

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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

Appellants,

v.

DEL WEBB COMMUNITIES, INC., an Arizona  
corporation,


Respondent.

) CASE NO. 0834  
)  
)  
) Eighth Judicial District Case  
) No. A-15-714632-D  
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JOINT APPENDIX VOLUME 2

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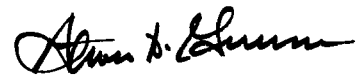
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CLERK OF THE COURT

FFCO

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No. A-15-714632-D

Dept. No. XXII

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

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

Plaintiffs,

Vs.

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

Defendants.

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

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

1 ROSA-LINIDA R. BAUTISTA, BROWER FAMILY TRUST, CHARLES COLUCCI, HARRY E.  
2 CROSBY REVOCABLE TRUST; DR. KAREN FELDMAN, COLLEN T. SAN FILIPPO, THE  
3 GILLES FAMILY LIVING TRUST DATED JANUARY 14, 2014; DAVID M. GORDON,  
4 CHARLES and MARIA HEARN, THOMAS C. and KATHLEEN A. JOHNSON, AARON  
5 KNUDSON, LORRAINE JOHNSON, JOLEAN JONES, YOUNG KYOON KIM and INOK KIM,  
6 MIKE and TALIA LAQUITARA, JAMES and ANDRONICKIE LAUTH, LEPORE FAMILY  
7 TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT, ROGER A. MARTIN AND VIRGINIA  
8 C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY  
9 24, 2011; THOMAS MEYERS and MARY CM MONICA-MEYERS, MARK MONACO, SAMIR  
10 FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13,  
11 2013; BUD O'BRIEN and ROSALIE O'BRIEN, DAVID L. POWELL and JUNE D. COOPER,  
12 RANDALL and NICOLE ROEDECKER, EUGENIUSZ and ZOFIA SUCHECKI, GARY G. TON,  
13 ROY and SHARON VAN SLYKE, LAUREL YVONNE WEAVER, SCOTT M. ZIPKIN and  
14 ROBERT A & ELLEN R. ZIPKIN, MICHAEL J. and GLORIA NAN CONNOLLY, ROBERT and  
15 CONCETTA GAYNOR, HECTOR G. and ROSARIO GARCIA, JAMES A. HENDERSON, JR.,  
16 HOWARD S. and ROBERTA P. LEVINE, KURT FIELD and CRISTEN BOLANDER-FIELD,  
17 BOBBIE SMITH, CHAD and ALLICIA TOMOLA, WILLIAM and CONNIE MCDERMOTT,  
18 SYDNEY WOO, PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC, VEROL R. and  
19 DEBRA A. BELLINFANTE, ALFREDO and ILUMINADO CAMPOS, WYNSIE MARIE CHAN,  
20 ROBERT M. DYKEMA, BROCK and REANNA FOSTER, J.C.F. FAMILY TRUST; WI JO  
21 KANG and CHONG-JA KANG, TAKESHI NAKAYA, DIONISIO ONG, POURZIAEE ERAJ  
22 AND SEDI POURZIAEE JOINT LIVING TRUST; JOSEPH and MILAGROS RIVERA,  
23 SALISBURY FAMILY TRUST, WILLIAM A. and CYNTHIA J. SHOOP, RONALD TURNER,  
24 BRENT and SARA URE, WILLIAM R. and NANCY WALLEY, JR., KEIL YOST, STEVEN and  
25  
26  
27  
28

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

8 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

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

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

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

27 ...

28 ...

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

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

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

## **CONCLUSIONS OF LAW**

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

<sup>1</sup>See NRCP 12(b)(5).



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiff SALISBURY FAMILY TRUST served its NRS 40.645 notice on December 30, 2014.<sup>8</sup> While it is Plaintiff's view such notice served on the last day is timely, Defendant disagrees. Defendant proposes the last day to serve a notice pursuant to NRS 40.645 was December 29, 2014. This Court found no authority within the Nevada Revised Statutes, and particularly within NRS 40.600, *et seq.*, to support either party's position. However, the timeliness of a document's filing is addressed within the Nevada Rules of Civil Procedure (NRCP), and particularly, in Rule 6. It provides in pertinent part:

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

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

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

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

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

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

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

9  
10 8. The issuance of the "Certificate of Occupancy" for the residence owned by Plaintiff  
11 RONALD TURNER, 2844 Blythswood Square, Henderson, Nevada, was December 6, 2004.<sup>10</sup> The  
12 "Notice of Completion" was issued eight (8) days later, December 14, 2004.<sup>11</sup> This Court concludes  
13 Plaintiff TURNER'S home was substantially completed on the latter date, December 14, 2004. *See*  
14 NRS 11.2055. Plaintiff TURNER served his NRS 40.645 notice of constructional defects on  
15 December 22, 2014. Unfortunately, such service falls outside the ten-year Statute of Repose period,  
16 and, as a consequence, Plaintiff RONALD TURNER'S constructional defect claims must be  
17 dismissed as being time-barred. *See* NRS 11.203.

18  
19 Plaintiff TURNER proposes his claims are not time-barred as the "Notice of Completion"  
20 was not recorded until December 23, 2004. While this Court appreciates his stance, NRS 11.2055  
21 does not identify the recording of the completion's notice at the local or county recorder's office as a  
22 defining date for substantial completion. As noted above, NRS 11.2055 specifically provides the  
23 improvement to real property is substantially completed upon the occurrence of the latter of three  
24  
25

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

<sup>10</sup>*See* Exhibit B attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss.

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

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

5       9. The "Certificate of Occupancy" was issued for Plaintiff ROBERT DYKEMA'S  
6 house, 2818 Craigton Drive, Henderson, Nevada on November 2, 2004.<sup>12</sup> The "Notice of  
7 Completion" was issued on November 30, 2004.<sup>13</sup> The NRS 40.645 Notice served by Plaintiff  
8 DYKEMA upon Defendant DEL WEBB COMMUNITIES, INC. is dated December 2, 2014.<sup>14</sup> The  
9 service of the constructional defects notice pursuant to NRS 40.645 falls outside the ten-year Statute  
10 of Repose period, and as a consequence, Plaintiff DYKEMA'S constructional defect claims are  
11 time-barred and must be dismissed.  
12

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

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

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

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

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

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

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

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

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

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

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

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

24 ...  
25

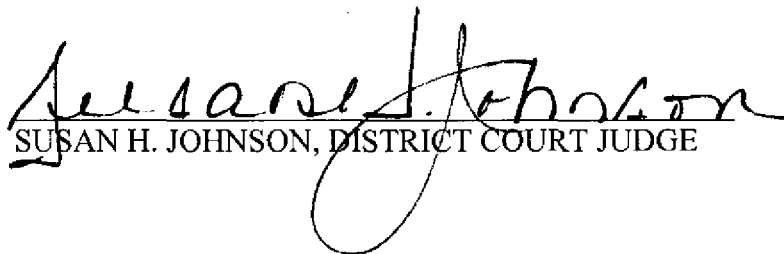
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27  
28 <sup>15</sup>See Exhibit I attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss, *and* Exhibit 6  
to Plaintiffs' Opposition to Del Webb Communities, Inc.'s Motion to Dismiss.

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

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

8  
9           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant DEL WEBB  
10 COMMUNITIES, INC.'S Motion to Dismiss, seeking dismissal of Plaintiff SALISBURY FAMILY  
11 TRUST'S constructional defect claims are denied as, in this Court's view, the NRS 40.645 notice  
12 was timely served upon this Defendant, whereby this Plaintiff's claims are not time-barred. *See*  
13 NRS 11.203.

14  
15           DATED and DONE this 16<sup>th</sup> day of November 2015.

16  
17             
18           SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
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Las Vegas, Nevada 89101  
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SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII



NEO

JASON W. WILLIAMS, ESQ.

Nevada Bar No. 8310

RICHARD D. YOUNG, ESQ.

Nevada Bar No. 11331

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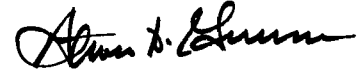
Phone: (702) 853-5500

Fax: (702) 853-5599

Attorneys for Defendant

Del Webb Communities, Inc.

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CLERK OF THE COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**CASE NO.: A714632**

**DEPT. NO.: XXII**

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

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

Plaintiffs

vs.

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

Defendants.

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

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

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

3 Dated this 25<sup>th</sup> day of November, 2015.

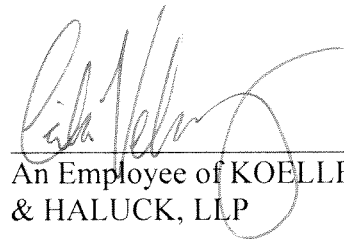
4  
5 KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP

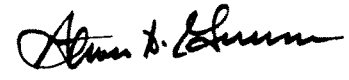
6  
7 BY: 

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

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**CERTIFICATE OF SERVICE**

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

18  
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An Employee of KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP



CLERK OF THE COURT

FFCO

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No. A-15-714632-D

Dept. No. XXII

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

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

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

Plaintiffs,

Vs.

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

Defendants.

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

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

1 ROSA-LINIDA R. BAUTISTA, BROWER FAMILY TRUST, CHARLES COLUCCI, HARRY E.  
2 CROSBY REVOCABLE TRUST; DR. KAREN FELDMAN, COLLEN T. SAN FILIPPO, THE  
3 GILLES FAMILY LIVING TRUST DATED JANUARY 14, 2014; DAVID M. GORDON,  
4 CHARLES and MARIA HEARN, THOMAS C. and KATHLEEN A. JOHNSON, AARON  
5 KNUDSON, LORRAINE JOHNSON, JOLEAN JONES, YOUNG KYOON KIM and INOK KIM,  
6 MIKE and TALIA LAQUITARA, JAMES and ANDRONICKIE LAUTH, LEPORE FAMILY  
7 TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT, ROGER A. MARTIN AND VIRGINIA  
8 C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY  
9 24, 2011; THOMAS MEYERS and MARY CM MONICA-MEYERS, MARK MONACO, SAMIR  
10 FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13,  
11 2013; BUD O'BRIEN and ROSALIE O'BRIEN, DAVID L. POWELL and JUNE D. COOPER,  
12 RANDALL and NICOLE ROEDECKER, EUGENIUSZ and ZOFIA SUCHECKI, GARY G. TON,  
13 ROY and SHARON VAN SLYKE, LAUREL YVONNE WEAVER, SCOTT M. ZIPKIN and  
14 ROBERT A & ELLEN R. ZIPKIN, MICHAEL J. and GLORIA NAN CONNOLLY, ROBERT and  
15 CONCETTA GAYNOR, HECTOR G. and ROSARIO GARCIA, JAMES A. HENDERSON, JR.,  
16 HOWARD S. and ROBERTA P. LEVINE, KURT FIELD and CRISTEN BOLANDER-FIELD,  
17 BOBBIE SMITH, CHAD and ALLICIA TOMOLA, WILLIAM and CONNIE MCDERMOTT,  
18 SYDNEY WOO, PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC, VEROI R. and  
19 DEBRA A. BELLINFANTE, ALFREDO and ILUMINADO CAMPOS, WYNSIE MARIE CHAN,  
20 ROBERT M. DYKEMA, BROCK and REANNA FOSTER, J.C.F. FAMILY TRUST; WI JO  
21 KANG and CHONG-JA KANG, TAKESHI NAKAYA, DIONISIO ONG, POURZIAEE ERAJ  
22 AND SEDI POURZIAEE JOINT LIVING TRUST; JOSEPH and MILAGROS RIVERA,  
23 SALISBURY FAMILY TRUST, WILLIAM A. and CYNTHIA J. SHOOP, RONALD TURNER,  
24 BRENT and SARA URE, WILLIAM R. and NANCY WALLEY, JR., KEIL YOST, STEVEN and  
25  
26  
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28

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

8 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

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

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

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

27 ...

28 ...

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

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

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

## CONCLUSIONS OF LAW

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

<sup>1</sup>See NRCP 12(b)(5).



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

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

12 3. While the pleadings and other proof must be construed in a light most favorable to  
13 the non-moving party, that party bears the burden "to do more than simply show that there is some  
14 metaphysical doubt" as to the operative facts in order to avoid summary judgment bent entered in  
15 the moving party's favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586  
16 (1986), cited by Wood, 121 Nev. at 732. The non-moving party "must, by affidavit or otherwise, set  
17 forth specific facts demonstrating the existence of a genuine issue for trial or have summary  
18 judgment entered against him." Bulbman Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591  
19 (1992), cited by Wood, 121 Nev. at 732. The non-moving party "is not entitled to build a case on  
20 the gossamer threads of whimsy, speculation, and conjecture." Bulbman, 108 Nev. at 110, 825 P.2d  
21 591, quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

24 **Plaintiffs DIONISIO ONG and TAKESHI NAKAYA**

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Way, Henderson, Nevada and owned by Plaintiff SALISBURY FAMILY TRUST was issued by the  
2 City of Henderson on November 23, 2004.<sup>6</sup> A "Notice of Completion" was issued by Defendant  
3 DEL WEBB COMMUNITIES, INC. approximately a month later, on December 30, 2004.<sup>7</sup> As NRS  
4 11.2055(1) specifically provides the date of substantial completion is the latter of three events, i.e.  
5 final building inspection being conducted, the issuance of the certificate of occupancy, or when the  
6 notice of completion is issued, this Court concludes the date the SALISBURY FAMILY TRUST  
7 home was substantially completed is December 30, 2004.  
8

9 Plaintiff SALISBURY FAMILY TRUST served its NRS 40.645 notice on December 30,  
10 2014.<sup>8</sup> While it is Plaintiff's view such notice served on the last day is timely, Defendant disagrees.  
11 Defendant proposes the last day to serve a notice pursuant to NRS 40.645 was December 29, 2014.  
12 This Court found no authority within the Nevada Revised Statutes, and particularly within NRS  
13 40.600, *et seq.*, to support either party's position. However, the timeliness of a document's filing is  
14 addressed within the Nevada Rules of Civil Procedure (NRCP), and particularly, in Rule 6. It  
15 provides in pertinent part:  
16

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

26 Here, the day of the act, i.e. the issuance of the Notice of Completion, is not included within  
27 the computation when the designated time begins to run. See NRCP 6(a). The designated time to  
28

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

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

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

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

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

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

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

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

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

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

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

5 9. The "Certificate of Occupancy" was issued for Plaintiff ROBERT DYKEMA'S  
6 house, 2818 Craigton Drive, Henderson, Nevada on November 2, 2004.<sup>12</sup> The "Notice of  
7 Completion" was issued on November 30, 2004.<sup>13</sup> The NRS 40.645 Notice served by Plaintiff  
8 DYKEMA upon Defendant DEL WEBB COMMUNITIES, INC. is dated December 2, 2014.<sup>14</sup> The  
9 service of the constructional defects notice pursuant to NRS 40.645 falls outside the ten-year Statute  
10 of Repose period, and as a consequence, Plaintiff DYKEMA'S constructional defect claims are  
11 time-barred and must be dismissed.  
12

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

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

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

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

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

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

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

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

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

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

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

23       **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the claims brought by  
24 Plaintiffs DIONISIO ONG and TAKESHI NAKAYA is dismissed, as unopposed;  
25

26 ...

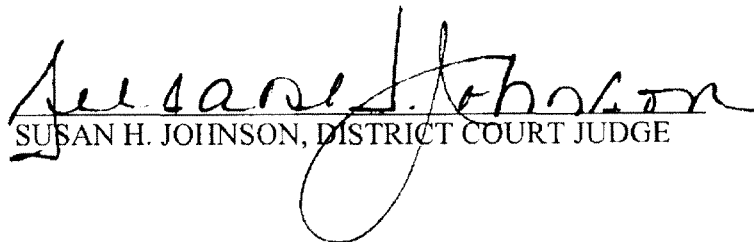
27  
28 <sup>15</sup>See Exhibit I attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss, and Exhibit 6  
to Plaintiffs' Opposition to Del Webb Communities, Inc.'s Motion to Dismiss.

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

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

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

14           DATED and DONE this 16<sup>th</sup> day of November 2015.  
15

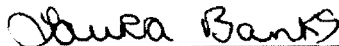
16  
17   
18 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
19  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that, on the 16<sup>th</sup> day of November 2015, I electronically served (E-served),  
3 placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed  
4 a true and correct copy of the foregoing ORDER RE: DEFENDANT DEL WEBB COMMUNITIES,  
5 INC.'S MOTION TO DISMISS to the following counsel of record, and first-class postage was fully  
6 prepaid thereon:  
7

8 DUANE E. SHINNICK, ESQ.  
9 SHINNICK RYAN & RANSAVAGE, P.C.  
4001 Meadows Lane  
10 Las Vegas, Nevada 89107  
11 [dshinnick@sslplaw.com](mailto:dshinnick@sslplaw.com)

12 RICHARD D. YOUNG, ESQ.  
13 KOELLER NEBEKER CARLSON & HALUCK, LLP  
300 South Fourth Street, Suite 500  
14 Las Vegas, Nevada 89101  
[richard.young@knchlaw.com](mailto:richard.young@knchlaw.com)

15   
16 Laura Banks, Judicial Executive Assistant



**NOTC**

Duane E. Shinnick, Esq.

Bar No. 7176

Courtney K. Lee, Esq.

Bar No. 8154

SHINNICK, RYAN & RANSAVAGE P.C.

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Las Vegas, NV 89107

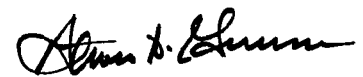
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[dshinnick@srfirms.com](mailto:dshinnick@srfirms.com)

[cleee@srfirms.com](mailto:cleee@srfirms.com)

Attorneys for Plaintiffs



CLERK OF THE COURT

Electronically Filed  
Dec 09 2015 03:26 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SCOTT PHILLIPS, individually; TEODORO

H. and ROSA-LINDA R. BAUTISTA,

individually; BROWER FAMILY TRUST,

individually; CHARLES COLUCCI,

individually; HARRY E. CROSBY

REVOCABLE TRUST; DR. KAREN

FELDMAN, individually; 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

**NOTICE OF APPEAL**

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 Notice is hereby given that Plaintiffs Ronald Turner ("Turner") and Robert M. Dykema  
2 ("Dykema") appeal to the Supreme Court of Nevada from the District Court Order entered on  
3 November 25, 2015, which granted Defendant Del Webb Communities, Inc.'s ("Del Webb") Motion to  
4 Dismiss Plaintiffs Turner and Dykema. The entry of dismissal for Plaintiffs Turner and Dykema  
5 operated as a summary adjudication on the merits as matters outside of the pleadings were presented  
6 and considered by the District Judge in granting the dismissals or deciding that Turner's and Dykema's  
7 claims were barred by the statute(s) of repose and/or limitations.  
8

9 DATED this 2<sup>nd</sup> day of December, 2015.  
10

11 Respectfully Submitted,

12 SHINNICK, RYAN & RANSAVAGE P.C.  
13

14 By: 

15 Duane E. Shinnick, Esq.

16 Bar No. 7176

17 Courtney K. Lee, Esq.

18 Bar No. 8154

19 4001 Meadows Lane

20 Las Vegas, NV 89107

21 Attorneys for Plaintiffs  
22  
23  
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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 December 2<sup>nd</sup>, 2015, I served the documents described as **NOTICE OF APPEAL** in Case No. A-15-714632-D on the following parties:

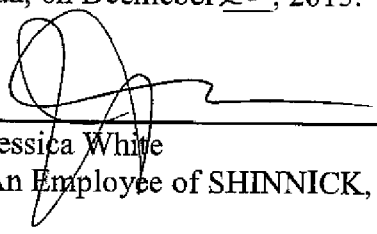
Jason W. Williams, Esq. Richard D. Young, Esq. KOELLER NEBEKER CARLSON & HALUCK, LLP 300 S. Fourth Street, Suite 500 Las Vegas, NV 89101
---

**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.

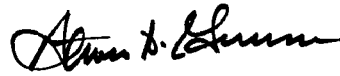
**X** VIA E-SERVICE: on all counsel of record through the Clark County District Court Electronic Filing Program per Wiznet – Odyssey File and Serve.

I declare that the foregoing is true and correct.

Executed at Las Vegas, Nevada, on December 2<sup>nd</sup>, 2015.

  
\_\_\_\_\_  
Jessica White

An Employee of SHINNICK, RYAN & RANSAVAGE P.C.



CLERK OF THE COURT

1 **ASTA**

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@srfirms.com](mailto:dshinnick@srfirms.com)

12 [cleee@srfirms.com](mailto:cleee@srfirms.com)

13 Attorneys for Plaintiffs

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **SCOTT PHILLIPS, individually; TEODORO**

17 **H. and ROSA-LINDA R. BAUTISTA,**

18 **individually; BROWER FAMILY TRUST,**

19 **individually; CHARLES COLUCCI,**

20 **individually; HARRY E. CROSBY**

21 **REVOCABLE TRUST; DR. KAREN**

22 **FELDMAN, individually; COLLEEN T. SAN**

23 **FILIPPO, individually; THE GILLES FAMILY**

24 **LIVING TRUST, DATED JANUARY 14,**

25 **2010; DAVID M. GORDON, individually;**

26 **CHARLES and MARIA HEARN, individually;**

27 **THOMAS C. and KATHLEEN A. JOHNSON,**

28 **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**

**CASE APPEAL STATEMENT**

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 1. Name of appellant filing this case appeal statement: Plaintiffs/Appellants Robert M. Dykema and  
2 Ronald Turner.
- 3 2. Identify the judge issuing the decision, judgment, or order appealed from: Judge Susan Johnson.
- 4 3. Identify each appellant and the name and address of counsel for each appellant:
- 5
- 6 Robert M. Dykema, Appellant Duane E. Shinnick, Esq.  
7 Ronald Turner, Appellant Courtney K. Lee, Esq.  
8 Shinnick, Ryan, & Ransavage P.C.  
9 4001 Meadows Lane  
Las Vegas, NV 89107  
Attorneys for Appellants
- 10 4. Identify each respondent and the name and address of appellate counsel, if known, for each  
11 respondent:
- 12
- 13 Del Webb Communities, Inc., Respondent Jason W. Williams, Esq.  
14 Richard D. Young, Esq.  
15 Koeller, Nebeker Carlson & Haluck, LLP  
16 300 S. Fourth Street, Suite 500  
Las Vegas, NV 89101  
Attorneys for Respondent
- 17 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to  
18 practice law in Nevada and, if so, whether the district court granted that attorney permission to  
19 appear under SCR 42: No, not applicable.
- 20 6. Indicate whether appellant was represented by appointed or retained counsel in district court:
- 21 Appellants were represented by retained counsel Shinnick, Ryan & Ransavage, P.C.
- 22 7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Appellants  
23 will be represented by retained counsel Shinnick, Ryan & Ransavage, P.C. on appeal.
- 24 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry  
25 of the district court order granting such leave: Not applicable.
- 26  
27  
28

- 1 9. Indicate the date the proceedings commenced in district court: Construction defect complaint  
2 was filed on February 27, 2015.
- 3  
4 10. Provide a brief description of the nature of the action and result in the district court, including the  
5 type of judgment or order being appealed and the relief granted by the district court: This is a  
6 residential construction defect action brought by Plaintiffs against developer Defendant Del  
7 Webb Communities, Inc. ("Del Webb") Defendant brought a Motion to Dismiss six (6) of the  
8 sixty-two (62) sets of Plaintiffs ("Motion") named in the Complaint on May 19, 2015. Plaintiffs  
9 did not oppose dismissal of 2 sets of Plaintiffs Dionisio Ong and Takeshi Nakaya. The claims of  
10 Salisbury Family Trust were found to be timely, and the claims of Steven and Maria Moore were  
11 dismissed without prejudice, in order to complete NRS Chapter 40. However, the claims of  
12 Plaintiffs Robert M. Dykema and Ronald Turner are being appealed as the district court found  
13 their claims to be time-barred (an adjudication on the merits). The Order was entered on  
14 November 25, 2015. Plaintiffs believe this finding that the claims of Plaintiffs Robert M.  
15 Dykema and Ronald Turner were time-barred to be in error as the cited statute of repose, NRS  
16 11.203 was repealed effective as of February 25, 2015, and was not applicable to the Motion,  
17 and/or the district court did not evaluate the correct date from which the statute of repose was to  
18 begin - the recordation date of the notices of completion.
- 19  
20  
21 11. Indicate whether the case has previously been the subject of an appeal or original writ  
22 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the  
23 prior proceeding: No, not applicable.
- 24  
25 12. Indicate whether this appeal involves child custody or visitation: No, not applicable.
- 26  
27 ///
- 28 ///



1 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: No.

2 Dated this 2<sup>nd</sup> day of December 2015.

3  
4 Respectfully Submitted,

5 SHINNICK, RYAN & RANSAVAGE P.C.

6  
7 By: 

8 Duane E. Shinnick, Esq.

9 Bar No. 7176

10 Courtney K. Lee, Esq.

11 Bar No. 8154

12 4001 Meadows Lane

13 Las Vegas, NV 89107

14  
15 Attorneys for Plaintiffs  
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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 December 2<sup>nd</sup>, 2015, I served the documents described as **PLAINTIFFS'/APPELLANTS' CASE APPEAL STATEMENT** in Case No. A-15-714632-D 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 December 2<sup>nd</sup>, 2015.

  
\_\_\_\_\_  
Jessica White

An Employee of SHINNICK, RYAN & RANSAVAGE P.C.

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

Scott Phillips, Plaintiff(s)  
vs.  
Del Webb Communities, Inc. , Defendant(s)

§  
§  
§  
§  
§

Location: **Department 22**  
Judicial Officer: **Johnson, Susan**  
Filed on: **02/27/2015**  
Cross-Reference Case Number: **A714632**

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**CASE INFORMATION**

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Case Type: **Chapter 40**  
Case Flags: **Appealed to Supreme Court**  
**Jury Demand Filed**

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**DATE**

**CASE ASSIGNMENT**

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**Current Case Assignment**

Case Number	A-15-714632-D
Court	Department 22
Date Assigned	02/27/2015
Judicial Officer	Johnson, Susan

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**PARTY INFORMATION**

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		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Bautista, Rosa-Linda R</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Bautista, Teodoro H</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Bellinfante, Debra A</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Bellinfante, Verol R</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Boulander-Field, Cristen</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Brower Family Trust</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Campos, Alfredo</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Campos, Iluminada</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Chan, Wynsie Marie</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
	<b>Colucci, Charles</b>	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

Connolly, Gloria Nan

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Connolly, Michael J

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Cooper, June D

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Dykema, Robert M

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Feldman, Karen

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Field, Kurt

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Foster, Brock

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Foster, Reanna

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Garcia, Hector G

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Garcia, Rosario

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Gaynor, Concetta

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Gaynor, Robert

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Gilles Family Living Trust

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Gordon, David M

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Harry E Crosby Revocable Trust

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Hearn, Charles

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Hearn, Maria

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Henderson, James A, Jr.

**Shinnick, Duane E.**

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

	<i>Retained</i> 702-631-8014(W)
J C F Family Trust	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Johnson, Kathleen A	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Johnson, Lorraine	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Johnson, Thomas C	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Jones, Jolean	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Kang, Chong-Ja	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Kang, Wi Jo	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Kim, Inok	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Kim, Young Kyoan	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Knudson, Aaron	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Laquitara, Mike	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Laquitara, Talia	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Lauth, Andronickie	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Lauth, James	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Lepore Family Trust	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Leveritt, John	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Levine, Howard S	<b>Shinnick, Duane E.</b> <i>Retained</i>

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

Levine, Roberta P	702-631-8014(W) <b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Maslin Family Living Trust	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
McDermott, Connie	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
McDermott, William	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Meyers, Thomas	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Monaco, Mark	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Monica-Meyers, Mary C	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Moore, Maria	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Moore, Steven	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Nakaya, Takeshi	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
O'Brien, Bud	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
O'Brien, Rosalie	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Ong, Dionisio	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Phillips, Scott	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Pourziaee Eraj and Sedi Pourziaee Joint Living Trust	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Powell, David L	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Premiere Holdings Residential Division LLC	<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

Rivera, Joseph

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Rivera, Milagros

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Roedecker, Nicole

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Roedecker, Randall

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Roger A Martin and Virginia C Martin Joint Living Trust

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Salisbury Family Trust

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Samir Farid Moujaes and Sylva Puzantian Moujaes Living Trust

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

San Filippo, Colleen T

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Shoop, Cynthia J

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Shoop, William A

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Smith, Bobbie

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Sucheki, Eugeniusz

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Sucheki, Zofia

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Tomolo, Allicia

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Tomolo, Chad

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Ton, Gary G

**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Turner, Ronald




**Shinnick, Duane E.**  
*Retained*  
702-631-8014(W)

Ure, Brent

**Shinnick, Duane E.**













DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

		<i>Retained</i> 702-631-8014(W)
Ure, Sara		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Van Slyke, Roy		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Van Slyke, Sharon		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Walley JR, William R		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Walley, Nancy		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Weaver, Laurel Yvonne		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Woo, Sydney		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Yost, Kiel		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Zipkin, Ellen R		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Zipkin, Robert A		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
Zipkin, Scott M		<b>Shinnick, Duane E.</b> <i>Retained</i> 702-631-8014(W)
<b>Defendant</b>	<b>Del Webb Communities, Inc.</b>	<b>Young, Richard D</b> <i>Retained</i>

DATE	EVENTS & ORDERS OF THE COURT	INDEX
02/27/2015	 Complaint (CD, Complex) Filed By: Plaintiff Phillips, Scott <i>Construction Defect Complaint</i>	
02/27/2015	Case Opened	
03/06/2015	 Initial Appearance Fee Disclosure Filed By: Plaintiff Bellinfante, Verol R <i>Initial Appearance Fee Disclosure for Plaintiffs' First Amended Construction Defect Complaint</i>	
03/06/2015	 First Amended Complaint	



DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

	Filed By: Plaintiff Bellinfante, Verol R <i>Plaintiffs' First Amended Complaint</i>
04/28/2015	 Demand for Jury Trial Filed By: Plaintiff Phillips, Scott <i>Plaintiff's Demand For Jury Trial</i>
05/05/2015	 Affidavit of Service Filed By: Plaintiff Phillips, Scott <i>Affidavit of Service-Del Webb Communities, Inc.</i>
05/19/2015	 Motion to Dismiss Filed By: Defendant Del Webb Communities, Inc. <i>Del Webb Communities, Inc.'s Motion to Dismiss</i>
05/20/2015	 Initial Appearance Fee Disclosure Filed By: Defendant Del Webb Communities, Inc. <i>Defendant Del Webb Communities, Inc.'s Initial Appearance Fee Disclosure</i>
06/05/2015	 Opposition Filed By: Plaintiff Phillips, Scott <i>Plaintiffs' Limited Opposition To Del Webb Communities Inc.'s Motion To Dismiss</i>
06/17/2015	 Reply in Support Filed By: Defendant Del Webb Communities, Inc. <i>Del Webb's Reply in Support of Motion to Dismiss</i>
06/23/2015	 <b>Motion to Dismiss</b> (10:30 AM) (Judicial Officer: Johnson, Susan) <i>Del Webb Communities, Inc.'s Motion to Dismiss</i>
11/16/2015	 <b>Decision</b> (3:00 AM) (Judicial Officer: Johnson, Susan)
11/16/2015	 Findings of Fact, Conclusions of Law and Order <i>Order Re: Defendant Del Webb Communities, Inc.'s Motion to Dismiss</i>
11/16/2015	<b>Order of Dismissal Without Prejudice</b> (Judicial Officer: Johnson, Susan) Debtors: Del Webb Communities, Inc. (Defendant) Creditors: Steven Moore (Plaintiff), Maria Moore (Plaintiff) Judgment: 11/16/2015, Docketed: 11/23/2015
11/16/2015	<b>Order of Dismissal</b> (Judicial Officer: Johnson, Susan) Debtors: Del Webb Communities, Inc. (Defendant) Creditors: Robert M Dykema (Plaintiff), Ronald Turner (Plaintiff) Judgment: 11/16/2015, Docketed: 11/23/2015
11/25/2015	 Notice of Special Master Hearing Filed By: Plaintiff Johnson, Kathleen A <i>Notice of Special Master Hearing</i>
11/25/2015	 Notice of Entry Filed By: Defendant Del Webb Communities, Inc. <i>Notice of Entry of Order Re: Del Webb Communities, Inc.'s Motion to Dismiss</i>
12/02/2015	 Case Appeal Statement

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

	Filed By: Plaintiff Phillips, Scott <i>Case Appeal Statement</i>	
12/02/2015	 Notice of Appeal Filed By: Plaintiff Phillips, Scott <i>Notice Of Appeal</i>	

DATE	FINANCIAL INFORMATION	
	<b>Defendant</b> Del Webb Communities, Inc.	
	Total Charges	473.00
	Total Payments and Credits	473.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Bautista, Rosa-Linda R	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Bautista, Teodoro H	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Bellinfante, Debra A	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Bellinfante, Verol R	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Boulander-Field, Cristen	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Brower Family Trust	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Campos, Alfredo	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Campos, Iluminada	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Chan, Wynsie Marie	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
	<b>Plaintiff</b> Colucci, Charles	
	Total Charges	30.00
	Total Payments and Credits	30.00
	<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

<b>Plaintiff</b> Connolly, Gloria Nan	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Connolly, Michael J	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Cooper, June D	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Dykema, Robert M	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Feldman, Karen	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Field, Kurt	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Foster, Brock	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Foster, Reanna	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Garcia, Hector G	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Garcia, Rosario	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Gaynor, Concetta	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Gaynor, Robert	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Gilles Family Living Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

<b>Plaintiff</b> Gordon, David M	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Harry E Crosby Revocable Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Hearn, Charles	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Hearn, Maria	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Henderson, James A, Jr.	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> J C F Family Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Johnson, Kathleen A	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Johnson, Lorraine	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Johnson, Thomas C	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Jones, Jolean	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Kang, Chong-Ja	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Kang, Wi Jo	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Kim, Inok	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

<b>Plaintiff</b> Kim, Young Kyoona	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Knudson, Aaron	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Laquitar, Mike	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Laquitar, Talia	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Lauth, Andronickie	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Lauth, James	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Lepore Family Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Leveritt, John	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Levine, Howard S	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Levine, Roberta P	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Maslin Family Living Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> McDermott, Connie	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> McDermott, William	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

<b>Plaintiff</b> Meyers, Thomas	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Monaco, Mark	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Monica-Meyers, Mary C	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Moore, Maria	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Moore, Steven	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Nakaya, Takeshi	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> O'Brien, Bud	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> O'Brien, Rosalie	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Ong, Dionisio	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Phillips, Scott	
Total Charges	544.00
Total Payments and Credits	544.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Pourziaee Eraj and Sedi Pourziaee Joint Living Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Powell, David L	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Premiere Holdings Residential Division LLC	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

<b>Plaintiff</b> Rivera, Joseph	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Rivera, Milagros	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Roedecker, Nicole	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Roedecker, Randall	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Roger A Martin and Virginia C Martin Joint Living Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Salisbury Family Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Samir Farid Moujaes and Sylva Puzantian Moujaes Living Trust	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> San Filippo, Colleen T	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Shoop, Cynthia J	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Shoop, William A	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Smith, Bobbie	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Suchecki, Eugeniusz	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Suchecki, Zofia	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>

DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

<b>Plaintiff</b> Tomolo, Allicia	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Tomolo, Chad	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Ton, Gary G	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Turner, Ronald	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Ure, Brent	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Ure, Sara	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Van Slyke, Roy	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Van Slyke, Sharon	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Walley JR, William R	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Walley, Nancy	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Weaver, Laurel Yvonne	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Woo, Sydney	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
 <b>Plaintiff</b> Yost, Kiel	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>



DEPARTMENT 22  
**CASE SUMMARY**  
**CASE NO. A-15-714632-D**

<b>Plaintiff</b> Zipkin, Ellen R	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Zipkin, Robert A	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>
<b>Plaintiff</b> Zipkin, Scott M	
Total Charges	30.00
Total Payments and Credits	30.00
<b>Balance Due as of 12/4/2015</b>	<b>0.00</b>

# DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada A-15-714632-D

Case No. \_\_\_\_\_ XXII  
(Assigned by Clerk's Office)

## I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s): Scott Phillips  
2527 Findlater Street  
Henderson, Nevada 89044  
Attorney (name/address/phone): Courtney K. Lee, Esq.  
SHINNICK RYAN & RANSAVAGE P.C.  
4001 Meadows Lane  
Las Vegas, NV 89107 (702) 631-8014

Defendant(s): Del Webb Communities, Inc.  
8345 W. Sunset Road  
Las Vegas, Nevada 89113  
Attorney (name/address/phone):

## II. Nature of Controversy (Please select the one most applicable filing type below)

### Civil Case Filing Types

Real Property	Torts	
<b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Torts <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
<b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect</b> <input checked="" type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil	Writ	Other Civil Filing
<b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

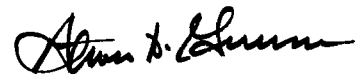
Business Court filings should be filed using the Business Court civil coversheet.

February 27, 2015

Date

/s/ Courtney K. Lee

Signature of initiating party or representative



CLERK OF THE COURT

FFCO

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No. A-15-714632-D

Dept. No. XXII

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

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

Plaintiffs,

Vs.

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

Defendants.

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

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

1 ROSA-LINIDA R. BAUTISTA, BROWER FAMILY TRUST, CHARLES COLUCCI, HARRY E.  
2 CROSBY REVOCABLE TRUST; DR. KAREN FELDMAN, COLLEN T. SAN FILIPPO, THE  
3 GILLES FAMILY LIVING TRUST DATED JANUARY 14, 2014; DAVID M. GORDON,  
4 CHARLES and MARIA HEARN, THOMAS C. and KATHLEEN A. JOHNSON, AARON  
5 KNUDSON, LORRAINE JOHNSON, JOLEAN JONES, YOUNG KYOON KIM and INOK KIM,  
6 MIKE and TALIA LAQUITARA, JAMES and ANDRONICKIE LAUTH, LEPORE FAMILY  
7 TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT, ROGER A. MARTIN AND VIRGINIA  
8 C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY  
9 24, 2011; THOMAS MEYERS and MARY CM MONICA-MEYERS, MARK MONACO, SAMIR  
10 FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13,  
11 2013; BUD O'BRIEN and ROSALIE O'BRIEN, DAVID L. POWELL and JUNE D. COOPER,  
12 RANDALL and NICOLE ROEDECKER, EUGENIUSZ and ZOFIA SUCHECKI, GARY G. TON,  
13 ROY and SHARON VAN SLYKE, LAUREL YVONNE WEAVER, SCOTT M. ZIPKIN and  
14 ROBERT A & ELLEN R. ZIPKIN, MICHAEL J. and GLORIA NAN CONNOLLY, ROBERT and  
15 CONCETTA GAYNOR, HECTOR G. and ROSARIO GARCIA, JAMES A. HENDERSON, JR.,  
16 HOWARD S. and ROBERTA P. LEVINE, KURT FIELD and CRISTEN BOLANDER-FIELD,  
17 BOBBIE SMITH, CHAD and ALLICIA TOMOLA, WILLIAM and CONNIE MCDERMOTT,  
18 SYDNEY WOO, PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC, VEROL R. and  
19 DEBRA A. BELLINFANTE, ALFREDO and ILUMINADO CAMPOS, WYNSIE MARIE CHAN,  
20 ROBERT M. DYKEMA, BROCK and REANNA FOSTER, J.C.F. FAMILY TRUST; WI JO  
21 KANG and CHONG-JA KANG, TAKESHI NAKAYA, DIONISIO ONG, POURZIAEE ERAJ  
22 AND SEDI POURZIAEE JOINT LIVING TRUST; JOSEPH and MILAGROS RIVERA,  
23 SALISBURY FAMILY TRUST, WILLIAM A. and CYNTHIA J. SHOOP, RONALD TURNER,  
24 BRENT and SARA URE, WILLIAM R. and NANCY WALLEY, JR., KEIL YOST, STEVEN and  
25  
26  
27  
28

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

8 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

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

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

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

27 ...

28 ...

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

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

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

## **CONCLUSIONS OF LAW**

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

<sup>1</sup>See NRCP 12(b)(5).

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

Plaintiff SALISBURY FAMILY TRUST served its NRS 40.645 notice on December 30, 2014.<sup>8</sup> While it is Plaintiff's view such notice served on the last day is timely, Defendant disagrees. Defendant proposes the last day to serve a notice pursuant to NRS 40.645 was December 29, 2014. This Court found no authority within the Nevada Revised Statutes, and particularly within NRS 40.600, *et seq.*, to support either party's position. However, the timeliness of a document's filing is addressed within the Nevada Rules of Civil Procedure (NRCP), and particularly, in Rule 6. It provides in pertinent part:

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

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

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

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

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

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

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

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

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

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

<sup>10</sup>*See* Exhibit B attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss.

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

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

5       9. The "Certificate of Occupancy" was issued for Plaintiff ROBERT DYKEMA'S  
6 house, 2818 Craigton Drive, Henderson, Nevada on November 2, 2004.<sup>12</sup> The "Notice of  
7 Completion" was issued on November 30, 2004.<sup>13</sup> The NRS 40.645 Notice served by Plaintiff  
8 DYKEMA upon Defendant DEL WEBB COMMUNITIES, INC. is dated December 2, 2014.<sup>14</sup> The  
9 service of the constructional defects notice pursuant to NRS 40.645 falls outside the ten-year Statute  
10 of Repose period, and as a consequence, Plaintiff DYKEMA'S constructional defect claims are  
11 time-barred and must be dismissed.  
12

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

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

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

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

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

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

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

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

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

17 Accordingly, and based upon the aforementioned Findings of Fact and Conclusions of Law,  
18

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

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the claims brought by  
23 Plaintiffs DIONISIO ONG and TAKESHI NAKAYA is dismissed, as unopposed;  
24  
25 ...  
26

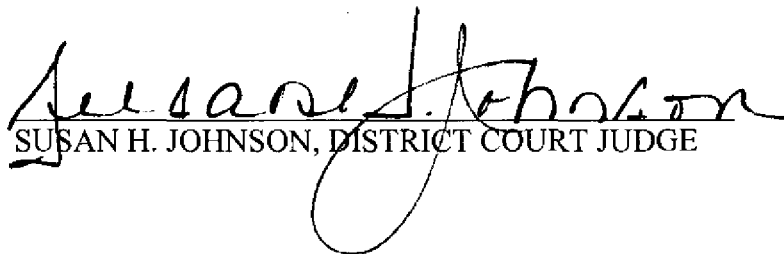
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28 <sup>15</sup>See Exhibit I attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss, *and* Exhibit 6  
to Plaintiffs' Opposition to Del Webb Communities, Inc.'s Motion to Dismiss.

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

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

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

14           DATED and DONE this 16<sup>th</sup> day of November 2015.  
15

16  
17   
18 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
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Las Vegas, Nevada 89101  
[richard.young@knchl.com](mailto:richard.young@knchl.com)

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

NEO

JASON W. WILLIAMS, ESQ.

Nevada Bar No. 8310

RICHARD D. YOUNG, ESQ.

Nevada Bar No. 11331

KOELLER NEBEKER CARLSON & HALUCK, LLP

300 S. Fourth St., Suite 500

Las Vegas, NV 89101

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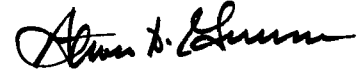
Phone: (702) 853-5500

Fax: (702) 853-5599

Attorneys for Defendant

Del Webb Communities, Inc.

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CLERK OF THE COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**CASE NO.: A714632**

**DEPT. NO.: XXII**

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



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

Plaintiffs

vs.

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

Defendants.

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

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

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

3 Dated this 25<sup>th</sup> day of November, 2015.

4  
5 KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP

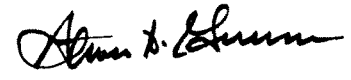
6  
7 BY: 

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

13 **CERTIFICATE OF SERVICE**

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

18  
19   
20  
21 An Employee of KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP  
22  
23  
24  
25  
26  
27  
28



CLERK OF THE COURT

FFCO

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Case No. A-15-714632-D

Dept. No. XXII

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

SUSAN H. JOHNSON  
DISTRICT JUDGE  
DEPARTMENT XXII

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

Plaintiffs,

Vs.

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

Defendants.

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

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

1 ROSA-LINIDA R. BAUTISTA, BROWER FAMILY TRUST, CHARLES COLUCCI, HARRY E.  
2 CROSBY REVOCABLE TRUST; DR. KAREN FELDMAN, COLLEN T. SAN FILIPPO, THE  
3 GILLES FAMILY LIVING TRUST DATED JANUARY 14, 2014; DAVID M. GORDON,  
4 CHARLES and MARIA HEARN, THOMAS C. and KATHLEEN A. JOHNSON, AARON  
5 KNUDSON, LORRAINE JOHNSON, JOLEAN JONES, YOUNG KYOON KIM and INOK KIM,  
6 MIKE and TALIA LAQUITARA, JAMES and ANDRONICKIE LAUTH, LEPORE FAMILY  
7 TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT, ROGER A. MARTIN AND VIRGINIA  
8 C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY  
9 24, 2011; THOMAS MEYERS and MARY CM MONICA-MEYERS, MARK MONACO, SAMIR  
10 FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13,  
11 2013; BUD O'BRIEN and ROSALIE O'BRIEN, DAVID L. POWELL and JUNE D. COOPER,  
12 RANDALL and NICOLE ROEDECKER, EUGENIUSZ and ZOFIA SUCHECKI, GARY G. TON,  
13 ROY and SHARON VAN SLYKE, LAUREL YVONNE WEAVER, SCOTT M. ZIPKIN and  
14 ROBERT A & ELLEN R. ZIPKIN, MICHAEL J. and GLORIA NAN CONNOLLY, ROBERT and  
15 CONCETTA GAYNOR, HECTOR G. and ROSARIO GARCIA, JAMES A. HENDERSON, JR.,  
16 HOWARD S. and ROBERTA P. LEVINE, KURT FIELD and CRISTEN BOLANDER-FIELD,  
17 BOBBIE SMITH, CHAD and ALLICIA TOMOLA, WILLIAM and CONNIE MCDERMOTT,  
18 SYDNEY WOO, PREMIERE HOLDINGS RESIDENTIAL DIVISION, LLC, VEROI R. and  
19 DEBRA A. BELLINFANTE, ALFREDO and ILUMINADO CAMPOS, WYNSIE MARIE CHAN,  
20 ROBERT M. DYKEMA, BROCK and REANNA FOSTER, J.C.F. FAMILY TRUST; WI JO  
21 KANG and CHONG-JA KANG, TAKESHI NAKAYA, DIONISIO ONG, POURZIAEE ERAJ  
22 AND SEDI POURZIAEE JOINT LIVING TRUST; JOSEPH and MILAGROS RIVERA,  
23 SALISBURY FAMILY TRUST, WILLIAM A. and CYNTHIA J. SHOOP, RONALD TURNER,  
24 BRENT and SARA URE, WILLIAM R. and NANCY WALLEY, JR., KEIL YOST, STEVEN and  
25  
26  
27  
28

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

8 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

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

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

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

27 ...

28 ...

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

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

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

## CONCLUSIONS OF LAW

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

<sup>1</sup>See NRCP 12(b)(5).

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

1 Way, Henderson, Nevada and owned by Plaintiff SALISBURY FAMILY TRUST was issued by the  
2 City of Henderson on November 23, 2004.<sup>6</sup> A "Notice of Completion" was issued by Defendant  
3 DEL WEBB COMMUNITIES, INC. approximately a month later, on December 30, 2004.<sup>7</sup> As NRS  
4 11.2055(1) specifically provides the date of substantial completion is the latter of three events, i.e.  
5 final building inspection being conducted, the issuance of the certificate of occupancy, or when the  
6 notice of completion is issued, this Court concludes the date the SALISBURY FAMILY TRUST  
7 home was substantially completed is December 30, 2004.  
8

9 Plaintiff SALISBURY FAMILY TRUST served its NRS 40.645 notice on December 30,  
10 2014.<sup>8</sup> While it is Plaintiff's view such notice served on the last day is timely, Defendant disagrees.  
11 Defendant proposes the last day to serve a notice pursuant to NRS 40.645 was December 29, 2014.  
12 This Court found no authority within the Nevada Revised Statutes, and particularly within NRS  
13 40.600, *et seq.*, to support either party's position. However, the timeliness of a document's filing is  
14 addressed within the Nevada Rules of Civil Procedure (NRCP), and particularly, in Rule 6. It  
15 provides in pertinent part:  
16

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

26 Here, the day of the act, i.e. the issuance of the Notice of Completion, is not included within  
27 the computation when the designated time begins to run. *See* NRCP 6(a). The designated time to  
28

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

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

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

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

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

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

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

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

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

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

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

5 9. The "Certificate of Occupancy" was issued for Plaintiff ROBERT DYKEMA'S  
6 house, 2818 Craigton Drive, Henderson, Nevada on November 2, 2004.<sup>12</sup> The "Notice of  
7 Completion" was issued on November 30, 2004.<sup>13</sup> The NRS 40.645 Notice served by Plaintiff  
8 DYKEMA upon Defendant DEL WEBB COMMUNITIES, INC. is dated December 2, 2014.<sup>14</sup> The  
9 service of the constructional defects notice pursuant to NRS 40.645 falls outside the ten-year Statute  
10 of Repose period, and as a consequence, Plaintiff DYKEMA'S constructional defect claims are  
11 time-barred and must be dismissed.  
12

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

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

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

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

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

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

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

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

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

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

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

23       **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the claims brought by  
24 Plaintiffs DIONISIO ONG and TAKESHI NAKAYA is dismissed, as unopposed;  
25

26 ...

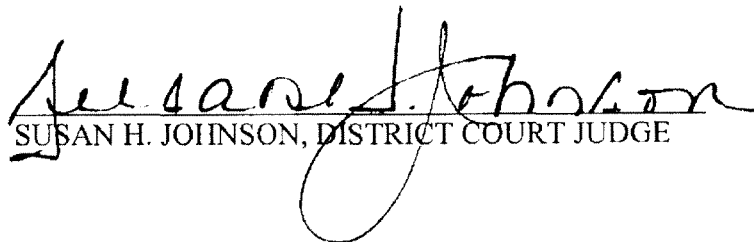
27  
28 <sup>15</sup>See Exhibit I attached to Defendant DEL WEBB COMMUNITIES, INC.'S Motion to Dismiss, *and* Exhibit 6  
to Plaintiffs' Opposition to Del Webb Communities, Inc.'s Motion to Dismiss.

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

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

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

14           DATED and DONE this 16<sup>th</sup> day of November 2015.  
15

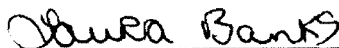
16  
17   
18 SUSAN H. JOHNSON, DISTRICT COURT JUDGE  
19  
20  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that, on the 16<sup>th</sup> day of November 2015, I electronically served (E-served),  
3 placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed  
4 a true and correct copy of the foregoing ORDER RE: DEFENDANT DEL WEBB COMMUNITIES,  
5 INC.'S MOTION TO DISMISS to the following counsel of record, and first-class postage was fully  
6 prepaid thereon:  
7

8 DUANE E. SHINNICK, ESQ.  
9 SHINNICK RYAN & RANSAVAGE, P.C.  
10 4001 Meadows Lane  
11 Las Vegas, Nevada 89107  
12 [dshinnick@ssllplaw.com](mailto:dshinnick@ssllplaw.com)

13 RICHARD D. YOUNG, ESQ.  
14 KOELLER NEBEKER CARLSON & HALUCK, LLP  
15 300 South Fourth Street, Suite 500  
16 Las Vegas, Nevada 89101  
17 [richard.young@knchlaw.com](mailto:richard.young@knchlaw.com)

18   
19 \_\_\_\_\_  
20 Laura Banks, Judicial Executive Assistant  
21  
22  
23  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Chapter 40**

**COURT MINUTES**

**June 23, 2015**

---

A-15-714632-D      Scott Phillips, Plaintiff(s)  
vs.  
Del Webb Communities, Inc. , Defendant(s)

---

**June 23, 2015      10:30 AM      Motion to Dismiss**

**HEARD BY:** Johnson, Susan      **COURTROOM:** RJC Courtroom 15D

**COURT CLERK:** Melissa Murphy

**RECORDER:** Norma Ramirez

**REPORTER:**

**PARTIES**

**PRESENT:**      Shinnick, Duane E.      Attorney  
                 Young, Richard D      Attorney

**JOURNAL ENTRIES**

- COURT noted it appeared there were no disputes as to claims against Plaintiff's Nakaya and Ong homes and therefore ORDERED, Motion to Dismiss GRANTED.

Arguments by counsel regarding applicable case law; whether the 6 year, 8 year or 10 year period of repose applied; whether the Chapter 40 notices were untimely or insufficient; whether there were valid allegations in the pleadings and disputes as to the definition of issuance. COURT FURTHER ORDERED, matter TAKEN UNDER ADVISEMENT with respects to Plaintiff's Moore, Turner, Dykema and Salisbury.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Chapter 40**

**COURT MINUTES**

**November 16, 2015**

---

A-15-714632-D      Scott Phillips, Plaintiff(s)  
vs.  
Del Webb Communities, Inc. , Defendant(s)

---

**November 16, 2015      3:00 AM      Decision**

**HEARD BY:** Johnson, Susan      **COURTROOM:**

**COURT CLERK:** Melissa Murphy

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT, having heard Defendant Del Webb Communities, Inc.'s Motion to Dismiss on 06/23/15, and having taken the matter under advisement, thereafter ORDERED, Defendant DEL WEBB COMMUNITIES, INC. S Motion to Dismiss filed May 19, 2015 is GRANTED IN PART, DENIED IN PART;

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

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

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

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



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**DUANE E. SHINNICK, ESQ.**  
**4001 MEADOWS LANE**  
**LAS VEGAS, NV 89107**

**DATE: December 4, 2015**  
**CASE: A714632**

**RE CASE: SCOTT PHILLIPS, ET AL. vs. DEL WEBB COMMUNITIES, INC.**

**NOTICE OF APPEAL FILED: December 2, 2015**

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

**PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:**

- ☐ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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**NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:**

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

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**\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; DISTRICT COURT CIVIL COVER SHEET; ORDER RE: DEFENDANT DEL WEBB COMMUNITIES, INC.'S MOTION TO DISMISS; NOTICE OF ENTRY OF ORDER RE: DEFENDANT DEL WEBB COMMUNITIES, INC.'S MOTION TO DISMISS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SCOTT PHILLIPS; TEODORO H. BAUTISTA; ROSA-LINDA R. BAUTISTA; BROWER FAMILY TRUST; CHARLES COLUCCI; HARRY E. CROSBY REVOCABLE TRUST; KAREN FELDMAN; COLLEEN T. SAN FILIPPO; THE GILLES FAMILY LIVING TRUST, DATED JANUARY 14, 2010; DAVID M. GORDON; CHARLES HEARN; MARIA HEARN; THOMAS C. JOHNSON; KATHLEEN A. JOHNSON; AARON KNUDSON; LORRAINE JOHNSON; JOLEAN JONES; YOUNG KYOON KIM; INOK KIM; MIKE LAQUITARA; TALIA LAQUITARA; JAMES LAUTH; ANDRONICKIE LAUTH; LEPORE FAMILY TRUST DATED OCTOBER 30, 2008; JOHN LEVERITT; ROGER A. MARTIN AND VIRGINIA C. MARTIN JOINT LIVING TRUST; MASLIN FAMILY LIVING TRUST DATED JANUARY 24, 2011; THOMAS MEYERS; MARY C. MONICA-MEYERS; MARK MONACO; SAMIR FARID MOUJAES AND SYLVA PUZANTIAN MOUJAES LIVING TRUST u/t/d August 13, 2013; BUD O'BRIEN; ROSALIE O'BRIEN; DAVID L. POWELL; JUNE D. COOPER; RANDALL ROEDECKER; NICOLE ROEDECKER; EUGENIUSZ SUCHECKI; ZOFIA SUCHECKI; GARY G. TON; ROY VAN SLYKE; SHARON VAN SLYKE; LAUREL YVONNE WEAVER; SCOTT M. ZIPKIN; ROBERT A. ZIPKIN; ELLEN R. ZIPKIN; MICHAEL J. CONNOLLY; GLORIA NAN CONNOLLY; ROBERT GAYNOR; CONCETTA GAYNOR; HECTOR G.

Case No: A714632

Dept No: XXII

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

Plaintiff(s),

vs.

DEL WEBB COMMUNITIES, INC.,

Defendant(s),

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 4 day of December 2015.

Steven D. Grierson, Clerk of the Court

*Mary Kielty*

Mary Kielty, Deputy Clerk

11844

SHINNICK RYAN & RANSAVAGE PC

GENERAL ACCOUNT  
4001 MEADOWS LANE  
LAS VEGAS, NV 89107-3104

USBANK  
90-3582-1222

12/03/15

\*\*\*\*\$250.00


\*\*\* TWO HUNDRED FIFTY & 00/100 DOLLARS

AMOUNT

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TO THE  
ORDER  
OF

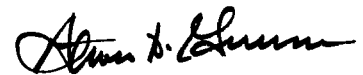
CLERK OF THE SUPREME COURT  
316 BRIDGER  
SUITE 200  
LAS VEGAS NV 89101

Acct: A-15-714632-D

  
AUTHORIZED SIGNATURE

⑈011844⑈ ⑆122235821⑆ 153491827322⑈

JA00309



CLERK OF THE COURT

1 ANSC  
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 [richard.young@knchlaw.com](mailto:richard.young@knchlaw.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; ) CASE NO.: A714632  
12 TEODORO H. and ROSA-LINDA R. ) DEPT. NO.: XXII  
13 BAUTISTA, individually; BROWER )  
14 FAMILY TRUST, individually; CHARLES )  
15 COLUCCI, individually; HARRY E. )  
16 CROSBY REVOCABLE TRUST; DR. )  
17 KAREN FELDMAN, individually; ) DEFENDANT DEL WEBB  
18 COLLEN T. SAN FILIPPO, individually; ) COMMUNITIES, INC.'S ANSWER  
19 THE GILLES FAMILY LIVING TRUST, ) TO PLAINTIFFS' COMPLAINT  
20 DATED JANUARY 14, 2014; DAVID M. )  
21 GORDON, individually; CHARLES and )  
22 MARIA HEARN, individually; THOMAS C. )  
23 and KATHLEEN A. JOHNSON, )  
24 individually; AARON KNUDSON, )  
25 individually; LORRAINE JOHNSON, )  
26 individually; JOLEAN JONES, individually; )  
27 YOUNG KYOON KIM and INOK KIM, )  
28 individually; MIKE and TALIA )  
LAQUITARA, individually; JAMES and )  
ANDRONICKIE LAUTH, individually; )  
LEPORE FAMILY TRUST DATED )  
OCTOBER 30, 2008; JOHN LEVERITT, )  
individually; ROGER A. MARTIN and )  
VIRGINIA C. MARTIN JOINT LIVING )  
TRUST; MASLIN FAMILY LIVING )  
TRUST DATED JANUARY 24, 2011; )  
THOMAS MEYERS and MARY CM )  
MONICA-MEYERS, individually; MARK )  
MONACO, individually; SAMIR FARID )  
MOUJAES and SYLVA PUZANTIAN )  
MOUJAES LIVING TRUST u/t/d August )  
13, 2013; BUD O'BRIEN and ROSALIE )  
O'BRIEN, individually; DAVID L. )  
POWELL and JUNE D. COOPER, )

1 individually; RANDALL and NICOLE )  
2 ROEDECKER, individually; EUGENIUSZ )  
3 and ZOFIA SUCHECKI, individually; )  
4 GARY G. TON, individually; ROY and )  
5 SHARON VAN SLYKE, individually; )  
6 LAUREL YVONNE WEAVER, )  
7 individually; SCOTT M. ZIPKIN and )  
8 ROBERT A. & ELLEN R. ZIPKIN, )  
9 individually; MICHAEL J. and GLORIA )  
10 NAN CONNOLLY, individually; ROBERT )  
11 AND CONCETTA GAYNOR, individually; )  
12 HECTOR G. and ROSARIO GARCIA, )  
13 individually; JAMES A. HENDERSON JR., )  
14 individually; HOWARD S. and ROBERTA )  
15 P. LEVINE, individually; KURT FIELD and )  
16 CRISTEN BOLANDER-FIELD, )  
17 individually; BOBBIE SMITH, individually; )  
18 CHAD and ALLICIA TOMOLA, )  
19 individually; WILLIAM and CONNIE )  
20 MCDERMOTT, individually; SYDNEY )  
21 WOO, individually; PREMIERE )  
22 HOLDINGS RESIDENTIAL DIVISION, )  
23 LLC, a Nevada limited-Liability Company; )  
24 VEROL R. and DEBRA A. )  
25 BELLINFANTE, individually; ALFREDO )  
26 and ILUMINADA CAMPOS, individually; )  
27 WYNSIE MARIE CHAN, individually; )  
28 ROBERT M. DYKEMA, individually; )  
BROCK and REANNA FOSTER, )  
individually; J C F FAMILY TRUST; WI JO )  
KANG and CHONG-JA KANG, )  
individually; TAKESHI NAKAYA, )  
individually; DIONISIO ONG, individually; )  
POURZIAEE ERAJ AND SEDI )  
POURZIAEE JOINT LIVING TRUST; )  
JOSEPH and MILAGROS RIVERA, )  
individually; SALISBURY FAMILY )  
TRUST; WILLIAM A. and CYNTHIA J. )  
SHOOP, individually; RONALD TURNER, )  
individually; BRENT and SARA URE, )  
individually; WILLIAM R. and NANCY )  
WALLEY JR., individually; KIEL YOST, )  
individually; STEVEN and MARIA )  
MOORE, individually; )  
  
23 Plaintiffs )  
  
24 vs. )  
  
25 DEL WEBB COMMUNITIES, INC., an )  
26 Arizona Corporation, and DOES 1-500, )  
  
27 Defendants. )  
28



1 Defendant, DEL WEBB COMMUNITIES, INC. (hereinafter referred to as "Del  
2 Webb") submits its Answer to Plaintiffs' Complaint.

3 **GENERAL ALLEGATIONS**

4 1. Answering Paragraph 1 of Plaintiffs' Complaint, Del Webb is without sufficient  
5 information to form a belief as to the truth or falsity of the allegations contained therein, and  
6 therefore denies same

7 2. Answering Paragraph 2 and 2a of Plaintiffs' Complaint, Del Webb asserts that  
8 said Paragraphs constitute legal conclusions to some extent, to which no response is required.  
9 To the extent said Paragraphs are determined to contain factual allegations, Del Webb denies  
10 each and every allegation contained therein.

11 3. Answering Paragraph 3 of Plaintiffs' Complaint, Del Webb asserts that it is a  
12 definition to some extent, to which no response is required. To the extent said Paragraph is  
13 determined to contain a factual allegation, Del Webb denies each and every allegation  
14 contained therein.

15 4. Answering Paragraph 4 of Plaintiffs' Complaint, Del Webb asserts that there are  
16 no allegations contained in said Paragraph as such no response is required.

17 5. Answering Paragraph 5 of Plaintiffs' Complaint, Del Webb admits that it is  
18 authorized and licensed to do business in Clark County, State of Nevada and that it is an  
19 Arizona corporation. As to the remainder of the allegations contained therein, Del Webb is  
20 without sufficient information to form a belief as to the truth or falsity of the allegations  
21 contained therein, and therefore denies the same.

22 6. Answering Paragraph 6 of Plaintiffs' Complaint, Del Webb is without sufficient  
23 information to form a belief as to the truth or falsity of the allegations contained therein, and  
24 therefore denies same.

25 7. Answering Paragraph 7 of Plaintiffs' Complaint, Del Webb is without sufficient  
26 information to form a belief as to the truth or falsity of the allegations contained therein and  
27 therefore denies same.  
28

8. Answering Paragraph 8 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein and therefore denies same.

9. Answering Paragraph 9 of Plaintiffs' Complaint, Del Webb admits that it acted as the developer of the subject project and that it engaged in the development, construction and/or sale of homes, appurtenances and improvements at the subject project. As to the remainder of the allegations contained therein, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

10. Answering Paragraph 10 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein and therefore denies same.

### FIRST CAUSE OF ACTION

**(Breach of Contract and Breach of Express Warranties as Against All Defendants and Does 1 through 400)**

11. Answering Paragraph 11 of Plaintiffs' Complaint, Del Webb repeats and realleges its answers to Paragraphs 1 through 10, inclusive, and incorporates the same by reference as though fully set forth herein.

12. Answering Paragraph 12 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

13. Answering Paragraph 13 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

14. Answering Paragraph 14 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

15. Answering Paragraph 15 of Plaintiffs' Complaint, Del Webb denies the allegations contained therein.

16. Answering Paragraph 16 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

17. Answering Paragraph 17 of Plaintiffs' Complaint, Del Webb asserts that certain allegations constitute legal conclusions to some extent, to which no response is required. To the extent said Paragraphs are determined to contain factual allegations, Del Webb denies each and every allegation contained therein.

18. Answering Paragraph 18 of Plaintiffs' Complaint, Del Webb asserts that certain allegations constitute legal conclusions to some extent, to which no response is required. To the extent said Paragraphs are determined to contain factual allegations, Del Webb denies each and every allegation contained therein.

## SECOND CAUSE OF ACTION

**(Breach of Implied Warranties Third-Party Beneficiary as against Does 1 through 400)**

19. Answering Paragraph 19 of Plaintiffs' Complaint, Del Webb repeats and realleges its answers to Paragraphs 1 through 18, inclusive, and incorporates the same by reference as though fully set forth herein.

20. Answering Paragraph 20 of Plaintiffs' Complaint, Del Webb admits entering subcontract agreements for materials, construction and design services with certain subcontractors, Del Webb denies that Plaintiffs' were intended as Third-Party Beneficiaries to any subcontract agreements.

21. Answering Paragraph 21 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

22. Answering Paragraph 22 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

23. Answering Paragraph 23 of Plaintiffs' Complaint, Del Webb is without sufficient information to form a belief as to the truth or falsity of the allegations contained therein, and therefore denies same.

24. Answering Paragraph 24 of Plaintiffs' Complaint, Del Webb asserts that certain allegations constitute legal conclusions to some extent, to which no response is required. To the extent said Paragraphs are determined to contain factual allegations, Del Webb denies each and every allegation contained therein.

### THIRD CAUSE OF ACTION

**(Negligence and Negligence per se As to All Defendants, and Does 1 through 400)**

25. Answering Paragraph 25 of Plaintiffs' Complaint, Del Webb repeats and realleges its answers to Paragraphs 1 through 24, inclusive, and incorporates the same by reference as though fully set forth herein.

26. Answering Paragraph 26 of Plaintiffs' Complaint, Del Webb asserts to the extent said Paragraphs apply to Del Webb, Del Webb denies each and every allegation contained therein. With respect to the remainder of the allegations contained therein and their application to other parties, Del Webb is without sufficient information to form a belief as to the truth or falsity of said allegations, and therefore denies the same.

27. Answering Paragraph 27 of Plaintiffs' Complaint, Del Webb asserts to the extent said Paragraphs apply to Del Webb, Del Webb denies each and every allegation contained therein. With respect to the remainder of the allegations contained therein and their application to other parties, Del Webb is without sufficient information to form a belief as to the truth or falsity of said allegations, and therefore denies the same.

28. Answering Paragraph 28 of Plaintiffs' Complaint, Del Webb asserts to the extent said Paragraphs apply to Del Webb, Del Webb denies each and allegation contained therein. With respect to the remainder of the allegations contained therein and their application to other parties, Del Webb is without sufficient information to form a belief as to the truth or falsity of said allegations, and therefore denies the same.

1           29.     Answering Paragraph 29 of Plaintiffs' Complaint, Del Webb asserts to the  
2 extent said Paragraphs apply to Del Webb, Del Webb denies each and every allegation  
3 contained therein. With respect to the remainder of the allegations contained therein and their  
4 application to other parties, Del Webb is without sufficient information to form a belief as to  
5 the truth or fasity of said allegations, and therefore denies the same.

6           30.     Answering Paragraph 30 of Plaintiffs' Complaint, Del Webb asserts to the  
7 extent said Paragraphs apply to Del Webb, Del Webb denies each and every allegation  
8 contained therein. With respect to the remained of the allegations contained therein and their  
9 application to other parties, Del Webb is without sufficient information to form a belief as to  
10 the truth or falsity of said allegations, and therefore denies the same.

11           31.     Answering Paragraph 31 of Plaintiffs' Complaint, Del Webb asserts to the  
12 extent said Paragraphs apply to Del Webb, Del Webb denies each and every allegation  
13 contained therein. With respect to the remainder of the allegations contained therein and their  
14 application to other parties, Del Webb is without sufficient information to form a belief as to  
15 the truth or falsity of said allegations, and therefore denies the same.

16                               **FOURTH CAUSE OF ACTION**

17                               **(Breach of Implied Warranty of Habitability**

18                               **as to All Defendants and Does 1 through 400)**

19           32.     Answering Paragraph 32 of Plaintiffs' Complaint, Del Webb repeats and  
20 realleges its answers to Paragraphs 1 through 31, inclusive, and incorporates the same by  
21 reference as though fully set forth herein.

22           33.     Answering Paragraph 33 of Plaintiffs' Complaint, Del Webb is without  
23 sufficient information to form a belief as to the truth or falsity of the allegations contained  
24 therein, and therefore denies same.

25           34.     Answering Paragraph 34 of Plaintiffs' Complaint, Del Webb is without  
26 sufficient information to form a belief as to the truth or falsity of the allegations contained  
27 therein, and therefore denies same.

1           35.     Answering Paragraph 35 of Plaintiffs' Complaint, Del Webb is without  
2 sufficient information to form a belief as to the truth or falsity of the allegations contained  
3 therein, and therefore denies same.

4           36.     Answering Paragraph 36 of Plaintiffs' Complaint, Del Webb is without  
5 sufficient information to form a belief as to the truth or falsity of the allegations contained  
6 therein, and therefore denies same.

7                               **AFFIRMATIVE DEFENSES**

8                               **FIRST AFFIRMATIVE DEFENSE**

9           As a first, separate and distinct affirmative defense, Del Webb alleges that Plaintiffs'  
10 Complaint, and each and every purported cause of action contained therein, fails to state facts  
11 sufficient to constitute a cause of action against Del Webb.

12                              **SECOND AFFIRMATIVE DEFENSE**

13           As a second, separate and distinct affirmative defense, Del Webb alleges that the  
14 damages suffered by Plaintiffs, if any, were the direct and proximate result of the negligence of  
15 parties, persons, corporations and/or entities other than Del Webb, and that the liability of Del  
16 Webb, if any, is limited in direct proportion to the percentage of fault actually attributable to  
17 Del Webb.

18                              **THIRD AFFIRMATIVE DEFENSE**

19           As a third, separate and distinct affirmative defense, Del Webb is informed and  
20 believes and thereon alleges that the injuries and damages of which Plaintiffs complain were  
21 proximately caused or contributed to by the acts of other persons and/or entities and that said  
22 acts were an intervening and/or superseding cause of the injuries and damages, if any, of which  
23 Plaintiffs complain, thus barring any recovery against Del Webb.

24                              **FOURTH AFFIRMATIVE DEFENSE**

25           As a fourth, separate and distinct affirmative defense, Del Webb is informed and  
26 believes and thereon alleges that at all times mentioned herein, Plaintiffs were negligent,  
27 careless and reckless and unlawfully conducted themselves so as to directly and proximately  
28

1 contribute to the happening of the incident(s) and the occurrence(s) of the claimed damages, all  
2 of which said negligence bars either completely or partially the damages sought herein.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 As a fifth, separate and distinct affirmative defense, Del Webb is informed and believes  
5 and thereon alleges that the Plaintiffs expressly, voluntarily and knowingly assumed all risks  
6 alleged in Plaintiffs' Complaint and therefore Plaintiffs are barred either totally or to the extent  
7 of said assumption from any damages by the doctrines of consent and assumptions of the risks.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 As a sixth, separate and distinct affirmative defense, Del Webb is informed and believes  
10 and thereon alleges that the Plaintiffs failed to exercise reasonable care and diligence to avoid  
11 loss and to minimize damages and, therefore, Plaintiffs may not recover for losses which could  
12 have been prevented by reasonable efforts or by expenditures which might reasonably have  
13 been made and, therefore, Plaintiffs' recovery, if any, should be reduced by the failure to  
14 mitigate damages, if any.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 As a seventh, separate and distinct affirmative defense, Del Webb is informed and  
17 believes and thereon alleges that each and every cause of action is barred by the doctrine of  
18 unclean hands.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 As an eighth, separate and distinct affirmative defense, Del Webb is informed and  
21 believes and thereon alleges that any and all events, happenings, injuries and damages, if any,  
22 as alleged in Plaintiffs' Complaint, were a direct result of an Act of God.

23 **NINTH AFFIRMATIVE DEFENSE**

24 As a ninth, separate and distinct affirmative defense, Del Webb is informed and  
25 believes and thereon alleges that the Plaintiffs have engaged in conduct and activities sufficient  
26 to constitute a waiver of any alleged breach of conduct, negligence, or any other conduct, if  
27 any, as set forth in Plaintiffs' Complaint.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 As a fifteenth, separate and distinct affirmative defense, Del Webb is informed and  
3 believes and thereon alleges that at all times and places alleged in Plaintiffs' Complaint,  
4 Plaintiffs failed to perform all duties and obligations on their part of any agreement, oral or  
5 written, with Del Webb, and such acts or omissions bar Plaintiffs' recovery herein.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 As a sixteenth, separate and distinct affirmative defense, Del Webb is informed and  
8 believes and thereon alleges that prior to the commencement of this action, Del Webb duly  
9 paid, satisfied and discharged all duties and obligations it owed to Plaintiffs arising out of any  
10 and all agreements, representations or contracts made by or on behalf of Del Webb .

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

12 As a seventeenth, separate and distinct affirmative defense, Del Webb is informed and  
13 believes and thereon alleges that Plaintiffs and others modified, altered or changed the property  
14 so that such changes in said product proximately caused the injuries, losses and damages  
15 alleged within Plaintiffs' Complaint.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 As an eighteenth, separate and distinct affirmative defense, Del Webb is informed and  
18 believes and thereon alleges that Plaintiffs have failed to name indispensable parties in  
19 Plaintiffs' Complaint, and by reason of which Plaintiffs are barred from recovery herein.

20 **NINETEENTH AFFIRMATIVE DEFENSE**

21 As a nineteenth, separate and distinct affirmative defense, Del Webb is informed and  
22 believes and thereon alleges that the object(s) that is (are) alleged to have caused injury to the  
23 Plaintiffs was (were) altered by some person or persons not under the supervision or control of  
24 Del Webb.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 As a twentieth, separate and distinct affirmative defense, Del Webb is informed and  
27 believes and thereon alleges that Plaintiffs are barred from recovery from Del Webb under a  
28

1 theory of comparative fault in that Plaintiffs' negligence, if any, was active and primary while  
2 the negligence, if any, of Del Webb was passive and secondary.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 As a twenty-first, separate and distinct affirmative defense, Del Webb alleges that at  
5 the time Del Webb's product left the hands of its manufacturer, if in fact Del Webb's product  
6 was involved within this litigation as alleged in Plaintiffs' Complaint; said product was fit and  
7 proper for the use for which it was designed and intended.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 As a twenty-second, separate and distinct affirmative defense, Del Webb is informed  
10 and believes and thereon alleges that Plaintiffs failed to give adequate notice of the alleged  
11 breach of warranty, or that there was a delay in giving notice of a breach within a reasonable  
12 time of discovery the breach.

13 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

14 As a twenty-third, separate and distinct affirmative defense, Del Webb is informed and  
15 believes and thereon alleges that if there are any defects or inadequacies in the work performed  
16 by Del Webb, which Del Webb denies, Plaintiffs have failed to timely notify Del Webb of  
17 such conditions, and have failed to give Del Webb timely opportunity to cure such conditions  
18 or to mitigate any damage, if any, resulting from such conditions. This conduct by Plaintiffs  
19 bars them from recovery of any relief from Del Webb .

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 As a twenty-fourth, separate and distinct affirmative defense, Del Webb is informed and  
22 believes and thereon alleges that Plaintiffs failed to take all proper measures and remedies to  
23 protect their property from damage and injury and said actions or inactions working as a  
24 complete bar to any recovery herein.

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 As a twenty-fifth, separate and distinct affirmative defense, Del Webb is informed and  
27 believes and thereon alleges that, at all times mentioned herein, the transaction between the  
28 individual Plaintiffs and Del Webb is one that would be governed by the Statute of Frauds.

1                                   **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2           As a twenty-sixth, separate and distinct affirmative defense, Del Webb is informed and  
3 believes and thereon alleges that Plaintiffs are not, nor have they ever been a third-party  
4 beneficiary of the subcontracts between Del Webb, and those entities who performed the work  
5 to design, engineer and/or construct Plaintiffs' homes.

6                                   **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

7           As a twenty-seventh, separate and distinct affirmative defense, Del Webb is informed  
8 and believes and thereon alleges that at all times mentioned in Plaintiffs' Complaint herein, no  
9 fiduciary duty existed on the part of Del Webb toward Plaintiffs.

10                                  **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

11           As a twenty-eighth, separate and distinct affirmative defense, Del Webb is informed and  
12 believes and thereon alleges that Plaintiffs have failed to satisfy one or more express or implied  
13 conditions precedent to any obligation(s) allegedly owed to Plaintiffs.

14                                  **TWENTY-NINTH AFFIRMATIVE DEFENSE**

15           As a twenty-ninth, separate and distinct affirmative defense, Del Webb is informed and  
16 believes and thereon alleges that at all times mentioned, there was, has been and continues to be  
17 a material failure of consideration on the part of the Plaintiffs herein, as a consequence of  
18 which Del Webb's duty of performance has been discharged.

19                                  **THIRTIETH AFFIRMATIVE DEFENSE**

20           As a thirtieth, separate and distinct affirmative defense, Del Webb is informed and  
21 believes and thereon alleges that Plaintiffs lack standing necessary to bring and maintain the  
22 claims as alleged by way of Plaintiffs' Complaint.

23                                  **THIRTIETH AFFIRMATIVE DEFENSE**

24           As a thirty-first, separate and distinct affirmative defense, Del Webb is informed and  
25 believes and thereon alleges that Plaintiffs are not, nor have they ever been, within the class of  
26 persons that the applicable Uniform and/or International Building Codes are/were intended to  
27 protect to support a claim for negligence per se.  
28

1                                   **THIRTY-SECOND AFFIRMATIVE DEFENSE**

2           As a thirty-second, separate and distinct affirmative defense, Del Webb is informed and  
3 believes and thereon alleges that Plaintiffs' Complaint fails to set forth any specific code  
4 violation to support a claim for negligence per se.

5                                   **THIRTY-THIRD AFFIRMATIVE DEFENSE**

6           As a thirty-third, separate and distinct affirmative defense, Del Webb is informed and  
7 believes and thereon alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiffs and  
8 Del Webb were not in privity of contract.

9                                   **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

10          As a thirty-fourth, separate and distinct affirmative defense, Del Webb is informed and  
11 believes and thereon alleges that Plaintiffs' claims are barred by the applicable statutes of  
12 repose and statutes of limitation.

13                                  **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

14          As a thirty-fifth, separate and distinct affirmative defense, Del Webb is informed and  
15 believes and thereon alleges that Plaintiffs' Complaint utilizes undefined terms that are  
16 misleading, confusing and inappropriate, and as such Del Webb cannot defend the claims  
17 alleged against it. Del Webb is entitled to a more specific statement(s)/allegation(s) from  
18 Plaintiffs.

19                                  **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

20          As a thirty-sixth, separate and distinct affirmative defense, Del Webb is informed and  
21 believes and thereon alleges that Plaintiffs do not offer information or allegations in support of  
22 their claim that Del Webb made any repairs at their respective residences, or that any alleged  
23 repairs were insufficient. Accordingly, Plaintiffs' allegations in this regard have no basis, and  
24 Del Webb is entitled to a more specific statement(s)/allegation(s) from Plaintiffs.

25                                  **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

26          As a thirty-seventh, separate and distinct affirmative defense, Del Webb is informed and  
27 believes and thereon alleges that Plaintiffs purchased the subject properties with notice of  
28 alleged defects such that Plaintiffs' are stopped from bringing the current claims.

1                                   **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

2           As a thirty-eighth, separate and distinct affirmative defense, Del Webb is informed and  
3 believes and thereon alleges that Plaintiffs' Complaint fails to provide specific allegations. Del  
4 Webb is entitled to a more specific statement(s)/allegation(s) from Plaintiffs.

5                                   **THIRTY-NINTH AFFIRMATIVE DEFENSE**

6           As a thirty-ninth, separate and distinct affirmative defense, Del Webb is informed and  
7 believes and thereon alleges that Plaintiffs claim under NRS 116.4114 fails to state a claim  
8 upon which relief can be granted; and Plaintiffs also lack the necessary standing to pursue such  
9 a claim under NRS 116.4114.

10                                  **FORTIETH AFFIRMATIVE DEFENSE**

11           As a fortieth, separate and distinct affirmative defense, Del Webb is informed and  
12 believes and thereon alleges that Plaintiffs' claims are precluded due to lack of maintenance  
13 and other necessary work in light of the foreclosure upon their properties and non-occupancy  
14 related to same.

15                                  **FORTY-FIRST AFFIRMATIVE DEFENSE**

16           As a forty-first, separate and distinct affirmative defense, Del Webb is informed and  
17 believes and thereon alleges that Plaintiffs' claims are barred by the doctrine of Res Judicata.

18                                  **FORTY-SECOND AFFIRMATIVE DEFENSE**

19           As a forty-second, separate and distinct affirmative defense, Del Webb is informed and  
20 believes and thereon alleges that Plaintiffs' claims are barred by the doctrine of collateral  
21 estoppel.

22                                  **FORTY-THIRD AFFIRMATIVE DEFENSE**

23           As a forty-third, separate and distinct affirmative defense, Del Webb is informed and  
24 believes and thereon alleges that Plaintiffs' claims are barred by NRS 46.640(1), which  
25 provides that a contractor is not liable for alleged construction defects based upon the acts or  
26 omissions of another.

27 \\\

28 \\\

1 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

2 As a forty-fourth, separate and distinct affirmative defense, Del Webb is informed and  
3 believes and thereon alleges that Plaintiffs' claims are barred by NRS 46.640(2), which  
4 provides that a contractor is not liable for alleged construction defects due to a failure to  
5 maintain the property.

6 **FORTY-FIFTH AFFIRMATIVE DEFENSE**

7 As a forty-fifth, separate and distinct affirmative defense, Del Webb is informed and  
8 believes and thereon alleges that Plaintiffs' claims are barred by NRS 46.640(3), which  
9 provides that a contractor is not liable for alleged construction defects due to normal wear, tear  
10 or deterioration.

11 **FORTY-SIXTH AFFIRMATIVE DEFENSE**

12 As a forty-sixth, separate and distinct affirmative defense, Del Webb is informed and  
13 believes and thereon alleges that Plaintiffs' claims are barred by NRS 46.640(4).

14 **FORTY-SEVENTH AFFIRMATIVE DEFENSE**

15 As a forty-seventh, separate and distinct affirmative defense, Del Webb is informed and  
16 believes and thereon alleges that Del Webb presently has insufficient knowledge or information  
17 upon which to form a belief as to whether it may have additional, yet unasserted affirmative  
18 defenses. Del Webb therefore reserves the right to assert additional affirmative defenses in the  
19 event discovery indicates it would be appropriate.

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1 WHEREFORE, Del Webb prays for judgment against Plaintiffs, and each of them, as  
2 follows:

- 3 1. That Plaintiffs take nothing by way of Plaintiffs' Complaint;
- 4 2. That Plaintiffs' Complaint be dismissed with prejudice in its entirety;
- 5 3. For attorney's fees and costs; and
- 6 4. For such other and further relief as the Court may deem just, equitable, and proper.

7 DATED this 11<sup>th</sup> day of December, 2015.

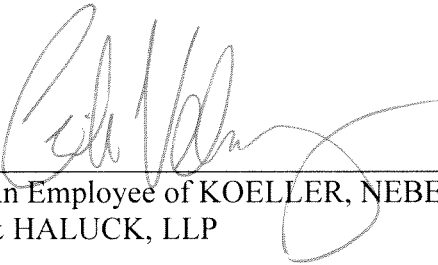
8  
9 KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP

10  
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 Attorneys for Defendant Del Webb  
19 Communities, Inc.  
20  
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**CERTIFICATE OF SERVICE**

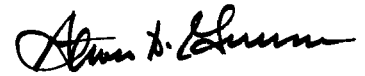
I HEREBY CERTIFY that on the 11<sup>th</sup> day of December, 2015, I served a true and correct copy of the foregoing **DEFENDANT DEL WEBB COMMUNITIES, INC.'S ANSWER TO PLAINTIFFS' COMPLAINT** by electronically serving all parties via the Court's Electronic Filing System.



---

An Employee of KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP





CLERK OF THE COURT

**JUDG**

Duane E. Shinnick, Esq.

Bar No. 7176

Courtney K. Lee, Esq.

Bar No. 8154

SHINNICK, RYAN &amp; RANSAVAGE P.C.

4001 Meadows Lane

Las Vegas, NV 89107

Tel. (702) 631-8014

Fax (702) 631-8024

clee@srfirms.com

Attorneys for PLAINTIFFS

## DISTRICT COURT

## CLARK COUNTY, NEVADA

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

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

BROWER FAMILY TRUST, individually;

CHARLES COLUCCI, individually; HARRY E. )

CROSBY REVOCABLE TRUST; DR. KAREN ) **FINAL JUDGMENT RE: PLAINTIFFS**  
FELDMAN, individually; COLLEEN T. SAN ) **RONALD TURNER AND ROBERT**  
FILIPPO, individually; THE GILLES FAMILY ) **DYKEMA**

LIVING TRUST, DATED JANUARY 14, 2010; )

DAVID M. GORDON, individually; CHARLES )

and MARIA HEARN, individually; THOMAS )

C. and KATHLEEN A. JOHNSON, individually; )

AARON KNUDSON, individually; LORRAINE )

JOHNSON, individually; JOLEAN JONES, )

individually; YOUNG KYOON KIM and INOK )

KIM, individually; MIKE and TALIA )

LAQUITARA, individually; JAMES and )

ANDRONICKIE LAUTH, individually; )

LEPORE FAMILY TRUST DATED OCTOBER )

30, 2008; JOHN LEVERITT, individually; )

ROGER A. MARTIN AND VIRGINIA C. )

MARTIN JOINT LIVING TRUST; MASLIN )

FAMILY LIVING TRUST DATED JANUARY )

24, 2011; THOMAS MEYERS and MARY C. )

MONICA-MEYERS, individually; MARK )

MONACO, individually; SAMIR FARID )

MOUJAES AND SYLVA PUZANTIAN )

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

2013; BUD O'BRIEN and ROSALIE )

O'BRIEN, individually; DAVID L. POWELL )

and JUNE D. COOPER, individually; )

RANDALL and NICOLE ROEDECKER, )

individually; EUGENIUSZ and ZOFIA )

{00263896.DOC}

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

Plaintiffs,

v.

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

Defendants.

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**FINAL JUDGMENT**

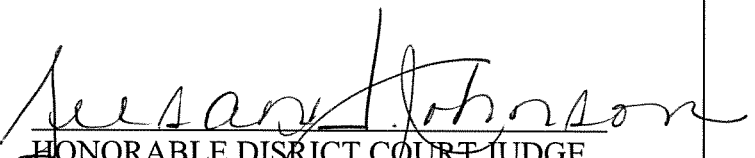
On June 23, 2015, before the Honorable Susan H. Johnson in Department XXII of the above-referenced Court, Defendant brought on for hearing their Motion to Dismiss ("Motion") filed on May 19, 2015.

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


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

**IT IS SO ORDERED.**

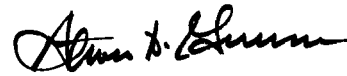
DATED this 22<sup>nd</sup> day of Dec., 2015.

  
HONORABLE DISTRICT COURT JUDGE  
A714632 15

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

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

{00263896.DOC}



CLERK OF THE COURT

**NOTC**

Duane E. Shinnick, Esq.

Bar No. 7176

Courtney K. Lee, Esq.

Bar No. 8154

SHINNICK, RYAN & RANSAVAGE P.C.

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Fax (702) 631-8024

[dshinnick@srfirms.com](mailto:dshinnick@srfirms.com)

[clees@srfirms.com](mailto:clees@srfirms.com)

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

individually; CHARLES COLUCCI, )

individually; HARRY E. CROSBY )

REVOCABLE TRUST; DR. KAREN )

FELDMAN, individually; COLLEEN T. SAN )

FILIPPO, individually; THE GILLES FAMILY ) **AMENDED NOTICE OF APPEAL**

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, )

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 Amended Notice is hereby given that Plaintiffs Ronald Turner ("Turner") and Robert M. Dykema  
2 ("Dykema") appeal to the Supreme Court of Nevada from the District Court Final Judgment entered on  
3 December 24, 2015 and the District Court Order entered on November 25, 2015, which granted  
4 Defendant Del Webb Communities, Inc.'s ("Del Webb") Motion to Dismiss Plaintiffs Turner and  
5 Dykema. The entry of dismissal for Plaintiffs Turner and Dykema operated as a summary adjudication  
6 on the merits as matters outside of the pleadings were presented and considered by the District Judge in  
7 granting the dismissals or deciding that Turner's and Dykema's claims were barred by the statute(s) of  
8 repose and/or limitations.  
9  
10

11 DATED this 26<sup>th</sup> day of December, 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 **CERTIFICATE OF SERVICE**

2 I, JESSICA WHITE, declare:

3 I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years  
4 and not a party to the within action. My business address is 4001 Meadows Lane, Las Vegas, NV  
5 89107.

6 On December ~~28<sup>th</sup>~~<sup>4</sup>, 2015, I served the documents described as **AMENDED NOTICE OF  
APPEAL** in Case No. A-15-714632-D on the following parties:

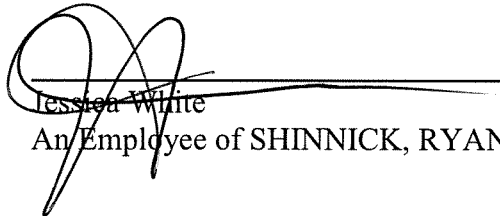
7 Jason W. Williams, Esq.  
8 Richard D. Young, Esq.  
9 KOELLER NEBEKER CARLSON &  
10 HALUCK, LLP  
300 S. Fourth Street, Suite 500  
Las Vegas, NV 89101

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

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

16 I declare that the foregoing is true and correct.

17 Executed at Las Vegas, Nevada, on December ~~28<sup>th</sup>~~<sup>4</sup>, 2015.

18   
19 Jessica White  
20 An Employee of SHINNICK, RYAN & RANSAVAGE P.C.  
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