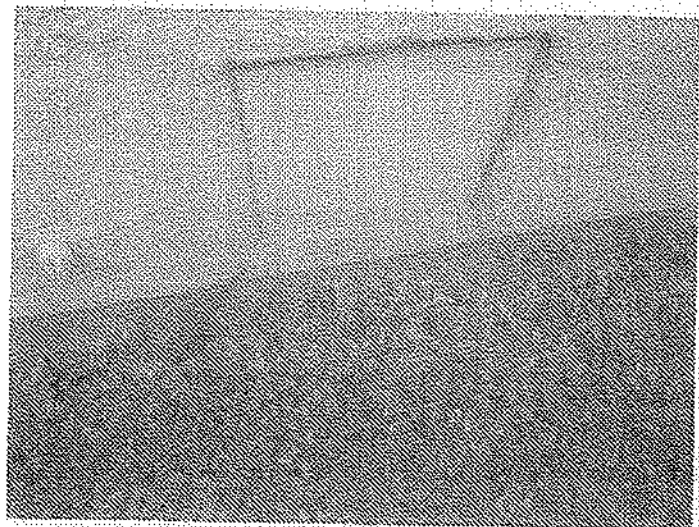
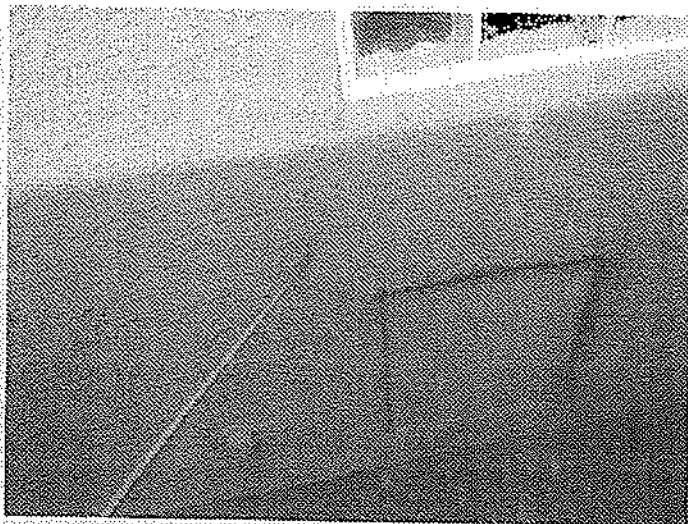
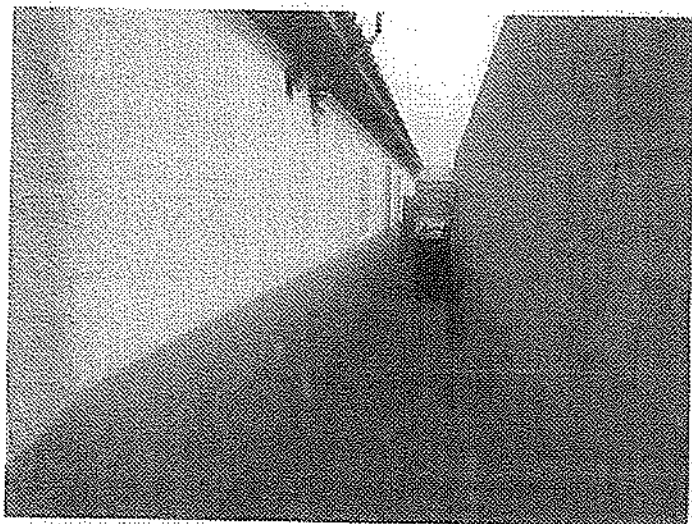


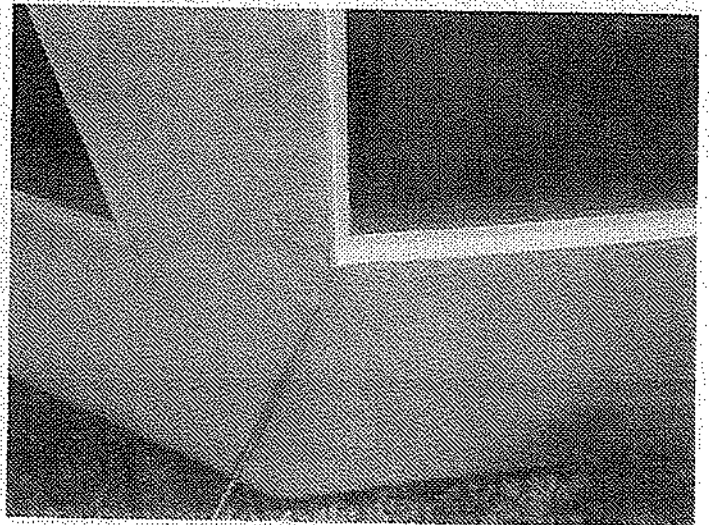
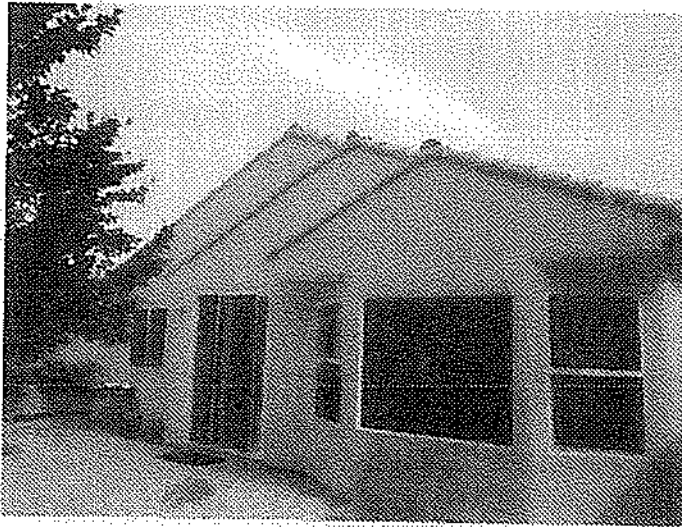
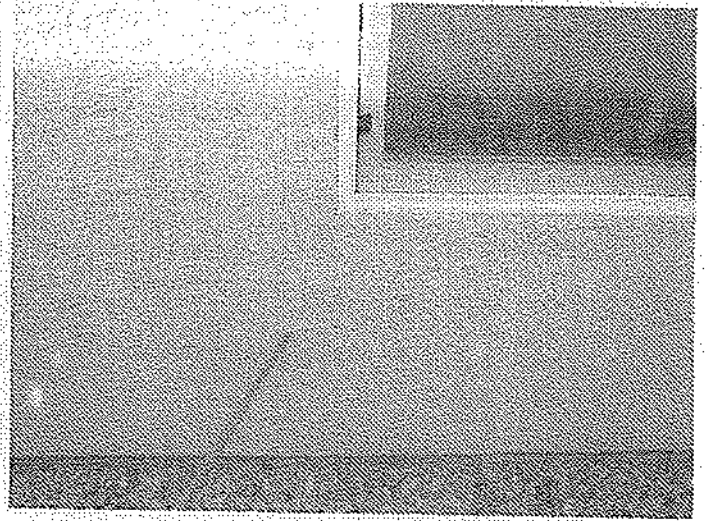
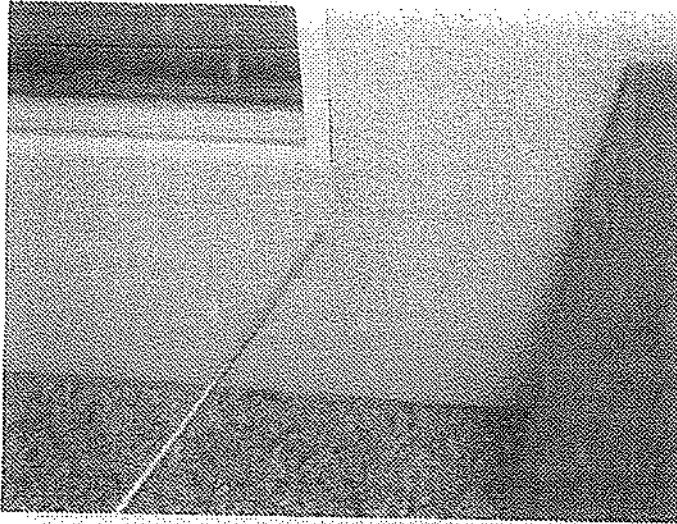


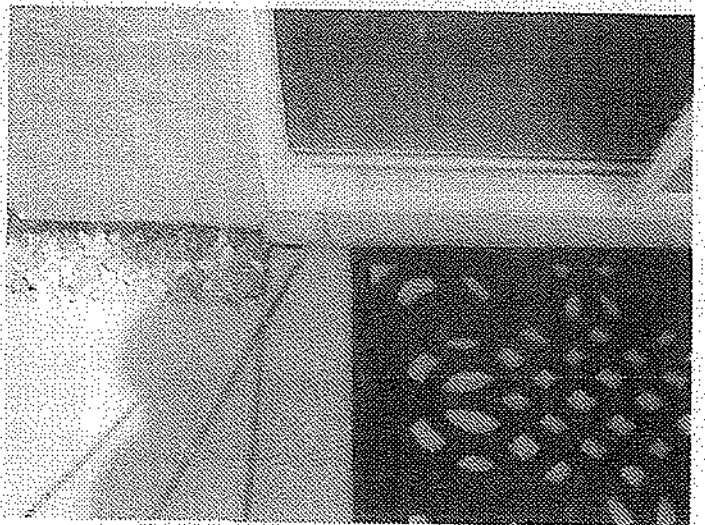
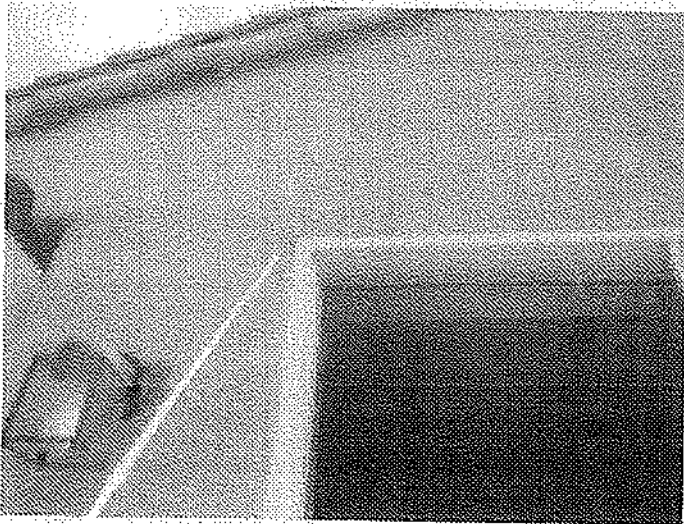
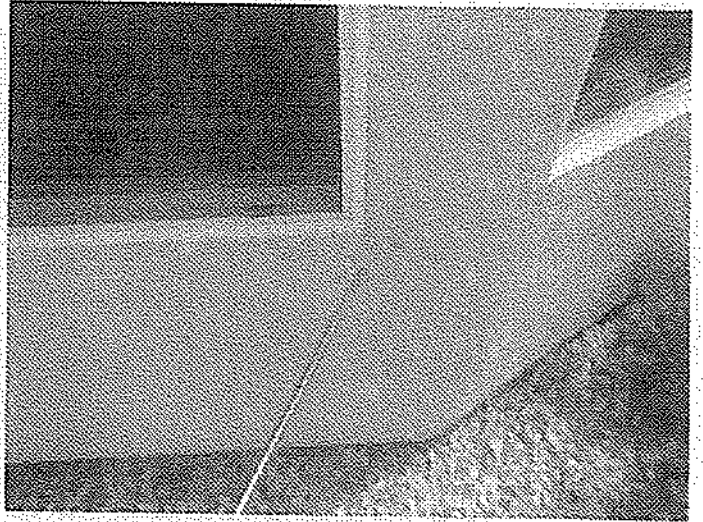
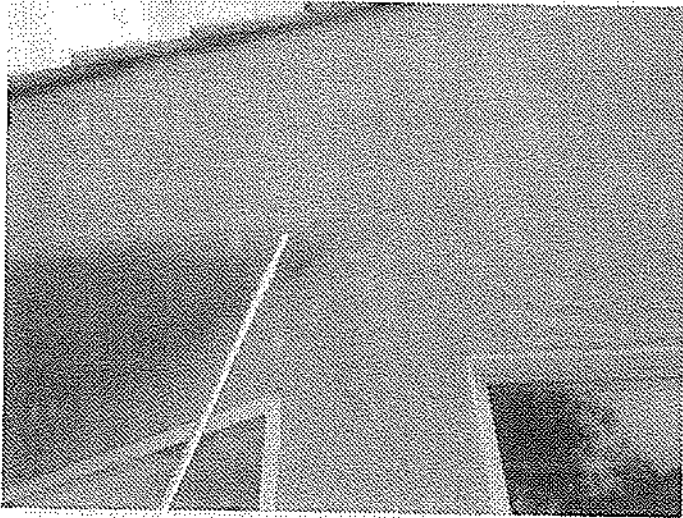


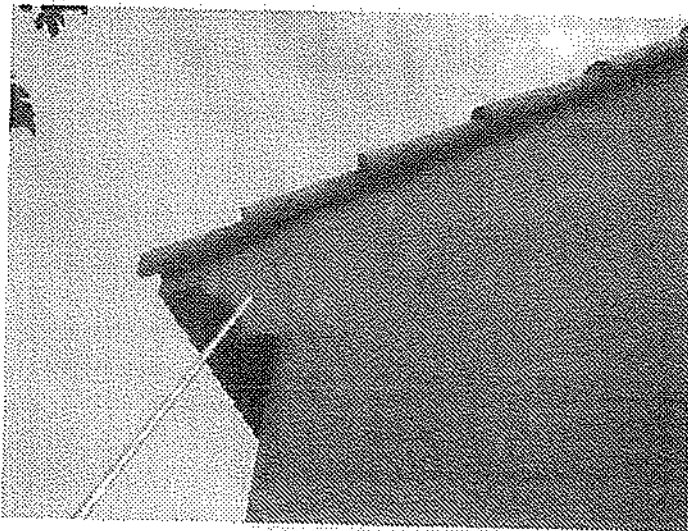
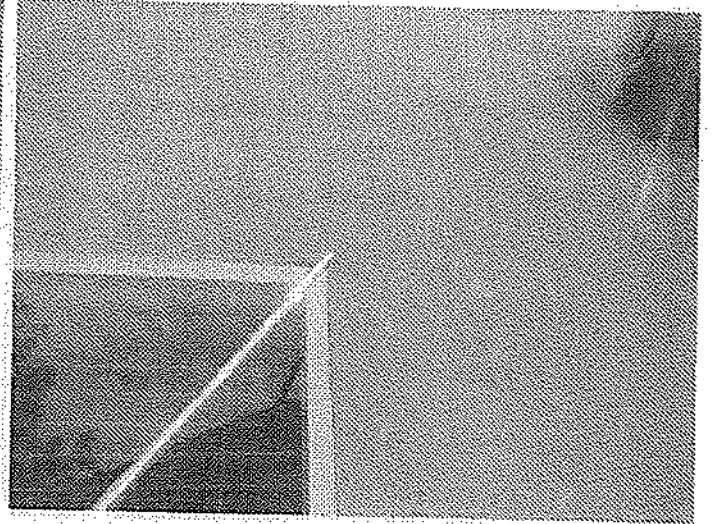
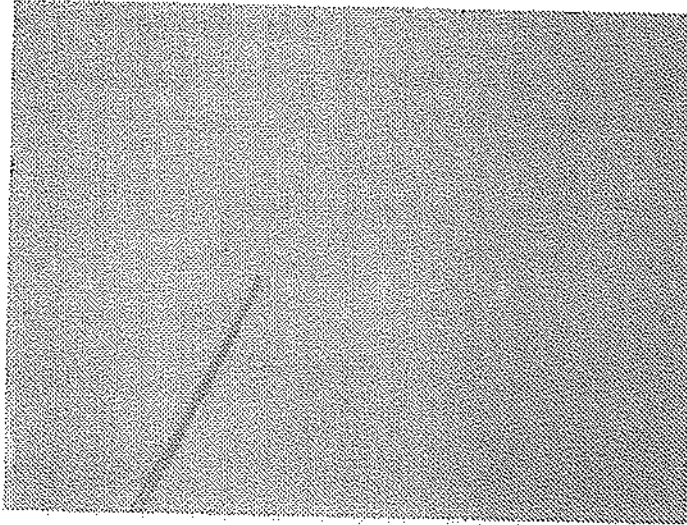


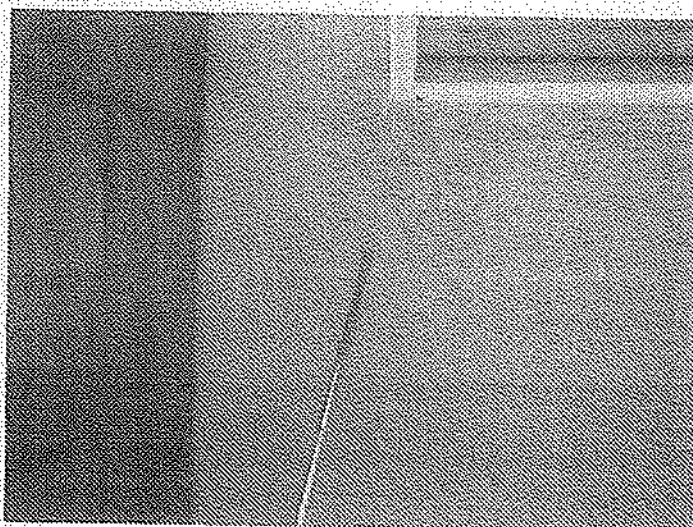
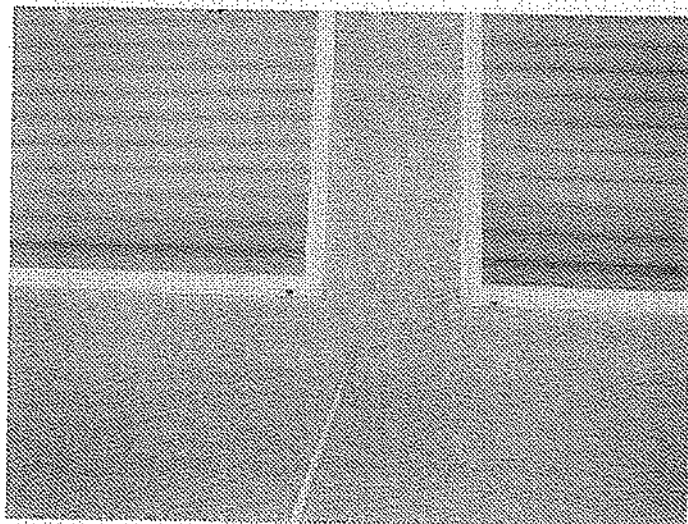
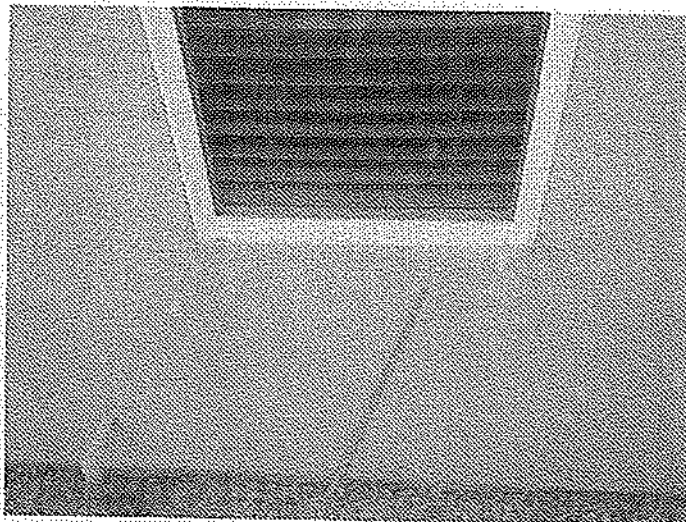
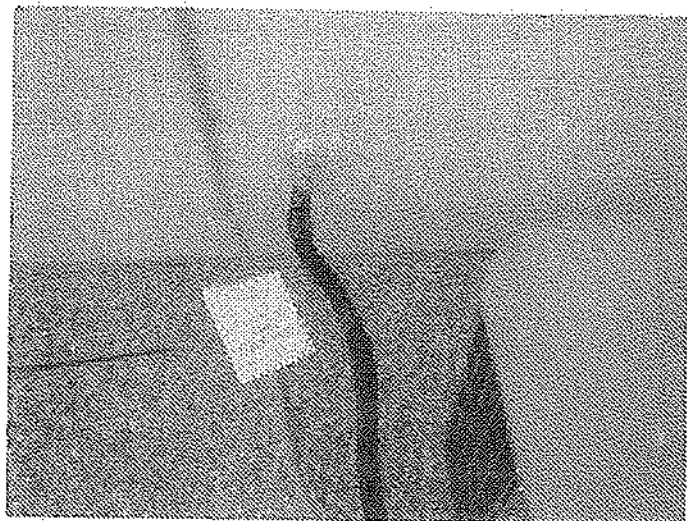


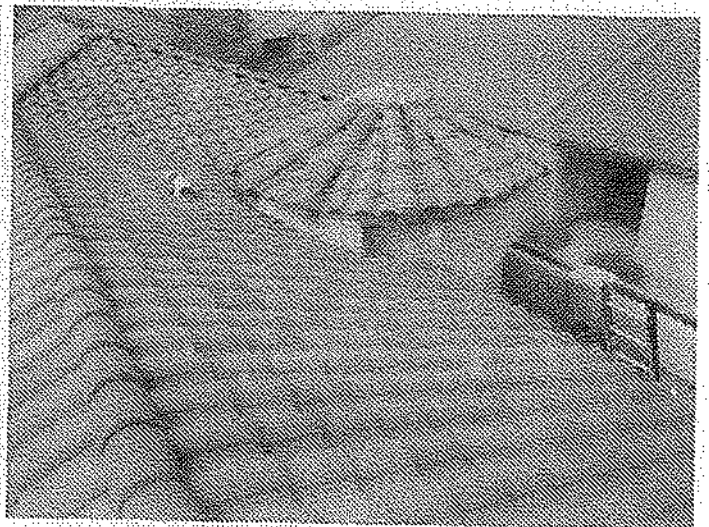
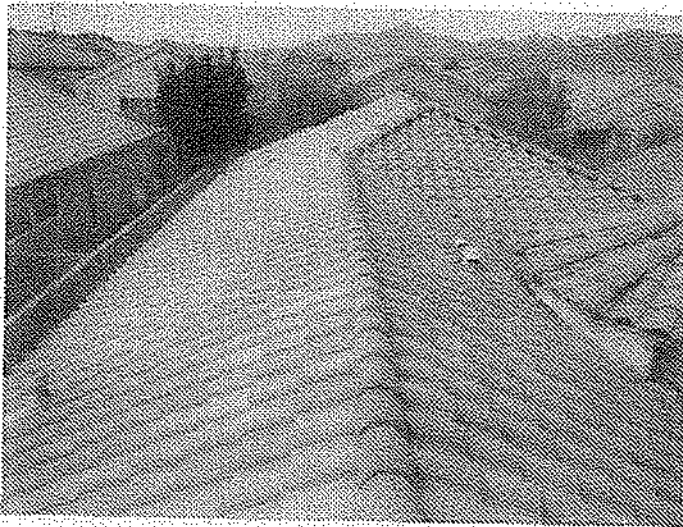
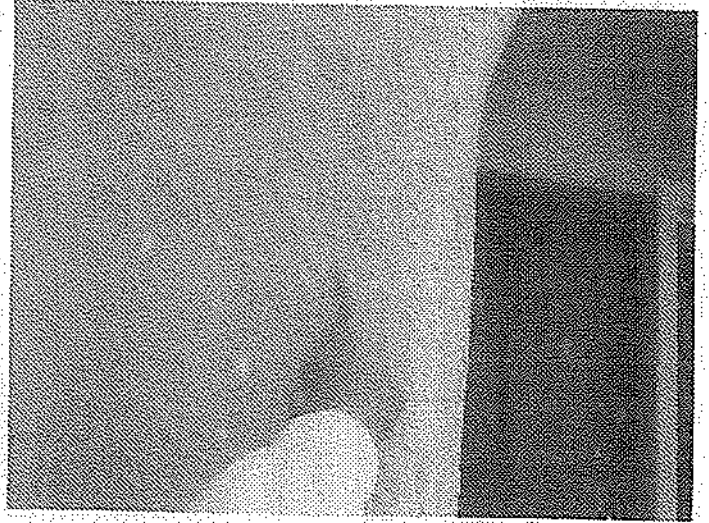
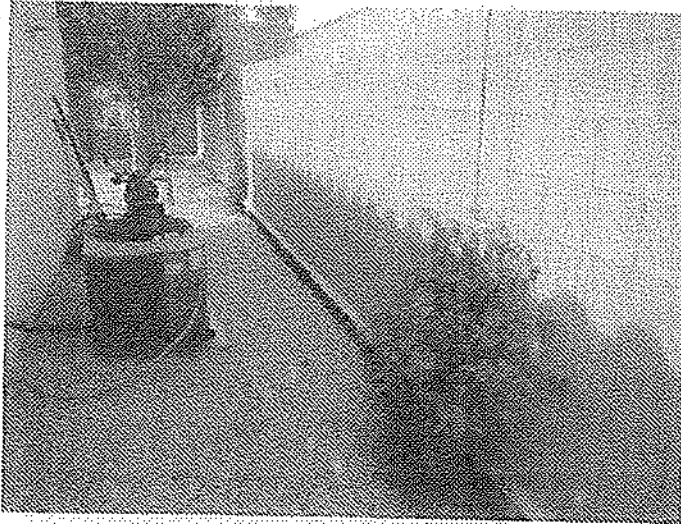


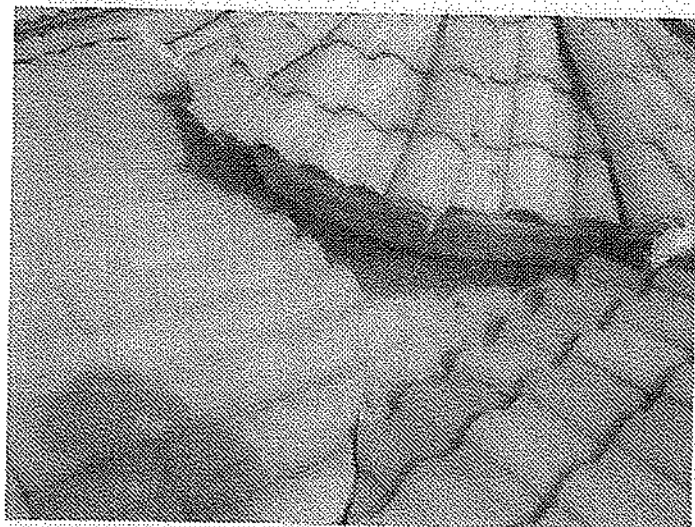
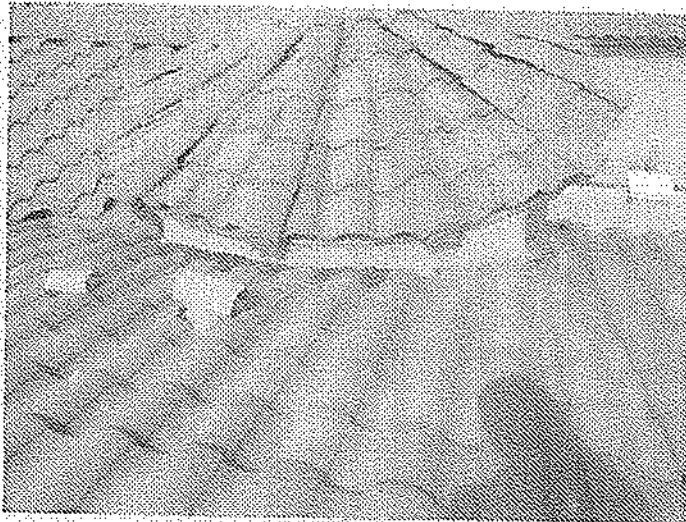
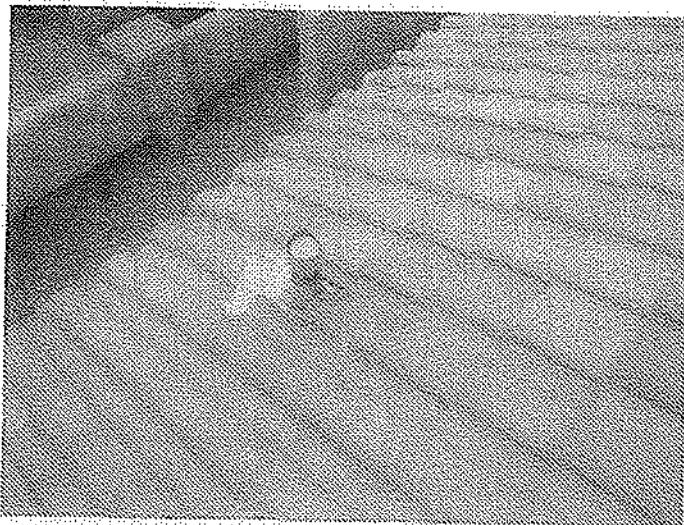


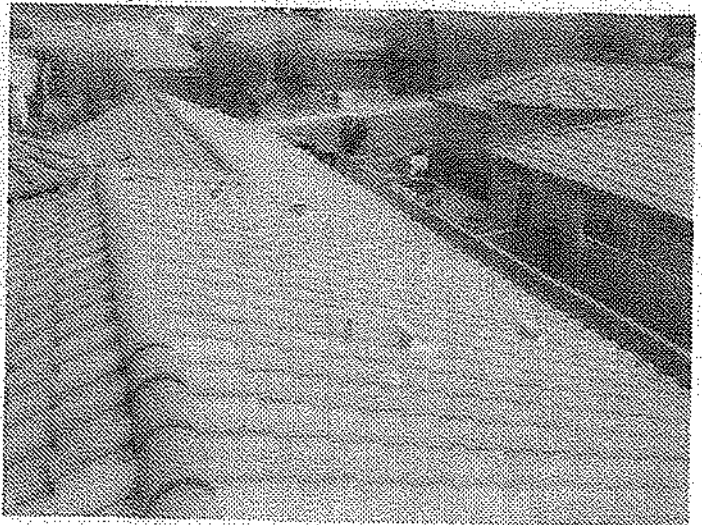
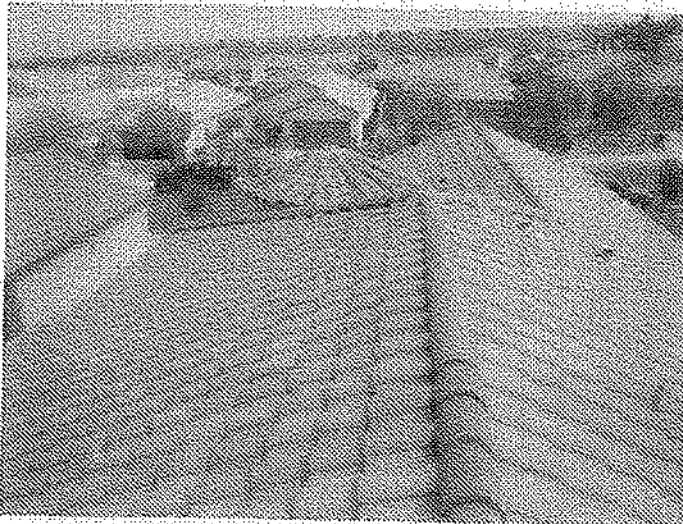
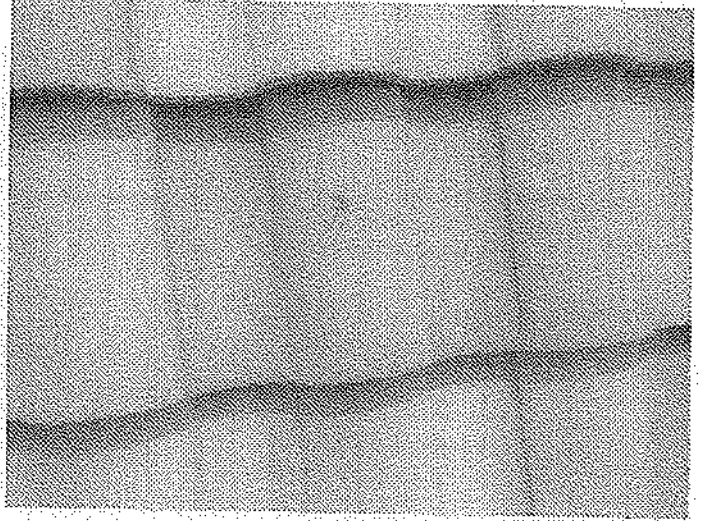
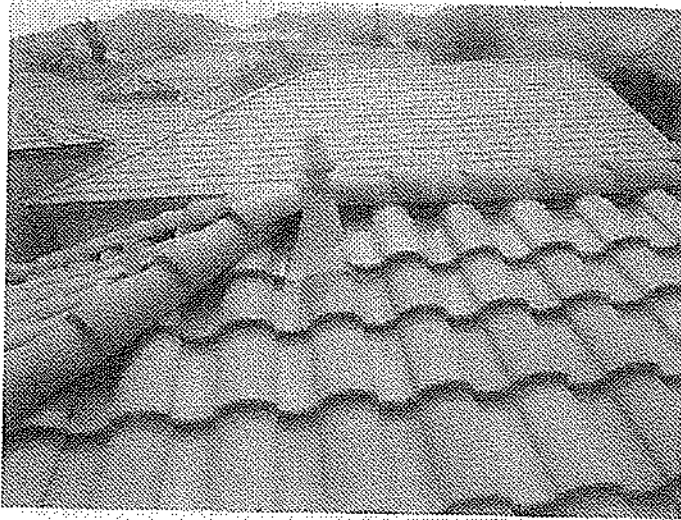


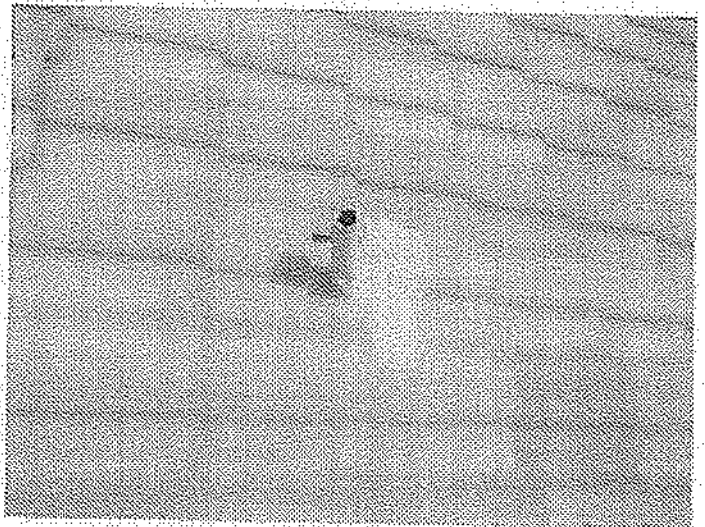
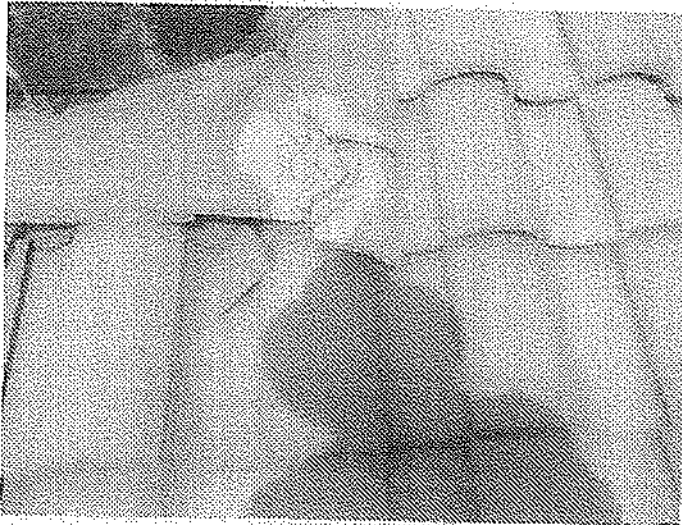
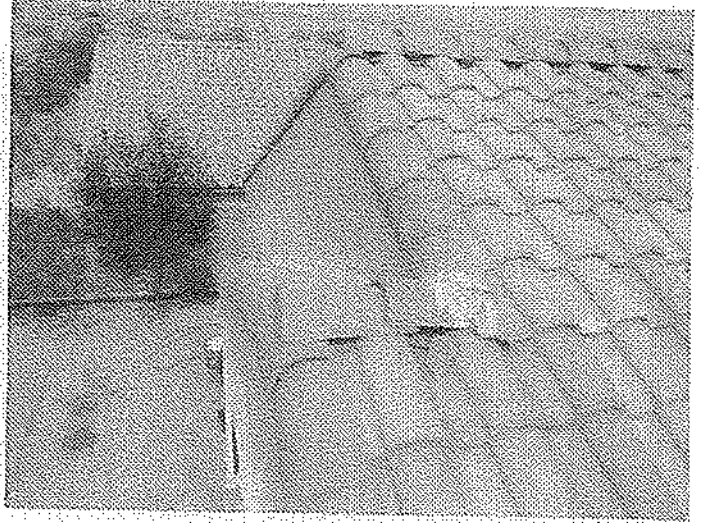
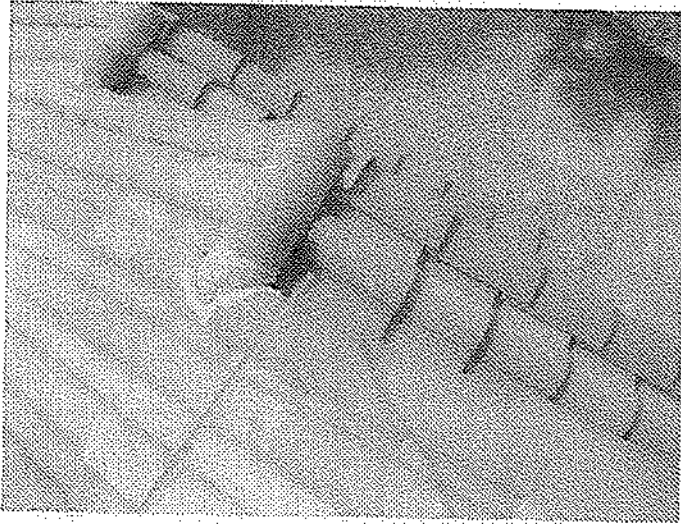


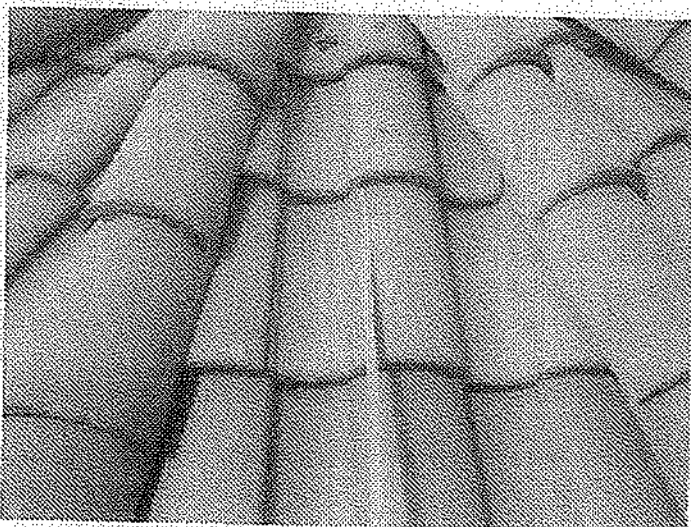
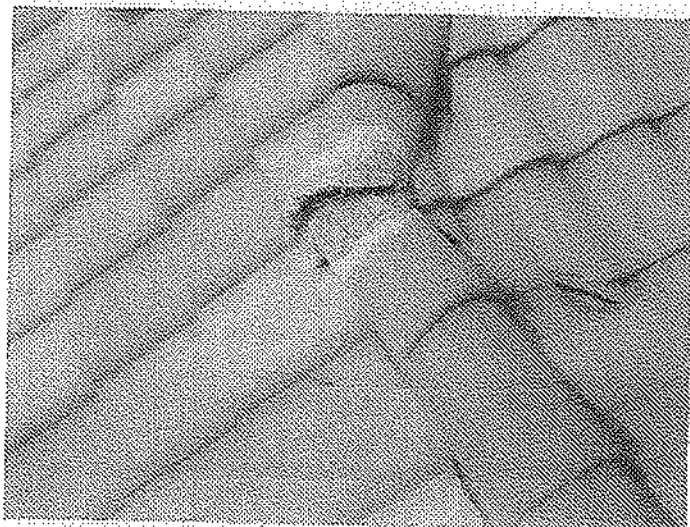
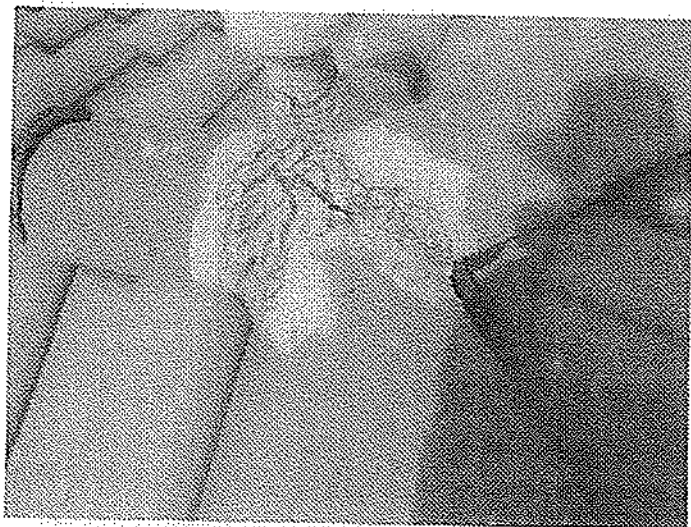


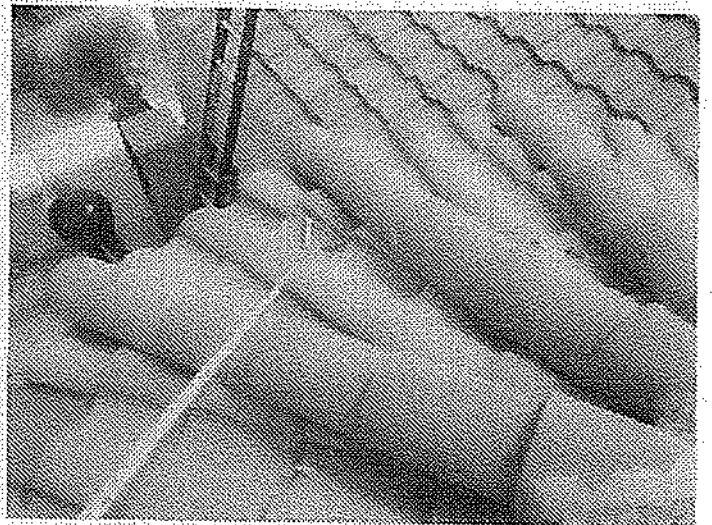
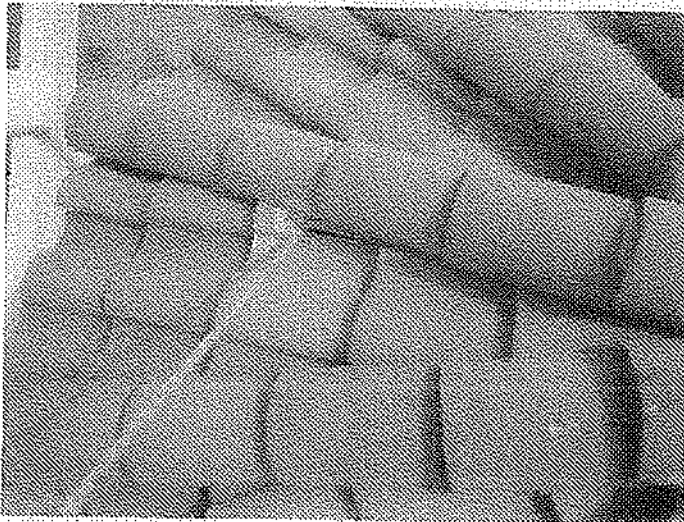
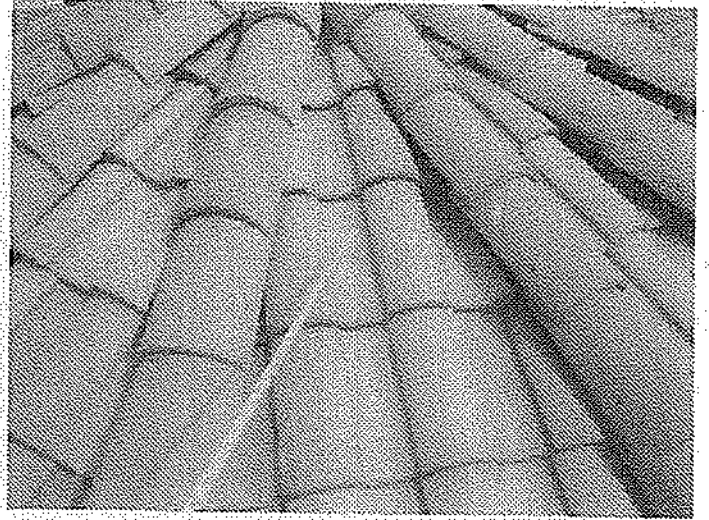
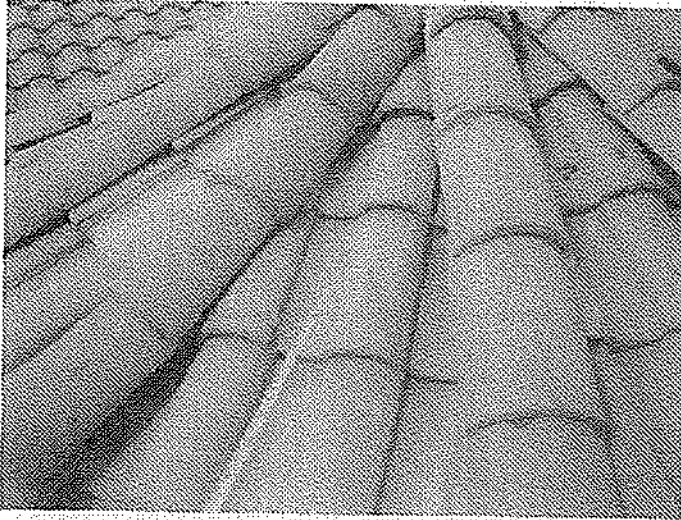


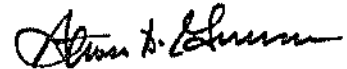












CLERK OF THE COURT

1 **RIS**
2 JASON W. WILLIAMS, ESQ.
3 Nevada Bar No. 8310
4 RICHARD D. YOUNG, ESQ.
5 Nevada Bar No. 11331
6 KOELLER NEBEKER CARLSON & HALUCK, LLP
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12 Attorneys for Defendant
13 Del Webb Communities, Inc.

9 **DISTRICT COURT**

10 **CLARK COUNTY NEVADA**

11 SCOTT PHILLIPS, individually; TEODORO H.) **CASE NO.: A714632**
12 and ROSA-LINDA R. BAUTISTA, individually;) **DEPT. NO.: XXII**
13 BROWER FAMILY TRUST, individually;)
14 CHARLES COLUCCI, individually; HARRY E.)
15 CROSBY REVOCABLE TRUST; DR. KAREN)
16 FELDMAN, individually; COLLEN T. SAN)
17 FILIPPO, individually; THE GILLES FAMILY) **DEL WEBB COMMUNITIES,**
18 LIVING TRUST, DATED JANUARY 14, 2014;) **INC.'S REPLY IN SUPPORT OF**
19 DAVID M. GORDON, individually; CHARLES) **ITS MOTION TO DISMISS**
20 and MARIA HEARN, individually; THOMAS)
21 C. and KATHLEEN A. JOHNSON,)
22 individually; AARON KNUDSON, individually;)
23 LORRAINE JOHNSON, individually; JOLEAN) **Hearing Date: June 23, 2015**
24 JONES, individually; YOUNG KYOON KIM) **Hearing Time: 10:30 a.m.**
25 and INOK KIM, individually; MIKE and TALIA)
26 LAQUITARA, individually; JAMES and)
27 ANDRONICKIE LAUTH, individually;)
28 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 w/t/d)
August 13, 2013; BUD O'BRIEN and ROSALIE)
O'BRIEN, individually; DAVID L. POWELL)

1 and JUNE D. COOPER, individually;)
2 RANDALL and NICOLE ROEDECKER,)
3 individually; EUGENIUSZ and ZOFIA)
4 SUCHECKI, individually; GARY G. TON,)
5 individually; ROY and SHARON VAN SLYKE,)
6 individually; LAUREL YVONNE WEAVER,)
7 individually; SCOTT M. ZIPKIN and ROBERT)
8 A. & ELLEN R. ZIPKIN, individually;)
9 MICHAEL J. and GLORIA NAN CONNOLLY,)
10 individually; ROBERT AND CONCETTA)
11 GAYNOR, individually; HECTOR G. and)
12 ROSARIO GARCIA, individually; JAMES A.)
13 HENDERSON JR., individually; HOWARD S.)
14 and ROBERTA P. LEVINE, individually;)
15 KURT FIELD and CRISTEN BOLANDER-)
16 FIELD, individually; BOBBIE SMITH,)
17 individually; CHAD and ALLICIA TOMOLA,)
18 individually; WILLIAM and CONNIE)
19 MCDERMOTT, individually; SYDNEY WOO,)
20 individually; PREMIERE HOLDINGS)
21 RESIDENTIAL DIVISION, LLC, a Nevada)
22 limited-Liability Company; VEROL R. and)
23 DEBRA A. BELLINFANTE, individually;)
24 ALFREDO and ILUMINADA CAMPOS,)
25 individually; WYNSIE MARIE CHAN,)
26 individually; ROBERT M. DYKEMA,)
27 individually; BROCK and REANNA FOSTER,)
28 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.

1 COMES NOW Defendant Del Webb Communities, Inc. (hereinafter "Del Webb"), by
2 and through its attorneys, Koeller, Nebeker, Carlson & Haluck, and hereby submits this reply in
3 support of its motion to dismiss.

4 This motion is supported by the attached memorandum of points and authorities, the
5 pleadings and papers on file herein, and any oral argument presented to the court at the time of
6 hearing.

7 DATED this 17th day of June, 2015.

8
9 KOELLER NEBEKER CARLSON
& HALUCK, LLP

10 BY: 

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18 Del Webb Communities, Inc.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Del Webb's underlying motion sought dismissal of 6 Plaintiffs¹. The opposition filed by
22 Plaintiffs does not oppose dismissal of 2 of these Plaintiffs (Nakaya and Ong). This leaves in
23 dispute the claims of 4 Plaintiffs.

24 The dispute concerning 3 of these Plaintiffs – Salisbury Trust, Turner and Dykema –
25 relates to the interpretation and application of the construction defect statutes of repose. Del
26 Webb contends that the claims of these 3 Plaintiffs are time-barred. Plaintiffs disagree. As will
27 be further demonstrated in this brief, Del Webb's position is supported by the allegations and by
28 the law of Nevada. Dismissal of these 3 Plaintiffs is therefore appropriate.

¹ Del Webb refers to the term Plaintiff to represent the owner or owners of a property. In some instances a single reference to "Plaintiff" may refer to multiple owners of the same property.

1 The dispute concerning the remaining Plaintiff group – Steven and Maria Moore –
2 requires the court to make a determination as to whether the Moores fully complied with the
3 pre-litigation requirements of NRS 40.600 et seq. (“Chapter 40”) prior to filing the complaint.
4 Plaintiffs’ opposition concedes that the Moores did not comply prior to filing the complaint, and
5 argue only for a stay of the litigation to allow compliance. Plaintiffs’ argument and request for
6 a stay must be rejected because it is not supported by the allegations or by Nevada law. of
7 Steven and Maria Moore should be dismissed.

8 II. THE MOTION TO DISMISS STANDARD IS APPROPRIATE

9 Plaintiffs’ opposition argues that Del Webb’s motion to dismiss should be evaluated
10 under a motion for summary judgment standard because the Del Webb’s motion considers
11 matters outside the complaint. While the general rule is that presentation of matters outside of
12 the complaint warrants a conversion of the applicable standard of review, there are exceptions.

13 The District Court of Nevada recently published an opinion interpreting FRCP 12(b)(6)².
14 In that decision the court held, “documents whose contents are alleged in a complaint and
15 whose authenticity no party questions, but which are not physically attached to the pleading,
16 may be considered in ruling on a Rule 12(b)(6) motion to dismiss without converting the motion
17 to dismiss into a motion for summary judgment.” *Eagle SPE NV I, Inc. v. Kiley Ranch*
18 *Communities*, 5 F. Supp. 3d 1238 (D. Nev. 2014) *quoting Branch v. Tunnell*, 14 F.3d 449, 454
19 (9th Cir.1994). This holding makes logical sense and represents sound policy, as a responding
20 party should be permitted to discuss the substance of documents relied upon in a complaint.

21 In addition, NRS 47.130 affords the district court the authority to take judicial notice of
22 facts that are generally known within the territorial jurisdiction of the court and are capable of
23 accurate and ready determination.

24 Here, the matters outside the pleadings upon which Del Webb’s motion rely are (1) the
25 Plaintiffs’ underlying Chapter 40 Notices; and (2) the certificates of occupancy and/or notices
26 of completion specific to each of the relevant properties.

27 ² FRCP 12(b)(6) is identical to NRCP 12(b)(5). The Nevada Supreme Court has previously recognized that federal
28 decisions involving the Federal Rules of Civil Procedure provide persuasive authority when examining the State
rules. *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005)

1 The Plaintiffs' underlying Chapter 40 Notices are directly alleged in Plaintiffs'
2 complaint (*see*, Paragraph 2a). In fact, under Nevada law Plaintiffs' entire complaint is based
3 upon the premise that each of the Plaintiffs has served the developer with a Chapter 40 Notice.
4 Thus, the Chapter 40 Notices attached to Del Webb's motion to dismiss are part and parcel of
5 Plaintiffs' complaint, and Del Webb's reliance upon them does not justify conversion of the
6 applicable standard of review.

7 Further, the Certificates of Occupancy and Notices of Completion upon which Del
8 Webb relies are public records maintained by Clark County and issued by the Henderson
9 Department of Building and Safety. These documents are generally known within the court's
10 territorial jurisdiction and are capable of accurate and ready determination. Thus, to the extent
11 these documents are considered outside of the complaint, Del Webb requests the court take
12 judicial notice of these documents. If judicial notice is taken, conversion to the NRCP 56
13 standard of review is not warranted.

14 **III. THE PROPER INTERPRETATION AND APPLICATION OF NRS 11**

15 To ultimately determine whether the claims of Plaintiffs Salisbury, Turner and Dykema
16 are appropriate, this court must interpret and apply NRS 11. Plaintiffs' opposition offers
17 inaccurate interpretations of some of the relevant provisions of this statute. Del Webb uses this
18 portion of its reply brief to correct these inaccuracies.

19 **A. How to calculate the date of substantial completion**

20 A statute of repose, unlike a statute of limitation, forecloses suit after a period of time
21 regardless as to whether damage or an injury has been discovered. The various statutes of
22 repose applicable to construction defect rely upon the date of substantial completion of a
23 property to determine the starting point for any calculation. NRS 11.205.5 defines the date of
24 substantial completion as follows:

25 The date of substantial completion of an improvement to real property shall be deemed to
be the date on which:

26 (a) The final building inspection of the improvement is conducted;

27 (b) A notice of completion is **issued** for the improvement; or

28 (c) A certificate of occupancy is **issued** for the improvement,
whichever occurs later.

(emphasis added)

1 Del Webb's motion to dismiss cites to the respective dates the Certificates of Occupancy
2 were issued for each property. Plaintiffs' counsel has secured the Notice of Completion
3 certificates for each property, and they have submitted those documents as part of Plaintiffs'
4 opposition. The Notice of Completion certificates were each issued later in time than the
5 corresponding Certificates of Occupancy. Thus, Plaintiffs are correct in noting that the Notices
6 of Completion should be used to calculate the date of substantial completion. However,
7 Plaintiffs have ultimately erred in their methodology of determining the date of substantial
8 completion because they rely on the date that each Notice of Completion was recorded instead
9 of the date each Notice of Completion was issued. The relevance of this error will be discussed
10 in Section IV of this brief, *infra*, as part of the specific discussion of each Plaintiff.

11 **B. How to determine the applicable statute of repose**

12 Plaintiffs' opposition argues the 10-year period of repose applies to the Plaintiffs'
13 claims. However, argument forwarded by counsel in a brief is not the standard for determining
14 whether the 10-year period of repose applies. Instead, the relevant inquiry requires review of
15 the allegations set forth in the operative complaint. Thus, for the 10-year period of repose to
16 apply we must look to the complaint to see if Plaintiffs have alleged that Del Webb knew or
17 should have known that a particular condition was a construction defect.

18 Here, Plaintiffs' complaint forwards no such allegation. Accordingly, there is no basis
19 upon which this court can even apply the 10-year period of repose. The current allegations
20 support the application of either the 6-year or 8-year period of repose. However, depending on
21 how the court interprets the 2-year savings provision (discussed in the following section), the
22 applicable statute of repose will not affect the outcome of Del Webb's motion to dismiss.

23 **C. How to evaluate the application of the two-year savings provision**

24 There are 3 *potentially* applicable statutes of repose to Plaintiffs' claims. *See*, NRS
25 11.203, 11.204, 11.205. Each of these statutes of repose provides what is colloquially referred
26 to as a "two-year savings provision." Each provision reads the same way, i.e., if an injury
27 occurs in the final year of the repose period, then an action may be commenced within 2 years
28 after the date of such injury.

1 Plaintiffs have offered two inaccurate interpretations of these savings provisions. First,
2 Plaintiffs make repeated reference to the “discovery” of defects. The date of discovery is
3 entirely irrelevant to the analysis; instead, it is the date the injury first occurs that is relevant.
4 Second, Plaintiffs interpret these savings provisions as adding 2 years to the end of the repose
5 period. This is also not true. The provisions provides that a Plaintiff has two years from the
6 date of injury to bring the claim.

7 IV. LEGAL ARGUMENT

8 A. The claims of Plaintiffs Salisbury, Dykema and Turner are time-barred

9 The claims forwarded by Plaintiffs Salisbury, Turner and Dykema are precluded by
10 operation of statute of repose. As a threshold issue, Del Webb submits that the allegations in
11 the complaint lend Plaintiffs’ claims to treatment under either the 6-year period of repose or the
12 8-year period of repose. As is discussed in Section III (B) of this brief, *supra*, there are no
13 allegations in the complaint which would permit application of the 10-year period of repose.
14 However, even if the 10-year period of repose is applied, Plaintiffs’ claims are still time-barred.

15 In response to Del Webb’s motion, Plaintiffs have offered varying arguments. Del
16 Webb addresses the unique arguments raised by each of the relevant 3 Plaintiffs below.

17 1. Plaintiff Ronald Turner

18 Plaintiff Ronald Turner is forwarding claims of construction defect related to his
19 property located at 2844 Blythswood Square. In their opposition, Plaintiffs have secured the
20 Notice of Completion certificate for the 2844 Blythswood Square property. The Notice of
21 Completion Certificate was issued on December 14, 2004. Rather than identify the date of
22 issuance as the date of substantial completion, Plaintiffs look at the date the document was
23 recorded – December 23, 2004 – and argue that the date of recording is the date of substantial
24 completion. However, as has been previously established in this brief, the date of recording is
25 irrelevant because the statute identifies the date of issuance as the appropriate standard.

26 The following table demonstrates that Mr. Turner’s claims are time-barred based upon
27 the date the Notice of Completion was issued.

| Plaintiff | Address | Date of Substantial Completion | Last Day to Serve Notice under NRS 11.203 | Date of First Claim |
|------------------|---------------------|---------------------------------------|--|----------------------------|
| Turner | 2844 Blythswood Sq. | 12/14/04 | 12/13/14 | 12/22/14 |

Due to the reasons discussed above, the claims of Mr. Turner must be dismissed, with prejudice because they are time-barred.

2. Plaintiff Salisbury Family Trust

Plaintiff Salisbury Family Trust is forwarding claims of construction defect related to its property located at 2798 Lochleven Way. In their opposition, Plaintiffs have secured the Notice of Completion certificate for the 2798 Lochleven Way property. The Notice of Completion Certificate was issued on December 30, 2004. Rather than identify the date of issuance as the date of substantial completion, Plaintiffs look at the date the document was recorded – January 7, 2005 – and argue that the date of recording is the date of substantial completion. However, as has been previously established in this brief, the date of recording is irrelevant because the statute identifies the date of issuance as the appropriate standard.

The following table demonstrates that Salisbury's claims are time-barred based upon the date the Notice of Completion was issued.

| Plaintiff | Address | Date of Substantial Completion | Last Day to Serve Notice under NRS 11.203 | Date of First Claim |
|------------------|--------------------|---------------------------------------|--|----------------------------|
| Salisbury Trust | 2798 Lochleven Way | 12/30/04 | 12/29/14 | 12/30/14 |

Plaintiff Salisbury missed its deadline to initiate a claim by only one day. But one day is no different than one month – late is late. In an effort to excuse the tardy notice, the trustee for Plaintiff Salisbury has executed a declaration. This declaration does nothing to save Salisbury's claims.

First, the declaration should not be considered by this court because its contents are irrelevant. The only relevant allegations are those contained in the complaint. Here, there are no allegations in the complaint that the injuries complained of by Plaintiff Salisbury occurred for the first time in the 10th year after substantial completion.

1 Second, the declaration should be disregarded because it is a matter outside the pleading.
2 As was discussed earlier in this brief, the only matters outside the pleading that can be
3 considered on a motion to dismiss are: (1) documents whose contents are alleged in a complaint
4 and whose authenticity no party questions; or (2) items judicially noticed. Salisbury's June 2,
5 2015 declaration does not fit into either category.

6 Third, even if the declaration is accepted, much of its substance does nothing to defeat
7 Del Webb's motion. Evidence of "replaced" items, such as GFCI outlets, a dishwasher or a
8 water heater are irrelevant because the purpose of a Chapter 40 Notice is to provide the builder
9 with an opportunity to repair. A homeowner who serves a notice after she has repaired a non-
10 life-threatening defect has objectively failed to comply with the pre-litigation process and
11 cannot recover for such claims.

12 Fourth, even if these items were properly noticed, there has been no allegation in the
13 complaint that Del Webb knew or should have known that the defective conditions existed at
14 the time of original construction, i.e., there is no allegation in the complaint upon which to
15 apply the 10-year period of repose.

16 Fifth, there is no allegation in the complaint that the issues itemized in the declaration
17 were the result of a construction defect.

18 Sixth, even if Salisbury's claims are found timely under NRS 11.203 and 11.204, and
19 even if each of the five previous arguments fail, then Plaintiff Salisbury's recovery would be
20 limited to the specific issues itemized in the declaration.

21 In summation, Plaintiff Salisbury is unable to establish that its claims are timely under
22 NRS 11.203 or 11.204. The Notice was served on year 11, day 1 after substantial completion.
23 Each and every attempt made by Plaintiffs to save these claims fails for various reasons.
24 Accordingly, Plaintiff Salisbury must be dismissed.

25 **3. Plaintiff Robert M. Dykema**

26 Plaintiff Robert Dykema is forwarding claims of construction defect related to his
27 property located at 2818 Creighton Dr. In their opposition, Plaintiffs have secured the Notice of
28 Completion certificate for the 2818 Creighton Dr. property. The Notice of Completion

1 Certificate was issued on November 30, 2004. Rather than identify the date of issuance as the
2 date of substantial completion, Plaintiffs look at the date the document was recorded –
3 December 8, 2004 – and argue that the date of recording is the date of substantial completion.
4 However, as has been previously established in this brief, the date of recording is irrelevant
5 because the statute identifies the date of issuance as the appropriate standard.

6 The following table demonstrates that Mr. Dykema's claims are time-barred based upon
7 the date the Notice of Completion was issued.

| 8
9
10 | Plaintiff | Address | Date of
Substantial
Completion | Last Day to Serve
Notice under NRS
11.203 | Date of
First Claim |
|--------------|-----------|--------------------|--------------------------------------|---|------------------------|
| | Dykema | 2818 Creighton Dr. | 11/30/04 | 11/29/14 | 12/02/14 |

11 In an effort to excuse the tardy notice, Plaintiffs' opposition attaches two
12 unauthenticated receipts and argues that "Plaintiff Dykema produced repair receipts in the 10th
13 year after substantial completion of his home..." (Plaintiffs' Opposition, Page 8, Lines 1-2).
14 These receipts should be disregarded for many reasons.

15 First, the receipts are not authenticated, and without the proper foundation and
16 authentication serve no purpose and represent inadmissible hearsay.

17 Second, the receipts are irrelevant. The only relevant allegations are those contained in
18 the complaint. Here, there are no allegations in the complaint that the injuries that are
19 supposedly demonstrated by the receipts occurred for the first time in the 10th year after
20 substantial completion.

21 Third, the receipts should be disregarded because they are matters outside the pleading.
22 As was discussed earlier in this brief, the only matters outside the pleading that can be
23 considered on a motion to dismiss are: (1) documents whose contents are alleged in a complaint
24 and whose authenticity no party questions; or (2) items judicially noticed. These two receipts
25 do not fit into either category.

26 Fourth, even if the receipts were considered, the description of the work performed in
27 each receipt represents a completed repair. The purpose of a Chapter 40 Notice is to provide the
28

1 builder with an opportunity to repair. A homeowner who serves a notice after he has repaired a
2 non-life-threatening defect has objectively failed to comply with the pre-litigation process and
3 cannot recover for such claims.

4 Fifth, Mr. Dykema's Chapter 40 Notice (attached to Del Webb's underlying motion as
5 **Exhibit "G"**) does not allege any claims related to the issues discussed in the receipts.
6 According to these receipts, the work performed was (1) the installation of a new pressure
7 reducing valve; and (2) the repair of cracked fiberglass and resurfacing of master shower tub.
8 There are no such claims in Mr. Dykema's Chapter 40 Notice.

9 Sixth, even if these receipts were relevant and were considered, there has been no
10 allegation in the complaint that Del Webb knew or should have known that these "defects"
11 existed at the time of original construction, i.e., there is no allegation in the complaint upon
12 which to apply the 10-year period of repose.

13 Seventh, there is no allegation in the complaint that the issues itemized in the receipts
14 were the result of a construction defect.

15 Eighth, even if Mr. Dykema's claims are found timely under NRS 11.203 and 11.204,
16 and even if each of the seven previous arguments fail, then Plaintiff Dykema's recovery would
17 be limited to the specific issues itemized in the receipts.

18 In summation, Plaintiff Dykema is unable to establish that his claims are timely under
19 NRS 11.203 or 11.204. The Notice was served on year 11, day 3 after substantial completion.
20 Each and every attempt made by Plaintiffs to save these claims fails for various reasons.
21 Accordingly, Plaintiff Dykema must be dismissed.

22 **B. Steven and Maria Moore have not complied with NRS 40.600 et seq.**

23 Steven and Maria Moore only first attempted to serve Del Webb with a compliant notice
24 on May 27, 2015 – 8 days after Del Webb filed its motion to dismiss, and 82 days after the
25 Moores filed suit against Del Webb. Plaintiffs' opposition does not dispute this. These claims
26 must be dismissed, and the Moores must be forced to proceed through the NRS 40.600 et seq.
27 pre-litigation process.
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V. CONCLUSION

For the foregoing reasons, Del Webb seeks the following relief:

1. Dismissal, with prejudice, of Plaintiffs Salisbury Family Trust, Ronald Turner and Robert Dykema because their claims are precluded by NRS 11.204 and NRS 11.203.

2. Dismissal of Plaintiffs Steven and Maria Moore due to their failure to comply with the pre-litigation requirements of NRS 40.600 et seq.

3. Dismissal, with prejudice, of Plaintiffs Dionisio Ong and Takeshi Nakaya. Plaintiffs have conceded Del Webb's request, and all that is left is for the court to grant the dismissal.

DATED this 17th day of June, 2015.

KOELLER NEBEKER CARLSON
& HALUCK, LLP

BY: 

RICHARD D. YOUNG, ESQ.

Nevada Bar. No. 11331

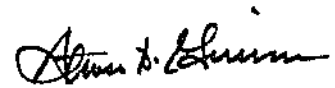
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

SCOTT PHILLIPS,

Plaintiff,

vs.

DEL WEBB COMMUNITIES, INC.,

Defendant.

CASE NO. A-714632

DEPT. XXII

BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE
JUNE 23, 2015

RECORDER'S TRANSCRIPT OF HEARING RE
DEL WEBB COMMUNITIES, INC.'S MOTION TO DISMISS

APPEARANCES:

For the Plaintiff:

DUANE E. SHINNICK, ESQ.

For the Defendant:

RICHARD D. YOUNG, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 TUESDAY, JUNE 23, 2015 AT 10:34:06 A.M.

2
3 THE COURT: All right. Phillips versus Del Webb Communities, case number
4 A15-714632-D.

5 MR. SHINNICK: Good morning, Your Honor. Duane Shinnick for the Plaintiffs
6 and responding party.

7 MR. YOUNG: Good morning, Your Honor. Richard Young for Del Webb
8 Communities, Inc.

9 THE COURT: Okay. Del Webb's Motion to Dismiss. And I gather from
10 reviewing that there are two Plaintiff cases that there is no dispute. I believe it was
11 Ong and -- let me get there. Let's see --

12 MR. YOUNG: Nakaya and Ong.

13 THE COURT: Nakaya and Ong. So, Mr. Shinnick, just so that I understand,
14 there is no opposition or a dispute regarding their claims?

15 MR. SHINNICK: That's correct, Your Honor. Those owners have decided to
16 withdraw their claim and we do not oppose the motion.

17 THE COURT: Okay. Then I'm gonna go ahead and grant the motion to
18 dismiss with respect to Nakata [sic] -- Nakaya and Ong. So, we can take that one --
19 and then now we're talking about Salisbury, Turner -- was it Dykema? Is that right?

20 MR. YOUNG: And Moore.

21 THE COURT: And -- I'm sorry?

22 MR. YOUNG: Yeah. Dykema, I don't know how it's pronounced --

23 THE COURT: Okay.

24 MR. YOUNG: -- and then Moore is the fourth.

25 THE COURT: Moore. Right. And there was one that I was looking at -- I

1 know that your position is is that there is a – we're getting into the statute of repose
2 and there was one of the Plaintiffs that – claims that – I'm concerned about the –
3 when the statute of repose starts. There was one that -- you said that it started on
4 this day and then we don't count date of filing or the day that the particular act
5 happens and then, I guess, they had filed like on the tenth year day or something. It
6 was like December 29th when they had until the 30th or – and it was your position
7 that they had until December 29th and they filed on the 30th when it appeared to me
8 that they had at least until the 30th before, you know, that was the deadline for filing
9 the Chapter 40 notice. There was one of them and I can't remember which one it is.

10 MR. YOUNG: That's Salisbury.

11 THE COURT: Okay. I'd like your response on that.

12 MR. YOUNG: Do you want me to talk about the Salisbury one first?

13 THE COURT: Yeah, you might as well.

14 MR. YOUNG: I believe there's a chart on our reply brief specific to each –

15 THE COURT: Right.

16 MR. YOUNG: -- Plaintiff and you can look at the Salisbury one and follow
17 along. That's –

18 THE COURT: Right.

19 MR. YOUNG: -- what I'm reading --

20 THE COURT: Page 8.

21 MR. YOUNG: -- off of. Correct.

22 THE COURT: Page 8 of your reply.

23 MR. YOUNG: Yes. The date of substantial completion for the Salisbury
24 property was December 30 --

25 THE COURT: Right.

1 MR. YOUNG: -- 2004, so they have ten years to then serve the notice and ten
2 -- or, I guess, the end of ten years is December 29, 2014.

3 THE COURT: Well, I usually don't count the date -- like the date of the
4 substantial completion when that starts, you start from the next day. And then I was
5 gonna ask you, on any of these do we have a weekend situation where for example,
6 I don't know -- well, I guess you wouldn't have to worry about mailing if there -- you
7 know, if there's an attestation if -- that the particular claimant put something in the
8 post box on Sunday or something. We don't have those kinds of issues do we?
9 Because I know that in filing that if the statute of limitations or statute of repose ends
10 or expires on a weekend you -- they've got until the first judicial day. So, do -- we
11 don't have any of those issues do we?

12 MR. YOUNG: Not that I'm aware of, Your Honor. In terms of the -- serving
13 the Chapter 40 notices we gave each of the homeowners or the Plaintiffs the benefit
14 of the doubt and gave them credit for the date on the letters, the date they mailed
15 the letter. In terms of the issuance of the notice of completion, so the date that
16 establishes the date of substantial completion it's the date that, again, that certificate
17 was issued. Since it's not an issue of providing notice to anybody since these
18 homeowners don't have notice of when the substantial completion is issued, then it's
19 not the next day that starts day one it's the date that it's issued. That's what the
20 statute clearly says. I believe it's 11.205(5) says that the date the certificate was
21 issued. So, in this instance for Salisbury it's December 30th and ten years ends
22 December 29th ten years later and then he served his Chapter 40 notice on year
23 eleven day one. So, for that particular Plaintiff they're a day late for the application
24 of the ten year period of repose which again Del Webb has argued in its brief, there
25 is no allegations in the complaint that the ten year even applies but we argue that at

1 least at the onset as a – as a total preclusion that no matter what period applies that
2 claim is precluded. But even if Your Honor accepts the Salisbury notice served on
3 basically year 9, day 365 then it still would be precluded based on our arguments
4 that the six year and eight periods apply.

5 THE COURT: Okay. Okay. All right. I'm listening, it's your motion.

6 MR. YOUNG: Yes. Can I take the podium?

7 THE COURT: You may.

8 MR. YOUNG: I will. So, we talked about this briefly with Salisbury but the
9 most important part in determining whether a claim is precluded by a statute of
10 repose is to determine how long after the date of substantial completion that each
11 notice was served. So, in our reply brief we clarified the specific calculations for
12 that. I believe Your Honor reviewed the first one, it was at page eight. So, starting
13 on page eight that top table has the –

14 THE COURT: On Turner.

15 MR. YOUNG: The Turner claim. So, the Turner claim, the date of substantial
16 completion is December 14, 2004. That means the last day to serve the notice if it's
17 ten years it's December 13, 2014 and the day of the claim was December 22nd. So,
18 the Turner claim was served ten years and nine days after substantial completion.
19 And we go on to Salisbury, perform the same exercise which we just went through
20 and we see that it was served ten years and one day after substantial completion.
21 And then with Dykema, if we turn to page ten you'll see the same table where it
22 demonstrates that the Dykema claim was served ten years and three days after the
23 date of substantial completion. So, that establishes our base line of how long each
24 homeowner waited to serve notice from when their respective home was
25 substantially completed.

1 So, in the next exercise in evaluating whether their claim is time barred
2 is to establish which of the statutes of repose apply. And Plaintiffs want to argue at
3 least in their opposition brief that the ten year applies, but what Plaintiffs argue or
4 what statutes of repose are potentially available to a random homeowner is
5 completely irrelevant, we need to look to the actual complaint. And when you look
6 at the allegations in the complaint there's nothing that alleges that – or pardon me,
7 Del Webb knew or should have known that any particular defect alleged by any of
8 these homeowners was a construction defect. And that's the standard for applying
9 the tenth year, you need to say, hey, Del Webb knew or they should have known
10 that this was a constructional defect. That's not alleged anywhere in the complaint.
11 So, that's why there isn't anything in the complaint to give the ten year statute of
12 repose to these Plaintiffs and that's why it must be either the six year or the eight
13 year period of repose – as in – under the six year or eight year or ten year even, all
14 of these claims are precluded because they were all served after the expiration of
15 ten years.

16 So, that's that issue. In Plaintiff's opposition they raise a couple of
17 potential exceptions. There's a continued reference to some of these homeowners
18 discovering defects in the tenth year but – or the eighth year, whatever the last year
19 of the statute of repose period is. The date of discovery is completely irrelevant. As
20 Your Honor knows the statute is when the – when the injury first occurs, not –

21 THE COURT: When the injury occurs. Right.

22 MR. YOUNG: Correct. And not when the thing – or when the defect is
23 discovered. So, there's reference in the opposition and then in some – some
24 declaration that was filed that there's these defects that were discovered in the tenth
25 year, but again that doesn't mean anything. So what? It has to be the injury first

1 occurs in that tenth year. There's no allegation anywhere in the complaint that that's
2 what happened. The opposition has a couple of receipts they've attached from
3 some Plaintiffs, they have a declaration. None of that should be considered
4 because again what's contained in a declaration or some unverified receipt it's
5 completely irrelevant and isn't what's in the pleading. I know Your Honor always
6 focuses on let's look at the pleading in a Motion to Dismiss and that's what I focused
7 on, that's what our brief focuses on, and these allegations just simply aren't in the
8 pleading and that's why all three of these claims are time barred.

9 And then finally we have the Moore plaintiff who served a Chapter 40
10 notice after the effect of AB125. So, there are a few new things that the
11 homeowners need to do in those circumstances and one of those is to sign a
12 verification that says, "Yes, each of these defects exist in my home." And the Moore
13 Plaintiff hadn't done that prior to filing the complaints. In response for a motion Del
14 Webb was served with this verification but again that Plaintiff has to go because
15 they didn't comply with the pre-litigation requirements prior to initiating the suit. So,
16 that's the basis for dismissing Moore. That one seems pretty straight forward and
17 then the issue just comes down to this Court's interpretation of the statute of repose.

18 THE COURT: Okay.

19 MR. YOUNG: Unless you have any questions I'll reserve my right to respond.

20 THE COURT: I don't.

21 MR. YOUNG: Thank you.

22 THE COURT: Mr. Shinnick, before I hear from you I am going to have the
23 attorneys in the Jacoby versus Kassouf matter – they'll take a few minutes. I've
24 gotta get a lawyer back to trial, all right?

25 [Matter trailed at 10:43:47 a.m.]

1 [Matter recalled at 10:49:45 a.m.]

2 THE COURT: Okay. Let's go back to the Phillips matter. I'm sure you'll be
3 more pleasant, Mr. Shinnick.

4 MR. SHINNICK: I'll do my best, Your Honor.

5 THE COURT: Okay.

6 MR. SHINNICK: For the moment the elephant in the room is that these
7 sections that are the basis of this motion have been repealed and are no longer part
8 of the Nevada Revised Statutes. 11.202 through 206 – or 203 through 206 have
9 been repealed under AB125. Let me come back to that and let me address more
10 specifically the arguments of Mr. Young on the ten year statute. They filed this
11 motion by submitting to the Court certificates of occupancy for the four homes at
12 issue and though a certificate of occupancy had been issued more than ten years
13 before the Chapter 40 notices were sent. That was their first argument in their
14 moving papers. But that ignored under 11.202 that we judged the date of
15 substantial completion or the improvement by the latest of – the latest of the
16 certificate of occupancy or the notice of completion.

17 THE COURT: Or the final building inspection of the improvement.

18 MR. SHINNICK: That's right. The latest of those things. So, we in our
19 opposition submitted the recorded notices of completion and now the issue is we
20 come even finer in terms of the dates involved. That is that if one goes by the
21 recorded dates of the notice of completion – notices of completion these Chapter 40
22 notices were timely within ten years from the recorded date for the notices of
23 completion. So, the certificate of occupancy happened first then the notices of
24 completion were recorded later. In their reply they say, "It doesn't matter when you
25 record the notice of completion, what counts is when the developer signs the notice

1 of completion." Because they call that the issuance of the notice of completion is in
2 the statutory terms. Let me explain why I think that's wrong.

3 The term issuance of the notice of completion is in the statute but
4 there's no definition of what issuance is --

5 THE COURT: I was gonna ask you --

6 MR. SHINNICK: -- than the ---

7 THE COURT: -- is there --

8 MR. SHINNICK: -- statute.

9 THE COURT: -- any definition for --

10 MR. SHINNICK: There is not.

11 THE COURT: -- issuance?

12 MR. SHINNICK: So, where do we go? Well, we go to both the nature of a
13 notice of completion and then the nature of the word issuance. We go to the tried
14 and true Black's Law Dictionary definition of issuance. It says: "To come forth, to
15 put out or to put into circulation." Well, how is a notice of completion that is signed
16 in some office in Del Webb and stuck in the bottom drawer of his desk, how does
17 that constitute issuance of a notice of completion? We argue it does not. If you use
18 their argument that issuance is the date that the Del Webb representative signed the
19 notice of completion and ignore the recording date that's what they're saying, that
20 they could sign this, you know, two months before it's completed, a year before it's
21 completed, stick it in a desk and have that count as the issuance of a notice of
22 completion. So, we think that interpretation that issuance means the date the
23 developer signed it is wrong. Why else is it wrong in addition to the basic definition
24 of issuance? It's because this is a notice of completion, it's not a statement of
25 completion, it's not an affirmation, it's not I believe it's complete; it's a notice of

1 completion that has more purposes than just our case.

2 If we look at the notice of completion it begins: "Pursuant to NRS
3 108.288 notice is hereby given that this work or improvement was completed on the
4 30th of December." Or whatever. The notice of completion has another purpose. It
5 has the purpose of once you're record it it starts the time period for a mechanic's
6 lien to be filed for the subcontractors, anybody that worked or supplied materials to
7 make some kind of claim that they weren't paid for their stuff and it triggers based on
8 the date of recordation of the notice of completion. That's true in –

9 THE COURT: Mr. Shinnick, I do have a question. I know the mechanic's lien
10 statutes go into – and they talk about recording, they don't – they use the term
11 recording as opposed to issuance at least with the majority that I've read. This one
12 says issuance. Can it be – using the Black's Law Dictionary definition you just read
13 to me, can it be even a little bit wider than that? For example, if the developer had
14 sent a copy to the new homeowner that, you know, the certificate of occupancy is –
15 is now issued, it's – or the notice of completion, I mean, can't they mail it? Can't
16 they give notice a different way besides recordation? I mean, I'm with you in terms
17 of when you say, "sticking in a drawer." That to me is not an issue, I mean, even if
18 you've got a sign. I mean, just – that's just my gut right now. But –

19 MR. SHINNICK: Now, I suppose that might be possible to provide notice of
20 completion in some other fashion than recordation, although recordation is by
21 statute the way that notice is usually –

22 THE COURT: Well –

23 MR. SHINNICK: -- provided.

24 THE COURT: -- it's notice to the world.

25 MR. SHINNICK: Right. But I also wonder if the period between signing it and

1 recording it if there's even a homeowner because typically the house wouldn't be --
2 be sold --

3 THE COURT: Well, I know --

4 MR. SHINNICK: -- until later on.

5 THE COURT: -- but you've got a buyer, right? You might have a buyer.

6 MR. SHINNICK: A potential buyer let's say. It's -- there might be a way but
7 there's nothing in these pleadings that says that was done. There's nothing in these
8 pleadings that said that they provided actual notice of the completion date to these
9 homeowners that was earlier than the recorded date and therefore the implied
10 notice to the world. And I think that the term notice needs to be part of our
11 discussion also. Notice means out there, it's a notice to somebody of something so
12 that they can act on it and rely on it, not the date that they happen to, again, have
13 signed it and kept it around and eventually mailed it or sent it to the recorder's office
14 for recording.

15 So, I think the recording date is the proper date to interpret a notice of
16 completion both under 108 and 228. And also there's another interesting section
17 under 108.22116 that says: "That the notice of completion is actually -- if it's timely
18 recorded and served then -- then it's effective again for the mechanic's lien issue."
19 But I think the same principle applies here. It can't be something short of either a
20 recorded notice or actual notice and there's nothing that says that. And I think
21 another way of interpreting it is you remember the statute of -- the statute itself,
22 11.202, says you go by the latest of the issuance of certificate of occupancy or the
23 issuance of the notice of completion or the final building inspection. So, when we're
24 looking at what date to apply -- we cited some cases in our pleadings that when
25 courts are confronted with statutes of limitations or repose that may apply to the

1 same situation they interpret it by going to the latest of that, just by the more lenient
2 of the statute so that rights aren't forfeited. I think when you have a statute that not
3 only do we have this case law that says you use the later of which you have a
4 statute that says use the latest of these events. So, if it came down to the date of
5 signing and keeping secret or the date of recording which is later I think consistent
6 with the statute you would use the later of those two dates.

7 So, that's kind of the details. And as it turns out if the recorded notice
8 of recording – the recording date for the notice of completion is used they're all
9 within the ten years. That's why in their reply they said, "Well, wait a minute, let's
10 not go for that, let's say an issuance means signing." That's what they're saying
11 without any case law or actual – anything to interp – support that interpretation.

12 But let me go back to the elephant in the room for the record. Each of
13 these sections 11.203, 04, 205, 206 were repealed by AB25 [sic]. They do not exist
14 anymore.

15 THE COURT: AB125.

16 MR. SHINNICK: AB125. Excuse me, AB125. They were repealed effective
17 the date of the signing, February 25th of this year. So, now what are the statutes
18 that apply to bringing this kind of claim? 11.202 remains but it was shortened to six
19 years from substantial completion.

20 THE COURT: Well, let me ask you this. I understand statute of repose or not
21 applied retroactively.

22 MR. SHINNICK: That's –

23 THE COURT: That's my understanding.

24 MR. SHINNICK: That's correct. And that's –

25 THE COURT: But don't we use the prior, still the 6, 8 and 10?

1 MR. SHINNICK: Here's what the new -- here's what the developer written law
2 says right now on this. It says -- 11.202 says: "Six years from substantial
3 completion of the improvement." Then sub -- section 21, subdivision 5 says: "This
4 six year limit is retroactive to improvements completed before February 24, 2015."
5 Then there is the exception that follows, it says: "The six year retroactive period
6 does not apply to an action that accrued earlier and for which an action commenced
7 in 2015." So the new statute, the current law says it's a six year statute. That six
8 year statute is retroactive unless the action accrued before the statute and the
9 action is commenced this year. So, that means a six year statute does not apply to
10 this case --

11 THE COURT: Well --

12 MR. SHINNICK: -- but the older statute has been repealed.

13 THE COURT: Can I ask you something? The one point that Mr. Young
14 brought up though is that the complaint does not indicate that it -- the particular
15 defect was one that the contractor knew or should have known.

16 MR. SHINNICK: Well, I frankly don't recall the language in the complaint; if
17 that's an issue we would amend it and reassert it. But the -- their whole basis for
18 their motion was the ten year statute. That's why they put the certificate of
19 occupancy in here to show that that was within ten years, so they essentially
20 addressed that issue in their motion. They're addressing it under the ten year
21 statute. We also submitted the other material from the homeowners, affidavits about
22 discovery, injury occurring and that sort of thing to take us within the ten year
23 statute.

24 But in terms of interpreting what statutes apply now the statutes that
25 they assert, 203 through 206, do not exist anymore. Now, that may not have been

1 what they intended in the statute to essentially repeal the statutes, put a six year
2 statute in there, but then say it doesn't apply to cases filed in 2015. In fact, there is
3 -- if you go back to the AB25 [sic]

4 THE COURT: AB125.

5 MR. SHINNICK: AB125, on page three of the introductory material. And I
6 acknowledge this is in there even though it's contrary to our argument, but it says --
7 section 21 of this Bill: "Provides that the revised statute of repose set forth in
8 section 17 to 19" -- that's a six year statute, "applied retroactively under
9 circumstances -- certain circumstances and (2) established a one year grace period
10 during which a person may commence an action under the existing statute of repose
11 if the action accrued before the effective date of this Bill." So, the legislative counsel
12 says, "Well, if you -- if you're in the grace period -- the one year grace period then
13 you would go by the existing statute of repose -- the old form statute of repose." But
14 that, Your Honor, is not what the statute actually says. What the -- that may have
15 been what they thought it said or what they intended or what they hoped for, but
16 what it actually says is the six year statute, it's retroactive but that statute does not
17 apply if you file the claim this year. It does not say and that you apply the old statute
18 of limitations for claims this year, it says that those statutes are repealed on the
19 effective date of the act. They have repealed the 6, 8 and 10 year statute under the
20 -- at the effective date of act, and that's the basis for their motion.

21 Again, I call out the elephant in the room argument because it's really a
22 sweeping argument on statutes of repose that exist or don't exist, but the detail is
23 that the -- if we go by the recording date of the notice of completion they're all within
24 the ten year statute.

25 THE COURT: Okay. And you also indicated that the savings -- savings clause

1 applies. When did the injury occur on these – on these particular homeowners'
2 houses?

3 MR. SHINNICK: They –

4 MR. YOUNG: For which? For all the claims or which ones in particular?

5 THE COURT: The three that we're talking about.

6 MR. YOUNG: And then like – because each one is alleging lots – many
7 claims. So, that analysis would be specific to each claim, correct? Is that the
8 question you're asking?

9 THE COURT: Well, I'm listening to Mr. Shinnick. So –

10 MR. YOUNG: Okay.

11 THE COURT: -- go ahead.

12 MR. SHINNICK: The accrual of the action is before the effective date of the
13 statute. The – if that – I don't know if the Court asked me kind of day by day when
14 the things accrue or were they – did they accrue before the effective date of the
15 statute or accrue after the effective date of the statute. And I think it's clear that
16 there is damage and injury and the rights accrue before the effective date of the
17 statute.

18 THE COURT: But do you have – I assume that there's something that
19 happened within the ninth and tenth year.

20 MR. SHINNICK: Yes. And those are the affidavits that the homeowners
21 indicated about when they discovered things which whether you call it discovery or
22 occurrence it's still the – it's the best knowledge that exists at this point of when
23 those – that damage accrued – damage occurred and the causes of action accrued.
24 Those are the affidavits. It's certainly a factual issue in this motion for summary
25 judgment.

1 THE COURT: Okay.

2 MR. SHINNICK: I do want to address the Moore house which was the
3 argument that there was insufficient Chapter 40 notice for the homeowner. You
4 know, it's just the nature of things, Murphy's Law, but that initial notice went out the
5 day after the Governor signed the new Act so it's one day after. And the first notice
6 went out and it did not have a verification and it had less information than we are
7 now providing in our Chapter 40 notices under the new statute. But that deficiency if
8 you will was cured when we sent Exhibit 6, the May 27th notice, May 27th of this year
9 notice, because that had all the detail about more specific locations of all the defects
10 and it had the verifications from both homeowners.

11 So, under the statute remember if there's a problem with the notice
12 there are only two remedies that – and there's a statute of limitations issue which I
13 would say this whole case is about the statute of limitations, then there are two
14 remedies either stay the action or dismiss it without prejudice, but we would suggest
15 staying the action is the only remedy available to the Court if you don't consider – if
16 you do not consider the May amended Chapter 40 notice. But if the Court considers
17 the May Chapter 40 notice – May, 2015 Chapter 40 notice with the verifications, with
18 the additional information, then there's already been substantial compliance with the
19 statute. The stay would be in effect only to send out what we already sent out on
20 May 27th. That's all – else would be needed unless we wanted to go through the
21 inspection and the mediation process which we're certainly willing to do or re-
22 inspection as it turns out.

23 THE COURT: Mr. Shinnick, I can't remember – I have read AB125 several
24 times, was NRS 40.247 amended as well? And that talks about the stay or
25 dismissal without prejudice as far as the remedies.

1 MR. SHINNICK: That is unchanged.

2 THE COURT: That one part is unchanged.

3 MR. SHINNICK: Yes.

4 THE COURT: Okay. All right.

5 MR. SHINNICK: So -- again so on the Chapter 40 notice, we have completed
6 now the verification and the greatest remedy would be a stay but it would be useless
7 since we've already done -- we've done the notice.

8 THE COURT: Okay. Mr. Young.

9 MR. YOUNG: I'll handle the issues in reverse. With respect to the Moore
10 claim, I don't know what substantial compliance is with Chapter 40, you comply with
11 it or you don't. It's an either/or proposition. You can't serve a notice in the middle
12 of the briefing process on a motion to dismiss and then claim that, oh, we've
13 substantially complied with Chapter 40. They gave a notice that's all they did.
14 There have been no inspection of the home; there's been no mediation of the
15 claims, no opportunity to repair either for Del Webb or its subcontractors. So, you
16 gotta comply with Chapter 40 before you can initiate a lawsuit. That's clear,
17 everyone agrees with that, that's why the Moore claim should be dismissed.

18 THE COURT: Well, if I were to agree with you and dismiss it out and let's say
19 I dismissed it out without prejudice under 40.247, would the effect be with prejudice?
20 Do we have a statute of repose or statute of limitation problem with the Moore
21 house?

22 MR. YOUNG: It would be without prejudice. And even if there was we were
23 close to a ten year issue. There has been a consistent, I guess, tolling from the date
24 this complaint was filed. And then even if this complaint is dismissed as to Moore
25 the Chapter 40 notice which was served in May also tolls the statute of repose that

1 would apply. So, to the extent the Moore family completes the Chapter 40 process
2 and enjoins this litigation in a timely and efficient manner then there is no statute of
3 repose issue because again it's been tolled during this entirety. So no, that would
4 be without prejudice to the dismissal.

5 THE COURT: Okay. All right.

6 MR. YOUNG: As to the statute of repose arguments, Mr. Shinnick refers to
7 AB125 as the elephant in the room issue. And without being too snarky, it's the not
8 in his brief issue. This issue was not briefed; it doesn't apply to any of these claims.
9 And the recitation of what AB125 says from Mr. Shinnick is slightly inaccurate. It
10 doesn't apply again to these current Plaintiffs, what applies is the old statutes of
11 repose. If Your Honor needs briefing on that we can supply it but it's – I don't think
12 that's necessary at all. This complaint was filed and we've been operating under the
13 old statute for the repose periods.

14 In terms of the recorded versus issuance, I can appreciate Mr.
15 Shinnick's arguments but the notice of completion cannot be signed, issued,
16 recorded, anything until there's been a final building inspection. So, that was all
17 done before even Del Webb signed the notice of completion and allegedly stuck it in
18 a drawer or whatever comment was made.

19 THE COURT: Well, I don't think he was accusing your client of sticking
20 something in a drawer. I guess the point was made that in terms of issue if you sign
21 something and let's just say you leave it on a desk or you don't give notice to
22 somebody, it just – it's like private, nobody knows about it but you signed it. It's
23 then – is that really giving – is that an issuance? And I appreciate that. I also
24 appreciate that recording does give notice to the world but – but I have to say that in
25 my gut and I haven't really researched or thought this out, but it seems to me that

1 issuance means more than just – it's a broader term than issuance. If I were to
2 send you a letter that gives you notice you could call it an issuance but I leave the
3 letter on my desk nobody knows about it except me. So, is there an issuance?

4 MR. YOUNG: I can appreciate that. Another example of a date of substantial
5 completion is the certificate of occupancy and that document is both issued by the
6 Henderson or whoever the –

7 THE COURT: And put –

8 MR. YOUNG: -- controlling –

9 THE COURT: -- on the -- tacked on the door I assume or on the building,
10 right?

11 MR. YOUNG: And then it gets recorded later. So, that has an issuance
12 aspect to it as well and that is based on the date. Again, it's signed by the Building
13 Department and issued and then it's recorded sometime later, and if we were gonna
14 use the certificate occupancy in a case we wouldn't base it off the recording date,
15 we'd base it off the date the document was again issued, generated. But I won't
16 concede on the argument but I can appreciate both sides of the argument and that it
17 hasn't been resolved, but ultimately I will argue that it doesn't matter because there
18 is nothing alleged in the complaint that would put the ten year period of repose in
19 play, it's the six year or the eighth year. For the ten year to apply the Plaintiffs and
20 each of them must allege that their claims and each individual defect was a defect
21 that Del Webb knew or should have known about. And there's no allegation
22 whatsoever in their complaint that that's the case. Plaintiffs don't just get the benefit
23 of any potential statute of repose; they get the statute of repose that applies to their
24 claims that have been alleged in their complaint. So, there is no application of ten
25 years that applies. So, all of this argument, so was it year ten, day one, or year

1 nine, day 362? Ultimately who cares. We set forth in both of our briefs, our motion
2 and our reply brief, that we will operate for purposes of the motion under the
3 assumption that the ten year applies but that we, Del Webb, believe that the six year
4 or eight year applies. We put that in our motion, we put that in our reply. And that's
5 why we think that these six year and eight year applies is that's what the facts tell
6 us, that's what the allegation in the complaint tell us.

7 Now, Mr. Shinnick represented to the Court that, "Oh, well, if that's the
8 case then our pleading is deficient; we'll just amend it to claim that." Well, that's not
9 something you can just freely claim, you need to have a good faith basis that Del
10 Webb knew or should have known that each claim alleged by each of these sixty
11 whatever it is Plaintiffs was a defect that Del Webb knew or should have known
12 about. And the argument is not simply, oh, well, Del Webb is a contractor; they
13 should have known that something violated a building code. If that were the case
14 then every claim ever would operate under the ten year period of repose and the six
15 year and eight year would never apply. That can't possibly be the interpretation of
16 what knew or known or should have known means, that would create an absurd
17 result.

18 So, there needs to be specific evidence and a good faith basis by
19 counsel that each of these claims were known or should have known to be defective
20 by Del Webb. So, again, counsel can file whatever he wants to file but he's gotta
21 signing with a Rule 11 promise that, yes, I have a good faith basis that that is indeed
22 the case. So, that's my only comment to that. But in terms of whether these
23 Plaintiffs need to be dismissed, they do because the ten year period of repose does
24 not apply based on the allegations in the complaint, it's six year or eight year. And
25 even if we want to give them the benefit of the two years from the eight years that

1 wouldn't matter because all of the arguments made by counsel – even – I know this
2 isn't in the complaint, all the arguments are, oh, we filed in the tenth year. Well, that
3 doesn't give you two years from eight that gives you two years from ten even if it
4 applied. So, that's why these three still need to be dismissed because the
5 allegations just simply aren't in their pleading.

6 THE COURT: Okay. Counsel, I am really interested in this issue, I want to
7 write a decision on this one. I'm gonna take this one under advisement, okay?

8 MR. YOUNG: Does that apply to the Moore claim as well?

9 THE COURT: Moore and then the three other homes --

10 MR. YOUNG: All right.

11 THE COURT: -- okay?

12 MR. YOUNG: Thank you, Your Honor.

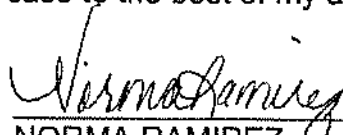
13 THE COURT: All right. Thank you.

14 MR. SHINNICK: Thank you, Your Honor.

15 [Proceedings concluded at 11:14:27 a.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video recording in the above-entitled case to the best of my ability.

23 
24 NORMA RAMIREZ
25 Court Recorder
District Court Dept. XXII
702 671-0572