

**In the
Supreme Court of the State of Nevada**

SOMERSETT OWNERS
ASSOCIATION, a Domestic Non-
Profit Corporation,

Plaintiff,

vs.

SOMERSETT DEVELOPMENT
COMPANY, LTD, a Nevada
Limited Liability Company;
SOMERSETT, LLC a dissolved
Nevada Limited Liability Company;
SOMERSETT DEVELOPMENT
CORPORATION, a dissolved
Nevada Corporation; PARSONS
BROS ROCKERIES, INC. a
Washington Corporation; Q & D
Construction, Inc., a Nevada
Corporation, and DOES 1 through
50, inclusive,

Defendants.

AND RELATED CROSS-
ACTIONS.

Electronically Filed
Jan 06 2020 10:48 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 79920

District Court Case No.:
CV17-02427

Judge: Hon. Elliott A. Sattler

AMENDED DOCKETING STATEMENT CIVIL APPEALS

1. Judicial District: Second Judicial District Department: X
Court
County: Washoe County Judge: Elliott A. Sattler
District Ct. Case No.: CV17-02427

2. Attorney filing this docketing statement:

Attorney: Don Springmeyer, Esq. (# 1021)
Bradley Schrager, Esq. (# 10217)
John Samberg, Esq. (#10828)
Roi Moas, Esq. (# 10686)

Address:

Wolf, Rifkin, Shapiro,
Schulman & Rabkin, LLP
5594-B Longley Lane
Reno, Nevada 89511
Telephone: (775) 853-6787

Client: Appellants, Somerset Owners Association

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

Attorneys: Charles Burcham, Esq.
Wade Carner, Esq.

Address:

Thorndal, Armstrong, Delk, Balkenbush &
Eisinger
6590 S. McCarran, Suite B
Reno, Nevada 89509

Client: Respondent, Somerset Development Company Ltd., Somerset, LLC, and
Somerset Development Corporation

Attorneys: Steve Castronova, Esq.

Address:

Castronova Law Offices, P.C.
605 Forest Street
Reno, Nevada 89509

Client: Respondent, Parsons Bros Rockeries, Inc.

Attorneys: Natasha Landrum, Esq.
Dirk W. Gaspar, Esq.
David Lee, Esq.

Address:

Lee, Hernandez, Landrum & Carlson, APC
7575 Vegas Drive, Suite 150
Las Vegas, Nevada 89128

Client: Respondent, Q & D Construction, Inc.

Attorneys: Theodore E. Chrissinger, Esq.
Michael S. Kimmel, Esq.

Address:

Hoy, Chrissinger, Kimmel, Vallas P.C.
50 W. Liberty St., Suite 840
Reno, Nevada 89501

Client: Respondent, Stantec Consulting Services, Inc.

4. Nature of Disposition Below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify)
Denial of MSJ as moot after grant
of Defense MSJ__ |
| <hr/> | |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify) |

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

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

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

Somerset Owners Association v. Somerset Development Company, Ltd.;

79921

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

N/A

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

This is an appeal of an order denying as moot Plaintiff's summary judgment motion, a day after the granting of a defense motion for summary judgment. It is taken in order to preserve that motion and its arguments in the event Plaintiff prevails in Case No. 79921—which the parties will move to consolidate with this appeal.

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

1. Did the district court err in denying Plaintiff's motion for summary judgment because it incorrectly decided, the day before, Defendants' motion for summary judgment?

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

N/A

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where *en banc* consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court.

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

On its own, this appeal may be appropriate for the Court of Appeals as error reversal, but because of the overwhelming likelihood that this case will be consolidated with Case No. 79921, which Appellant has urged the full Supreme Court to retain, it is unnecessary to transfer this matter to the Court of Appeals at this time.

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

Order Denying Plaintiff's Motion to Strike Certain Affirmative Defenses
Relating to Statutes of Limitations and Repose

October 3, 2019

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

17. Date written notice of entry of judgment or order was served:

November 13, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed: October 29, 2019

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment order:

The district court issued a subsequent order to its resolution of a defense motion for summary judgment, mooted Plaintiff's motion but forming, essentially, a final judgment on claims by Plaintiff, and Plaintiff filed its notice of appeal as precaution in preserving its rights of appeal.

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

(a) Parties:

Somerset Owners Association;
Somerset Development Company, Ltd;
Somerset, LLC ;
Somerset Development Corporation;
Parsons Bros Rockeries, Inc. ; and
Q & D Construction, Inc.
Stantec Consulting Inc.

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

N/A

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

Plaintiff: 1. Negligence and Negligence Per Se
 2. Breach of Express and Implied Warranties per NRS 116.4113
 & 116.4114
 3. Negligent Misrepresentation and/or Failure to Disclose
 4. Declaratory Relief
 5. Breach of NRS 116.4113

Defendants Somerset Development Company Ltd; Somerset LLC; and Somerset Development Corp., Cross-Claims:

1. Implied Indemnity
2. Contribution
3. Equitable Indemnity
4. Apportionment

5. Express Indemnity

Defendants Somerset Development Company Ltd., Third-Party Claims:

1. Implied Indemnity
2. Contribution
3. Equitable Indemnity
4. Apportionment
5. Express Indemnity

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:

Remaining are the cross- and third-party claims noted above between and among Defendants and Third-Party Defendant, but which are technically mooted by the result of Plaintiff’s motion for summary judgment, the orders regarding which the district court certified as final for purposes of appeal on December 19, 2019.

(b) Specify the parties remaining below:

Cross-Claim Defendants Q & D Construction, Inc.; Parsons Bros
Rockerries, Inc.

Third-Party Defendant Stantec Consulting Services, Inc

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

☒ Yes

☐ No, but unopposed motion is pending

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

☒ Yes

☐ No, but expected presently

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

The primary—if not now, only—issues on appeal are Plaintiff’s contention that the district court erred when it ruled that the pertinent statute of repose could not be tolled during pendency of developer control, and in the particular standard for determining the date of “substantial completion” of a project for purposes of the statute of repose under pertinent statutory and common law. The remaining claims, essentially from the primary Defendant for indemnity and contribution in the event of an adverse ruling, have not been dismissed or resolved formally below, but have been logically mooted by the result below. The district court granted Rule 54(b) certification of its orders on December 19, 2019, and the order granting such was entered that same day. The parties have entered the mediation/settlement program and have set a March 2020 date for the mediation session.

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

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

VERIFICATION

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

Somerset Owners Association
Name of appellants

Bradley Schrager, Esq.
Name of counsel of record

January 6, 2020
Date

/s/ Bradley Schrager
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2020, a true and correct copy of the foregoing **AMENDED DOCKETING STATEMENT CIVIL APPEALS** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system and by depositing a true copy of the same for mailing, postage pre-paid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Paul F. Hamilton
577 California Ave
Reno. NV 89509

By: /s/ Danielle Fresquez

Danielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN, LLP

INDEX OF EXHIBITS

Exhibit 1	First Amended Complaint
Exhibit 2	Third Party Complaint
Exhibit 3	Answer to First Amended Complaint and Cross-Claim
Exhibit 4	Defendants' Motion for Summary Judgment
Exhibit 5	Order Granting Defendants' Motion for Summary Judgment
Exhibit 6	Notice of Entry of Order Granting Defendants' Motion for Summary Judgment
Exhibit 7	Order for Partial Dismissal of Certain Claims
Exhibit 8	Notice of Entry of Order for Partial Dismissal of Certain Claims
Exhibit 9	Order Denying Motion to Strike as Moot
Exhibit 10	Notice of Entry of Order Denying Motion to Strike as Moot
Exhibit 11	Notice of Entry of Order Granting Plaintiff's NRCP 54(B) Motion for Certification of Final Judgment for Purposes of Appeal

EXHIBIT 1

EXHIBIT 1

1090
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**IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

SOMERSETT OWNERS ASSOCIATION,
a Domestic Non-Profit Corporation,

Plaintiff,

vs.

SOMERSETT DEVELOPMENT COMPANY,
LTD, a Nevada Limited Liability Company;
SOMERSETT, LLC a dissolved Nevada
Limited Liability Company; SOMERSETT
DEVELOPMENT CORPORATION, a
dissolved Nevada Corporation; Q & D
Construction, Inc., a Nevada Corporation;
PARSONS BROS ROCKERIES, INC., a
Washington Corporation; PARSONS ROCKS!,
LLC., a Nevada Limited Liability Company,
and DOES 5 through 50, inclusive,

Defendants.

Case No. CV-1702427

Dept. No. 15

**FIRST AMENDED COMPLAINT FOR
DAMAGES (CORRECTED)**

Exempt from Arbitration:

- 1) Complex Construction Defect
Litigation pursuant to NRS 40.600
et seq. and NRS Chapter 116 (NRS §§
116.4113, 116.4114)
- 2) Damages in excess of \$50,000
- 3) Declaratory Relief Requested

Demand for Jury Trial

PLAINTIFF, by and through its attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN, &
RABKIN, LLP, hereby files this Complaint for Claims for Relief against Defendants, and each of
them, and hereby complains, alleges and states as follows:

I. PARTIES

A. Plaintiff

1. Plaintiff, Somersett Owners Association, (hereinafter referred to as the

1 “Association”), at all times herein mentioned is and was incorporated as a domestic non-profit
2 Nevada corporation with its principal place of business in Washoe County, Nevada as a common-
3 interestcommunity governed by NRS Chapter 116.

4 2. The Association is comprised of owners of single family residential units and
5 common areas, including but not limited to improvements, appurtenances, common areas, and
6 structures built and existing upon certain parcels of real property (hereinafter referred to as the
7 “Association Development,” and/or the “Community”), all as more specifically described in the
8 Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens,
9 Reservations, and Easements recorded in the Official Records of Washoe County, Nevada, and
10 any amendments thereto (hereinafter referred to as the “CC&Rs”).

11 3. The Association is informed and believes, and based thereon alleges, that the
12 CC&Rs were recorded before title to any common area within the Association Development was
13 conveyed by deed, and are referenced in the deeds to all common areas within the Association
14 Development.

15 4. Development and construction of the Association Development continued by the
16 declarant/developer(s) and involved contractors until the year the Association board became
17 homeowner controlled.

18 5. By the terms of the CC&Rs and pursuant to Nevada Revised Statute, Chapter 116
19 of the Common Interest Ownership Act, and specifically including NRS 116.3102, the Association
20 is granted the general authority and responsibility to bring the herein stated action in its own name,
21 on behalf of units’ owners within the Association , and hereby asserts and exercises such authority
22 and responsibility as to the claims related to the common areas identified herein..

23 6. In accordance with the CC&Rs, the Association has the right and duty to manage,
24 operate, control, repair, replace and restore the Association, including the right to enter into
25 contracts to accomplish its duties and obligations, and has all of the powers necessary to carry out
26 its rights and obligations, including the right, duty, and power to contract for legal services to
27 prosecute any action affecting the Association and or its homeowners when such action is deemed
28 by it necessary to enforce its powers, rights, and obligations, including the bringing of this action.

1 **B. Defendants**

2 7. Plaintiff is informed and believes, and thereon alleges, that Defendant
3 SOMERSETT DEVELOPMENT COMPANY, LTD, (herein referred to as “Somerset
4 Development”) whose registered agent is Sierra Corporate Services, Registered Agent, located at
5 100 West Liberty St., 10th Floor, Reno, Nevada 89501 is, and at all times herein mentioned was,
6 and continues to be a Nevada Limited Liability Company engaged in business in Washoe County,
7 Nevada, as a real estate developer and or builder.

8 8. Plaintiff is informed and believes, and thereon alleges, that Defendant
9 SOMERSETT, LLC (herein referred to as “Somerset”) whose registered agent was Sierra
10 Corporate Services, located at 100 West Liberty St., 10th Floor, Reno, Nevada 89501 is a
11 dissolved company and at all times herein mentioned was a Nevada Limited Liability Company
12 engaged in business in Washoe County, Nevada, as a real estate developer and or builder.

13 9. Plaintiff is informed and believes, and thereon alleges, that Defendant
14 SOMERSETT DEVELOPMENT CORPORATION (herein referred to as “Somerset Corp.”)
15 whose registered agent was Sierra Corporate Services, located at 100 West Liberty St., 10th Floor,
16 Reno, Nevada 89501, is a dissolved corporation and at all times herein mentioned was a Nevada
17 Corporation engaged in business in Washoe County, Nevada.

18 10. Plaintiff is informed and believes, and thereon alleges, that Defendant Somerset
19 Development, Somerset, LLC, and Somerset Corp. are interrelated and/or successor entities each
20 as to the other in form or forms presently unknown. Plaintiff reserves the right to amend this
21 Complaint at such time as the inter-relationships become known.

22 11. Plaintiff is informed and believes, and thereon alleges, that at all times pertinent
23 hereto, Somerset Development, Somerset, LLC and Somerset Corp., and those acting in concert
24 with them (co-defendants herein) were developers, contractors, materialmen, suppliers, and
25 builders of the “Common Elements” as defined in NRS, Chapter 116, which are the subject matter
26 of this action.

27 12. Plaintiff is informed and believes, and thereon alleges, that, at all times pertinent
28 hereto, Somerset Development, Somerset LLC, and Somerset Corp. and those acting in concert

1 with them (co-defendants herein) were declarants of the CC&Rs, applicable to the “Common
2 Elements” as defined in NRS, Chapter 116, which are the subject matter of this action.

3 13. Plaintiff is informed and believes, and thereon alleges, that Defendant Q & D
4 CONSTRUCTION, INC., (“Q & D”) whose registered agent is Sierra Corporate Services, located
5 at 100 West Liberty St., 10th Floor, Reno, Nevada 89501, is and at all times herein mentioned
6 was, a Nevada Corporation engaged in business in Washoe County, Nevada.

7 14. Plaintiff is informed and believes, and thereon alleges, that Defendant PARSONS
8 BROS ROCKERIES, INC., a Washington Corporation; (“Parsons Rockeries”) whose registered
9 agent is Kevin Parsons, located at 710 W. Sunset Road, Suite 10, Henderson, NV 891015, is and
10 at all times herein mentioned was, a Washington Corporation licensed to do business in the State
11 of Nevada as a foreign entity.

12 15. Plaintiff is informed and believes, and thereon alleges, that Defendant PARSONS
13 ROCKS!, LLC., a Nevada Limited Liability Company (“Parsons Rocks”), whose registered agent
14 is Kevin Parsons, located at 710 W. Sunset Road, Suite 10, Henderson, NV 891015, is and at all
15 times herein mentioned was, a Nevada limited liability company licensed to do business in the
16 State of Nevada.

17 16. The true names and capacities of Defendants sued herein as DOES 5 -50 (together
18 with Somersett Development, Somersett, LLC., Somersett Corp., Parsons Rockeries, Parsons
19 Rocks and Q & D, as “Defendants”) inclusive, and each of them, are presently unknown to
20 Plaintiff and therefore, they are sued herein under fictitious names. Prior to the filing of this
21 Complaint, Plaintiff made a good-faith effort to identify all parties who or which should be
22 properly named as first-party Defendants herein, including inquiry of the named defendant herein,
23 but were unable to identify such person(s) or entity(ies) with sufficient probability to warrant their
24 inclusion herein at this time. Plaintiff will identify and name DOE Defendants when the true
25 names and capacities of such Defendants are ascertained.

26 17. Plaintiffs are informed and believe that DOES 5 – 50 are in some way negligently
27 or otherwise proximately responsible for the injuries and damage suffered by Plaintiff as herein
28 alleged. All such Defendants named above, including DOES 5- 50, inclusive, shall hereinafter be

1 referred to as “Defendants.”

2 18. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
3 herein, each of the Defendants were and remain the agents, servants, general contractors,
4 subcontractors, materialmen, suppliers, designers, representatives, independent contractors,
5 partners, joint venturers, predecessors, successors, alter egos, and/or employees of each and/or
6 some of the other Defendants, and in doing those acts referred to herein, were acting within the
7 course and scope of their authority as such agents, servants, subcontractors, representatives,
8 independent contractors, partners, joint venturers, alter egos, and/or employees, and with the
9 express and/or implied approval, permission, knowledge, consent, and ratification of all co-
10 defendants, and in consent of action relating thereto.

11 19. Defendants sued herein as alter egos are responsible for corporate obligations in
12 that the unity of interest, including the existence of common employees and management, the
13 commingling of funds, the diversion or appropriation of corporate assets, the disregard of
14 corporate formalities, the sole or majority ownership of stock, the exertion of control, the
15 inadequate capitalization, and the wrongful use of the corporation to avoid legal obligations,
16 between the individual and the corporation, are so aligned that the separate personalities of the
17 individual and the corporation no longer exist, and if the acts were treated as those of the
18 corporation alone, an inequitable result or sanctioning of a fraud would follow.

19 20. Plaintiff is informed and believes, and based thereon alleges, that at all times
20 relevant hereto Defendants, and each of them, acted as planners, developers, general contractors,
21 subcontractors, designers, installers, testers, inspectors, suppliers, manufacturers, and distributors
22 of any and all labor, parts and/or materials installed and/or constructed at the Subject Property, and
23 are responsible for the defects and deficiencies in the design, provision of materials and/or labor,
24 construction, selection of subcontractors, coordination and supervision of the construction, and
25 inspection and/or approval of the work as alleged herein, and that Plaintiff’s damages were and are
26 directly and proximately caused by the conduct, acts and omissions of these Defendants, and each
27 of them.

28 21. Prior to the filing of this Complaint, and on or about December 29, 2017, Plaintiff,

1 in accordance with provisions of NRS 40.645 and each subsection thereof, provided written notice
2 to the identified Defendants a written NRS Chapter 40 Notice of Claims (herein “Chapter 40
3 Notice”), including therein a statement that the notice is being given to satisfy the requirements of
4 NRS 40.645, and identifying in specific detail each defect, damage and injury to the common area
5 that is the subject of the claim, including, without limitation, the exact location by Map and
6 Picture of each such defect, damage and injury. Additionally, to the extent known, the cause of
7 the defects and the nature and extent of the damage or injury resulting from the defects is
8 identified in reasonable detail . Additionally, the Chapter 40 Notice includes a signed statement by
9 a member of the executive board and or officer of the Plaintiff, verifying that each such defect,
10 damage and or injury specified in the Chapter 40 Notice exists.

11 **II. GENERAL ALLEGATIONS**

12 22. The Association Development is located in the City of Reno, County of Washoe,
13 State of Nevada.

14 23. The Association Development contains common areas owned by the Association in
15 accordance with the Association’s governing documents and NRS Chapter 116.

16 24. The common areas include, but are not limited to areas of property that include the
17 rockery wall structures (“Subject Property”).

18 25. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
19 them, undertook certain works of improvement to develop the Subject Property, including all
20 works of development, design, construction of the Subject Property.

21 26. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
22 herein, Defendants, including DOEs, were the predecessors or successors in interest, agents,
23 employees, and representatives of each other in doing or omitting the actions alleged herein, and
24 in so doing, were acting in the scope of their respective authority and agency.

25 27. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
26 them, failed to properly and adequately plan, design, investigate, inspect, supervise, and construct
27 the Subject Property, in that said Subject Property has and continues to experience defects,
28 deficiencies, and damages resulting therefrom, as more specifically described below.

1 28. Plaintiff is informed and believe, and thereon allege, that Defendants, and each of
2 them, were merchants and sellers of the units surrounding the Subject Property which is the
3 subject of this action as described above.

4 29. Plaintiff is informed and believes, and thereon alleges, that the Subject Property, as
5 provided by Defendants, is defective and deficient as is more specifically described below.

6 30. Plaintiff is informed and believes and thereon alleges, that Defendants, and each of
7 them, failed to properly and adequately investigate, design, inspect, plan, engineer, supervise,
8 construct, produce, manufacture, develop, prepare, and/or transfer the Subject Property, in that
9 said Subject Property has experienced, and continues to experience, defects, deficiencies and
10 damages resulting therefrom as more specifically described below.

11 31. Said defects and deficiencies, in certain areas of the Subject Property include those
12 described in the Plaintiff's Chapter 40 Notice which was attached as Exhibit 1 to the original
13 complaint filed in this matter on December 29, 2017, including but not limited to, excessive or
14 inadequate voids with no or inadequate chinking rocks; failure to use filter fabric to enclose the
15 drain rock or otherwise in construction of rockery walls; drain rock and or retained soil spilling
16 through voids; inadequate, improper or otherwise bad placement of rockery wall rocks; over-
17 steepened and or non-uniform face batter of rockery walls; and inadequate stabilization of the
18 rockery walls.

19 32. Based upon investigation and testing performed by experts retained by Plaintiff,
20 Plaintiff is informed, believes, and thereon alleges that the above-referenced defects are pervasive
21 throughout the Subject Property, as reported by Plaintiff's expert in the Chapter 40 Notice, and
22 that said Defendants, and each of them, had actual knowledge of many of the said deficiencies at
23 the time of construction and have such knowledge at the present time.

24 33. All of the said defects which are the subject matter of this action were described
25 and accompanied by an expert report (defect list) as required by NRS 40.645(4), which was and is
26 a part of the Chapter 40 Notice previously provided to Defendants and which list is incorporated
27 herein by this reference as though fully set forth herein.

28 34. Plaintiff is informed and believes, and thereon alleges, that the Subject Property

1 may be defective or deficient in other ways not presently known to Plaintiff, and not specified
2 above. Plaintiff reserves its right to amend this Complaint upon discovery of any additional
3 defects or deficiencies not referenced herein, and/or to present evidence of the same at the time of
4 trial of this action.

5 35. Plaintiff is informed, believes and thereon alleges that the defects and deficiencies,
6 as described above and incorporated herein, are, among other things, violations or breaches of
7 local building and construction practices, industry standards, governmental codes and restrictions,
8 manufacturer requirements and/or product specifications at the time the Subject Property was
9 planned, designed, constructed and sold.

10 36. Plaintiff is informed and believes, and thereon alleges, that the deficiencies in the
11 construction, design, planning, and/or construction of the Subject Properties described in this
12 Complaint were known or should have been known by Defendants at all times relevant hereto.

13 37. Plaintiff alleges generally that this is a complex matter, an appointment of a special
14 master is appropriate pursuant to NRS 40.680(6). The notices required pursuant to NRS Chapter
15 40 have already been sent and such claims will be prosecuted against the Defendants.

16 38. Plaintiff alleges generally that the conduct of Defendants, as more fully described
17 herein, was and remains the actual and proximate cause of general and special damages to the
18 Plaintiff. A more particular statement of related damages is provided in the prayer for relief,
19 hereby incorporated by reference.

20 **III. FIRST CLAIM FOR RELIEF**

21 **Negligence and Negligence Per Se** 22 **(Against All Defendants)**

23 39. Plaintiff hereby incorporates and realleges Paragraphs 1 through 38 of the
24 Complaint as though fully set forth herein.

25 40. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
26 them, in their development, planning, design, construction, marketing and related functions as
27 described herein with respect to the Subject Property, owed to Plaintiff, to others similarly
28 situated, and to the public at large, a duty to exercise reasonable care in fulfilling all of these

1 functions, and in performing all actions associated therewith.

2 41. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
3 them, in breach of said duty, negligently, carelessly, wrongfully and recklessly failed to exercise
4 reasonable care in the investigation, design, inspection, planning, engineering, supervision,
5 construction, production, manufacture, development, preparation, marketing, distributing,
6 supplying and/or transfer of the Subject Property, thereby breaching the duty owed to Plaintiff.
7 Many of the said breaches of duty resulted in construction which did and does not comply, among
8 other things, with building standards and or local building codes, and, to that extent, and as
9 otherwise provided by law, constitute negligence per se.

10 42. Plaintiff is informed and believes, and thereon alleges, that under the
11 circumstances, a reasonable person in each Defendants' position and/or in the position of each of
12 the Defendants' agents, would have followed building and construction practices, industry
13 standards, governmental codes and restrictions, manufacturer requirements and product
14 specifications at the time the Subject Property was planned, designed, constructed and transferred.

15 43. As a proximate and legal result of the negligence of Defendants, and each of them,
16 and the defective conditions as more fully set forth herein affecting the Subject Property and
17 associated improvements, Plaintiff has been caused, and will continue to be caused, damages as
18 more fully described herein, including, but not limited to, the cost to repair all defects and
19 defective conditions as required, and its interests in the Subject Property has been, and continues
20 to be, rendered substantially reduced in value, and/or the Subject Property has been rendered
21 dangerous to the well-being of Plaintiff, its guests and members of the general public, all to the
22 general detriment and damage of Plaintiff in an amount to be proven at the time of trial.

23 44. As a further proximate and legal result of the negligent conduct of Defendants, and
24 each of them, and the defective conditions affecting the Subject Property, Plaintiff has incurred,
25 and will continue to incur, expenses, including, but not limited to, expert and/or subcontractors'
26 fees, and other associated costs of repair, all in an amount to be established at the time of trial.

27 45. At all times mentioned herein Defendants had a duty to exercise ordinary care in
28 the conduct of their business and affairs so as to avoid any reasonable likelihood and/or gravity of

1 potential harm to property and people who might be injured as a foreseeable result of Defendants'
2 acts, failures to act, or failures to warn.

3 46. Plaintiff is informed and believes, and thereupon alleges, that Defendants breached
4 the above standard of care when they negligently, carelessly and recklessly, designed, planned,
5 developed, constructed, marketed and or transferred the Subject Property, resulting in numerous
6 defects, some of which are particularly alleged in Plaintiff's General Allegations, specifically
7 incorporated herein.

8 47. Plaintiff is informed and believes, and thereupon alleges, that at all times relevant
9 hereto, Defendants knew or through the exercise of reasonable care and diligence should have
10 known as such defective, dangerous and hazardous conditions and that Defendants thereafter
11 failed to warn Plaintiff of such conditions.

12 48. At all times relevant hereto, there existed local, state, national and international
13 building codes and or standards, such as, but not limited to, the Nevada Standard Guidelines for
14 Rockery Wall Construction and the Federal Highway Administration Rockery Design and
15 Construction Guidelines that controlled the construction of the rockery walls at the Subject
16 Property.

17 49. At all times relevant hereto, particular provisions of these above mentioned
18 building standards were intentionally adopted to protect a class of persons to which the Plaintiff
19 belongs.

20 50. At all times relevant hereto, the injuries suffered by Plaintiff as alleged herein are
21 the type of injuries that the above mentioned provisions were intended to prevent.

22 51. As a direct and proximate result of the negligent, careless, and/or wanton conduct
23 of Defendants, Plaintiff has been damaged in the manner herein alleged.

24 52. As a further proximate and legal result of the negligent conduct of Defendants, and
25 each of them, as herein alleged, and the defective conditions as more fully set forth herein
26 affecting the Subject Property and associated improvements, Plaintiff has been compelled to resort
27 to litigation against Defendants to judicially resolve the differences between Plaintiff and
28 Defendants.

1 53. As a result of the actions or inactions of the Defendants, Plaintiff has been damaged
2 and is entitled to recovery of an amount in excess of \$15,000.00.

3 54. As a result of the actions or inactions of the Defendants, Plaintiff has been required
4 to retain the services of counsel and experts , to prosecute this matter, and is, therefore, entitled to
5 recovery of its reasonable attorney fees, construction expert costs, past repair costs, the costs of all
6 future repairs necessary to cure any defects Defendants have failed to cure, the reasonable value of
7 other property damaged by the constructional and/or material/product defects, and additional costs
8 fees and interest, all in excess of \$15,000.00.

9 55. Plaintiff incorporate by reference, as if again set forth herein, the particular
10 statement of damages described in the prayer for relief hereinafter set forth.

11 **IV. SECOND CLAIM FOR RELIEF**

12 **Breach of Express and Implied Warranties Pursuant to NRS 116.4113 and NRS 11.4114 and** 13 **Common Law(Against All Defendants)**

14 56. Plaintiff hereby incorporates and realleges Paragraphs 1 through 55 of the
15 Complaint as though fully set forth herein.

16 57. Defendants impliedly and expressly warranted pursuant to the contracts, proposals,
17 purchase orders, and or agreements between each of the Defendants, that their work would be
18 done in a good, workmanlike and substantial manner, and in full accordance with the provisions
19 and conditions of the agreements, plans and specifications.

20 58. Plaintiff is informed and believes said Defendants entered into agreements that
21 were substantially similar in form. Plaintiff is furthered informed and believes that the agreements
22 expressly or implicitly provided, in pertinent part and without limitation to other and further
23 matters, the following:

24 (a) That the work by the Defendants will be performed by qualified, careful and
25 efficient contractors and laborers in a workmanlike, prompt and diligent manner and to furnish
26 materials as specified for the purpose intended.

27 (b) That performance of any act or thing or work in connection with the
28 performance or completion of any work of the Defendant's trade or profession or is customarily

1 performed in Defendant's trade or profession, then such obligation is assumed by the Defendants
2 to be part of its work.

3 (c) That the Defendants' agreements would be binding upon and inure to the
4 benefit of the parties hereto and their respective successors, legal representative and assigns.

5 (d) That the Defendants agreed to exercise due care in the performance of their
6 duties in connection with their work in strict compliance with the contract documents.

7 (e) That the Defendants shall comply with all local building codes, all federal,
8 state and municipal codes, ordinances, regulations or any local codes having jurisdiction.

9 (f) That all work required or implied by the contract documents will be
10 performed or installed in accordance with all applicable codes and ordinances.

11 59. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
12 them, expressly and impliedly warranted that the Subject Property and associated improvements
13 were of merchantable quality, were safely and properly constructed and/or installed in accordance
14 with plans and specifications therefore which are part of the CC&Rs for the Community, and were
15 fit for the normal purpose intended.

16 60. Plaintiff is further informed and believes and thereon alleges that the express
17 warranties made and utilized by said Defendants, and each of them, have at all relevant times,
18 been provided in the form of, by example, and without limitation: advertising flyers, brochures,
19 sales literature, promotional packages, signs, magazine and newspaper articles and advertisements,
20 all designed to promote the sale of the Subject Property and to impart the belief that said Subject
21 Property had been sufficiently constructed.

22 61. Further, Plaintiff alleges that the express warranties described in the Public
23 Offering Statement for the Subject Property, within the meaning of NRS 116.4113, but were not
24 delivered and orally tendered, including, without limitation, the complimentary statements made
25 to the Plaintiff and/or members of the Plaintiff and/or Plaintiff's representatives by Defendant
26 and/or Defendants' representative(s), and/or agents of Defendants, and each of them, in marketing
27 and offering the Subject Property for sale.

28 62. Plaintiff further alleges that implied warranties arose by virtue of NRS 116.4114

1 and the offering for sale and transfer by Defendants, and each of them, of the Subject Property to
2 Plaintiff, and members of the Plaintiff, without disclosing that there were material and substantial
3 defects associated with said Subject Property, thereby leading all members of the Plaintiff to
4 believe that no such defects existed, impliedly warranting that the Subject Property was free from
5 defects, free from defective materials, and constructed in accordance with applicable law,
6 according to sound standards of engineering and construction, and in a workmanlike manner.

7 63. Plaintiff further alleges that the warranties were not limited by the Defendants, and
8 the provisions of NRS 116.4113 and NRS 116.4114 apply to their fullest extent.

9 64. Plaintiff further is informed and believes and thereon alleges that the Defendants
10 impliedly warranted that the common areas and thereby the Subject Property was suitable for the
11 ordinary use and made or contracted for by the Defendants in a manner that was free from
12 defective materials, and constructed in accordance with applicable law, according to sound
13 standards and in a workmanlike manner without disclosing that there were any defects associated
14 with the Subject Property, thereby leading the Plaintiff to believe that no such defects existed.

15 65. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
16 them, gave similar implied warranties to any and all regulatory bodies who issued permits and/or
17 provided approvals of any nature as to the Subject Property, which were at all relevant times
18 defective and were known by Defendants, and each of them, to be so defective.

19 66. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
20 them, breached their express and implied warranties in that, among other things, the Subject
21 Property was not, and is not, of marketable quality, nor fit for the purpose intended, in that the
22 Subject Property was not, and is not, properly and adequately constructed.

23 67. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
24 them, named herein have been notified and have full knowledge of the alleged breaches of
25 warranties, and that Defendants named herein, and each of them, have failed and refused to take
26 adequate steps to rectify and/or repair said breaches.

27 68. As a proximate and legal result of the breaches of said express (written and oral)
28 and implied warranties by Defendants, and each of them, and the defective conditions affecting

1 said Subject Property, Plaintiff has been, and will continue to be, damaged, as more fully
2 described herein, including but not limited to, that the interests of Plaintiff in the Subject Property
3 have been, and will be damaged as more fully alleged above and in an amount to be established at
4 the time of trial.

5 69. As a further proximate and legal result of the breaches of the express (written and
6 oral) and implied warranties by Defendants, and each of them, and the defective conditions
7 affecting the Subject Property, Plaintiff has been, and will continue to be, further damaged in that
8 the defects and deficiencies have resulted in conditions which breach the implied warranty of
9 habitability recognized under Nevada law.

10 70. As a further proximate and legal result of the negligent conduct of Defendants, and
11 each of them, as herein alleged, and the defective conditions affecting said Subject Property and
12 associated improvements, Plaintiff has compelled to resort to litigation against Defendants to
13 judicially resolve the differences between Plaintiff and Defendants.

14 71. As a result of the actions or inactions of the Defendants, Plaintiff has been damaged
15 and is entitled to recovery of an amount in excess of \$15,000.00.

16 72. As a result of the actions or inactions of the Defendants, Plaintiff has been required
17 to retain the services of counsel and expert witnesses to prosecute this matter, and is therefore,
18 entitled to recovery of its reasonable attorneys' fees, expert witness costs, past repair costs, the
19 costs of all future repairs necessary to cure any defects Defendants have failed to cure, the
20 reasonable value of other property damaged by the constructional and/or material/product defects,
21 and additional costs fees and interest, all in excess of \$15,000.00.

22 73. Plaintiff incorporates by reference, as if set forth herein, the particular statement of
23 damages described in the Prayer for Relief.

24 **V. THIRD CLAIM FOR RELIEF**

25 **Negligent Misrepresentation and/or Failure to Disclose** 26 **(Against All Defendants)**

27 74. Plaintiff hereby incorporates and realleges Paragraphs 1 through 73 of the
28 Complaint as though fully set forth herein.

1 75. Plaintiff is informed and believes and thereon alleges that the Defendants, and their
2 agents, representatives, and employees, represented both orally and in writing, to Plaintiff at the
3 time of the transfer of assets, including the Subject Property, to the Plaintiff that the Subject
4 Property was designed, developed, constructed, and built in a good and workmanlike manner, with
5 good quality products, pursuant to appropriate plans and specifications, applicable industry
6 standards, and reasonably free of defects.

7 76. Defendants failed to disclose the existence of serious known latent defects and
8 deficiencies in the Subject Property and/or misrepresented the condition of the Subject Property,
9 which contained defects.

10 77. Plaintiff is informed, and believes, and thereon alleges, that Defendants and their
11 agents, representatives, and employees made these express representations and implied warranties
12 to the Plaintiff when Defendants and their agents had no sufficient or reasonable grounds for
13 believing them to be true, and said Defendants were negligent in not ascertaining the true
14 condition of the Subject Property and reporting it to the Plaintiffs.

15 78. Plaintiff relied to its detriment on the negligent misrepresentations and failures to
16 disclose material facts by said Defendants and their agents, representatives, and employees
17 relating to the Subject Property.

18 79. Plaintiff has recently become aware of the defects identified herein. As a direct and
19 proximate result of the aforesaid misrepresentations concerning the warranties, the efforts of the
20 Plaintiff to provide notice of warranty claims, obtain satisfaction of warranty claims, and to obtain
21 repairs justly due and owing under warranty claims, were rendered useless and futile, and Plaintiff
22 was thereby excused from any and all duties to Defendants or any other warranty service
23 providers to provide notice of further warranty claims.

24 80. Plaintiff is informed and believes, and thereon alleges, that as a direct and
25 proximate result of the negligent misrepresentations by Defendants, and each of them, Plaintiff has
26 sustained and will sustain damages as alleged herein, in excess of \$15,000.00.

27 81. Plaintiff incorporates by reference, as if set forth herein, the particular statement of
28 damages described in the Prayer for Relief.

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**Declaratory Relief
(Against All Defendants)**

82. Plaintiff hereby incorporates and realleges Paragraphs 1 through 81 of the Complaint as though fully set forth herein.

83. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties in that Plaintiffs claim that, as a direct and proximate result of the negligence and breach of implied warranties by Defendants, and the resulting construction defects, Plaintiff has been, and will continue to be, caused damage, as more fully described herein, including but not limited to, Plaintiff being denied the benefit of the express and implied warranties contained therein in that, among other things, the interests of Plaintiff in the Subject Property have been, and will be, reduced in value, and the useful life of the Subject Property has been shortened, resulting in damage to Plaintiff, in an amount to be established at the time of trial.

84. A further dispute has arisen and an actual controversy exists between Plaintiff and Defendants as to whether Defendants have violated any provisions of applicable building and construction practices, industry standards, governmental codes and restrictions, manufacturers' requirements, and product specifications.

85. A further dispute has arisen and an actual controversy exists between Plaintiff and Defendants as to whether the Subject Property has and is experiencing defective conditions and whether the Subject Property and the structures located thereon were not fit for their intended purposes, were not of merchantable quality and were not designed, erected, constructed or installed in a workmanlike manner, and therefore that the Subject Property as constructed is defective and improper and has resulted in damaged and defective structures and real property.

86. Further, Plaintiff claims that as a direct and proximate result of the negligence and breaches of express and implied warranties by Defendants, and the resulting defective conditions affecting the Subject Property, Plaintiffs have incurred and will continue to incur expenses, including but not limited to attorney fees, expert witness fees, contractors' and subcontractors'

1 fees, and other associated costs of repair, all in an amount to be established at the time of trial.
2 Plaintiff is informed and believes and thereon alleges that Defendants deny any negligence and/or
3 breaches of express or implied warranties, and/or that Plaintiff has incurred, or will continue to
4 incur, any of the expenses claimed by Plaintiff herein.

5 87. A judicial determination of the respective parties' rights, duties, and obligations
6 and a declaration as to the same with respect to the above-specified issues is essential to the
7 administration of justice in this lawsuit and, therefore, is necessary and appropriate at this time in
8 order that Plaintiff and Defendants may ascertain their respective rights, duties, and obligations as
9 to each other and with respect to the above-specified controversies.

10 **VII. FIFTH CLAIM FOR RELIEF**

11 **Breach of NRS 116.1113 and the Implied Covenant of Good Faith** 12 **(Against All Defendants)**

13 88. Plaintiff hereby incorporates and realleges Paragraphs 1 through 87 of the
14 Complaint as though fully set forth herein.

15 89. Plaintiff is entitled to the benefits of all covenants of good faith contained in
16 agreements or any duties arising from Defendants' transfer of the Subject Property to the Plaintiff.

17 90. NRS 116.1113 (applicable to all common interest communities created within the
18 State of Nevada) provides that every contract or duty governed by Chapter 116 imposes an
19 obligation of good faith in its performance or enforcement.

20 91. NRS 116.1113 and the duties arising from NRS Chapter 116 impose upon said
21 Defendants an obligation of good faith.

22 92. Said Defendants knew and/or should have known at the time of constructing and or
23 transfer of the Subject Property that it was defectively constructed as herein alleged. Said
24 Defendants' conduct was a breach of their statutory duty of good faith owed to the Plaintiff and its
25 members.

26 93. This conduct of the said Defendants was and remains the actual and proximate
27 cause of damages to Plaintiff, as set forth in the prayer for relief and incorporated herein by
28 reference.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff alleges, as damages caused by the conduct of Defendants, as set
3 forth in the Claims for Relief, and prays for the entry of judgment for damages and other relief
4 against Defendants, and each of them, as follows:

5 1. For general and special damages pursuant to NRS 40.600 *et seq.*, and all other
6 statutory or common law causes of action, as pled in this Complaint, all in an amount in excess of
7 \$15,000.00;

8 2. For the cost of repair and/or replacement of defects, in a sum to be determined
9 according to proof;

10 3. For the costs to reconstruct the defective areas of the Subject Property, in
11 accordance with applicable law, according to sound standards of engineering and construction, and
12 in a workmanlike manner.

13 4. For costs and expenditures to correct, cure or mitigate damages caused or that will
14 be caused by defects and/or deficiencies caused by Defendants;

15 5. For losses associated with the defects and/or deficiencies, including loss of use,
16 relocation, and incidental expenses according to proof;

17 6. For reasonable attorney fees, costs, expert witness costs and expenses, both
18 pursuant to statutory and common laws;

19 7. For such relief as is necessary, including equitable and monetary relief, for a just
20 adjudication of this matter;

21 8. For prejudgment interest; and

22 9. For any other such relief that the Court deems just and proper.

23 **JURY DEMAND**

24 Plaintiff respectfully demands a trial by a jury of all issues so triable.

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AFFIRMATION

The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603A.040 about any person.

DATED this 3 day of May, 2018.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

By: /s/ John Samberg, Esq.
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CERTIFICATE OF SERVICE

I hereby certify on this 3rd day of May, 2018, pursuant to NRCP 5(b), I served a true copy of the following document(s) described as **FIRST AMENDED COMPLAINT FOR DAMAGES (CORRECTED)** on the interested parties in this action by **E-Mail** as follows:

SERVICE LIST

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/s/ E. Noemy Valdez
E. Noemy Valdez

EXHIBIT 2

EXHIBIT 2

Code: 4180

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Attorneys for Defendants
SOMERSETT DEVELOPMENT COMPANY, LTD,
SOMERSETT, LLC, and SOMERSETT DEVELOPMENT CORPORATION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a
Domestic Non-Profit Corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 15

SOMERSETT DEVELOPMENT COMPANY,
LTD, a Nevada Limited Liability Company;
SOMERSETT, LLC a dissolved Nevada
Limited Liability Company; SOMERSETT
DEVELOPMENT CORPORATION, a
dissolved Nevada Corporation; Q & D
Construction, Inc., a Nevada Corporation,
PARSONS BROS ROCKERIES, INC., a
Washington Corporation; PARSONS
ROCKSI, LLC., a Nevada Limited Liability
Company, and DOES 5 through 50, inclusive,

Defendants.

SOMERSETT DEVELOPMENT CO., LTD.,

Third-Party Plaintiff,

vs.

STANTEC CONSULTING, INC., an Arizona
Corporation; and DOES 1-50 inclusive,

Third-Party Defendant.

THIRD-PARTY COMPLAINT

COMES NOW Defendant/Third-Party Plaintiff SOMERSETT DEVELOPMENT CO.,
LTD., ("SOMERSETT") by and through its attorneys of records, Thorndal Armstrong Delk

1 Balkenbush & Eisinger, and hereby brings this Third-Party Complaint against Third-Party
2 Defendant STANTEC CONSULTING, INC., an Arizona Corporation; and DOES 1-50
3 inclusive, and alleges as follows:

4 **GENERAL ALLEGATIONS**

- 5 1. Third-Party Plaintiff incorporates herein that Plaintiff's Complaint solely for the purposes
6 of establishing that a Complaint has been filed against SOMERSETT but without
7 admitting the truth of any allegation therein except for such allegations which may have
8 been admitted in Third-Party Plaintiff's Answer. Third-Party Plaintiff is informed and
9 believes and therefore alleges that the matters referred to in Plaintiff's Complaint were
10 proximately caused by the acts and omissions of Third-Party Defendants.
- 11 2. SOMERSETT is a Defendant in this matter, having been sued by Plaintiff, SOMERSETT
12 OWNERS ASSOCIATION.
- 13 3. At all times relevant herein STANTEC CONSULTING, INC; and DOES 1-50
14 (collectively "Third-Party Defendants") were either individuals, sole proprietorships,
15 partnerships, registered professionals, corporations, or other legal entities licensed to do
16 and were doing business in Washoe County, State of Nevada and performed
17 constructions-related work and/or supplied materials for the construction of the lots
18 identified by PLAINTIFF in its Complaint ("Subject Properties").
- 19 4. Third-Party Defendants, and each of them, were developers, contractors, subcontractors,
20 and/or design professionals who, pursuant to the agreements between each of the Third-
21 Party Defendants and SOMERSETT, performed construction related activities for
22 SOMERSETT, or were one of the subcontractors who supplied materials and/or items
23 which were installed into and/or became a part of said subject properties.
- 24 5. SOMERSETT alleges that that Third-Party Defendants, including DOES 1-50, may have
25 acted as alter-egos of other individuals, sole proprietorships, partnerships, registered
26 professionals, corporations, or other legal entities, and that the true names and capacities
27 of any such persons or entities for which Third-Party Defendants acted as alter egos are
28 currently unknown to SOMERSETT; therefore, SOMERSETT will seek leave of the

1 Court to amend this Third-Party Complaint to set forth the true names and capacities of
2 any alter ego entities and state appropriate charging allegations, if and when that
3 information is ascertained.

- 4 6. Third-Party Defendants DOES 1-50 are sued herein under fictitious names and the true
5 names and capacities of said Third-Party Defendants are not known by Third-Party
6 Plaintiff who will seek leave of court to amend this Third-Party Complaint to set forth
7 same as it becomes known or ascertained.
- 8 7. The work performed and/or materials supplied by each of the Third-Party Defendants
9 was pursuant to contracts, purchase orders, and/or agreements between Third-Party
10 Defendants and SOMERSETT pursuant to plans and specifications for the Subject
11 Properties.
- 12 8. SOMERSETT has been sued by Plaintiff SOMERSETT OWNERS ASSOCIATION,,
13 INC. in the Second Judicial District Court in Washoe County, State of Nevada, Court
14 Case Number CV17-02427. The Plaintiffs in this case have alleged defective or deficient
15 design or construction giving rise to their claims for relief. Plaintiff's allegations
16 implicate the Third-Party Defendants' work.

17 **FIRST CLAIM FOR RELIEF**

18 **(Implied Indemnity)**

- 19 9. Third-Party Plaintiff realleges each and every allegation contained in paragraphs 1-8 as
20 though fully set forth herein.
- 21 10. SOMERSETT is informed and believes and thereon alleges that SOMERSETT entered
22 into written, oral, and/or implied agreements with Third-Party Defendants.
- 23 11. By reason of the foregoing, if Plaintiffs recover against SOMERSETT, then
24 SOMERSETT is entitled to implied contractual indemnity from Third-Party Defendants,
25 and each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums
26 paid by way of settlement or, in the alternative, judgment rendered against SOMERSETT
27 in the underlying action based upon Plaintiff's Complaint or any cross-claims filed
28 herein.

1 12. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
2 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
3 fees and costs incurred herein pursuant to the contractual provisions of the agreements
4 and Nevada Law.

5 **SECOND CLAIM FOR RELIEF**

6 **(Contribution)**

7 13. Third-Party Plaintiff repeats and realleges each and every allegation contained in
8 paragraphs 1-12 above as if though fully set forth herein.

9 14. Third-Party Plaintiff is entitled to contribution from Third-Party Defendants with respect
10 to any settlement, judgment, awards or any other type of resolution or claims brought
11 forward by the Plaintiff in its Complaint on file herein in an amount proportionate to the
12 amount of negligence and/or fault attributable to each of the Third-Party Defendants.

13 15. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
14 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
15 fees and costs incurred herein pursuant to the contractual provisions of the agreements
16 and Nevada Law.

17 **THIRD CLAIM FOR RELIEF**

18 **(Equitable Indemnity)**

19 16. Third-Party Plaintiff repeats and realleges each and every allegation contained in
20 paragraphs 1-15 above as if though fully set forth herein.

21 17. SOMERSETT is informed and believes and thereon alleges that any and all defects and
22 damages alleged by Plaintiff in their Complaint are all defects and damages to, or
23 destruction of, property and SOMERSETT is further informed and believes and thereon
24 alleges that any and all damages were caused by Third-Party Defendants, and each of
25 them, arising out of and in connection with the performance of Third-Party Defendants'
26 operations and work at the subject properties.

27 18. In equity and good conscience, if Plaintiff recovers against SOMERSETT herein, then
28 SOMERSETT is entitled to an equitable indemnity apportionment of the liability and

1 contribution among and from the Third-Party Defendants, and each of them, according to
2 their respective faults for the injuries and damages allegedly sustained by Plaintiffs, if
3 any, by way of sums paid by settlement or, in the alternative, judgment rendered against
4 SOMERSETT based upon Plaintiff's Complaint.

5 19. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
6 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
7 fees and costs incurred herein pursuant to the contractual provisions of the agreements
8 and Nevada Law.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Apportionment)**

11 20. Third-Party Plaintiff repeats and realleges each and every allegation contained in
12 paragraphs 1-19 above as if though fully set forth herein.

13 21. SOMERSETT is entitled to an apportionment of liability between Third-Party
14 Defendants, and each of them.

15 22. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
16 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
17 fees and costs incurred herein pursuant to the contractual provisions of the agreements
18 and Nevada Law.

19 **FIFTH CLAIM FOR RELIEF**

20 **(Express Indemnity)**

21 23. Third-Party Plaintiff repeats and realleges each and every allegation contained in
22 paragraphs 1-22 above as if though fully set forth herein.

23 24. Pursuant to the terms of the agreements entered into between SOMERSETT and Third-
24 Party Defendants, SOMERSETT has defense and indemnification rights from the Third-
25 Party Defendants, and each of them.

26 25. Pursuant to the terms of the agreements entered into between SOMERSETT and Third-
27 Party Defendants, Third-Party Defendants, and each of them, have the duty to defend and
28 indemnify SOMERSETT in the action filed by Plaintiffs.

1 26. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
2 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
3 fees and costs incurred herein pursuant to the contractual provisions of the agreements
4 and Nevada Law.

5 WHEREFORE, Third-Party Plaintiff demands judgment against Third-Party Defendants as
6 follows:

- 7 1. For indemnity, all damages, and/or economic losses that Plaintiffs and/or any
8 cross-claimant/third-party plaintiff recover against SOMERSETT by way of
9 judgment, order, settlement, compromise or trial;
- 10 2. For reasonable attorney's fees, costs and expert costs and expenses pursuant to
11 statutory and contract law and the terms of the contract(s);
- 12 3. For prejudgment interest;
- 13 4. For an apportionment of liability between the Third-Party Defendants, an each of
14 them;
- 15 5. For contribution pursuant to NRS 17.225; and
- 16 6. For such other and further relief as the Court may deem just, equitable and proper.

17 **AFFIRMATION**

18 **Pursuant to NRS 239B.030**

19 The undersigned hereby affirms that this document does not contain the social security
20 number of any person.

21 DATED this 29th day of August, 2018.

22 THORNDAL, ARMSTRONG,
23 DELK, BALKENBUSH & EISINGER

24 By: 

25 CHARLES L. BURCHAM, ESQ.
26 State Bar No. 2673
27 WADE CARNER, ESQ.
28 State Bar No. 11530
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this date I caused the foregoing **THIRD-PARTY COMPLAINT** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

 X Second Judicial District Court Eflex ECF (Electronic Case Filing)

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

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DATED this 29th day of August, 2018.


An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger

EXHIBIT 3

EXHIBIT 3

Code: 1140

1 Charles L. Burcham, Esq., Nevada Bar No. 2673
2 Wade Carner, Esq., Nevada Bar No. 11530
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Attorneys for Defendants

5 SOMERSETT DEVELOPMENT COMPANY, LTD,
SOMERSETT, LLC, and SOMERSETT DEVELOPMENT CORPORATION

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8
9 SOMERSETT OWNERS ASSOCIATION, a
10 Domestic Non-Profit Corporation,

11 Plaintiff,

Case No. CV17-02427

12 vs.

Dept. No. 15

13 SOMERSETT DEVELOPMENT COMPANY,
LTD, a Nevada Limited Liability Company;
14 SOMERSETT, LLC a dissolved Nevada
Limited Liability Company; SOMERSETT
15 DEVELOPMENT CORPORATION, a
dissolved Nevada Corporation; Q & D
16 Construction, Inc., a Nevada Corporation,
PARSONS BROS ROCKERIES, INC., a
17 Washington Corporation; PARSONS
ROCKS!, LLC., a Nevada Limited Liability
18 Company, and DOES 5 through 50, inclusive,

19 Defendants.

20 **ANSWER TO FIRST AMENDED COMPLAINT AND CROSS-CLAIM**

21 COMES NOW, Defendants SOMERSETT DEVELOPMENT COMPANY, LTD,
22 SOMERSETT, LLC, and SOMERSETT DEVELOPMENT CORPORATION, by and through
23 their attorneys, Thorndal Armstrong Delk Balkenbush & Eisinger, and in answer to Plaintiff's
24 Amended Complaint, hereby admits, denies, and alleges as follows:

25 ///

26 ///

27 ///

28 ///

1 **FIRST DEFENSE**

2 **I. PARTIES**

3 **A. Plaintiff**

4 I.

5 Defendants admit the allegations contained in Paragraph 1 of the Amended Complaint.

6 II.

7 Defendants are without sufficient knowledge or information with which to form a belief
8 as to the truth of the allegations contained in Paragraphs 2, 3 and 4 of the Amended Complaint,
9 and upon such basis deny same.

10 III.

11 The allegations of Paragraph 5 of the Amended Complaint are legal and not factual; this
12 lawsuit was filed in violation of NRS 116.31088.

13 IV.

14 In answer to Paragraph 6 of the Amended Complaint, the referenced CC&Rs speak for
15 themselves.

16 **B. Defendants**

17 V.

18 Defendants admit the allegations contained in Paragraphs 7, 8 and 9 of the Amended
19 Complaint.

20 VI.

21 Defendants are without sufficient knowledge or information with which to form a belief
22 as to the truth of the allegations contained in Paragraphs 10, 13, 14, 15, 16 and 17 of the
23 Amended Complaint, and upon such basis deny same.

24 VII.

25 Defendants deny the allegations contained in Paragraphs 11, 12, 18, 19 and 20 of the
26 Amended Complaint.

27 VIII.

28 In answer to Paragraph 21 of the Amended Complaint, Defendants admit that a Notice of

1 Claims was provided, and Defendants allege that said notice was untimely and improper under
2 NRS 11.202.

3 **II. GENERAL ALLEGATIONS**

4 I.

5 Defendants admit the allegations contained in Paragraph 22 of the Amended Complaint.

6 II.

7 Defendants are without sufficient knowledge or information with which to form a belief
8 as to the truth of the allegations contained in Paragraphs 23, 24 and 33 of the Amended
9 Complaint, and upon such basis deny same.

10 IV.

11 Defendants deny the allegations contained in Paragraphs 25, 26, 27, 28, 29, 30, 31, 32,
12 34, 35, 36, 37 and 38 of the Amended Complaint.

13 **III. FIRST CLAIM FOR RELIEF**

14 **Negligence and Negligence Per Se**

15 **(Against All Defendants)**

16 I.

17 In answer to Paragraph 39 of the Amended Complaint, Defendants repeat and reallege
18 each and every answering Paragraphs 1 through 38 of the Amended Complaint as though fully
19 set forth herein.

20 II.

21 Defendants deny the allegation contained in Paragraphs 40, 41, 43, 44, 45, 46, 47, 48, 49,
22 50, 51, 52, 53 and 54 of the Amended Complaint.

23 III.

24 Defendants are without sufficient knowledge or information with which to form a belief
25 as to the truth of the allegations contained in Paragraph 42 of the Amended Complaint, and upon
26 such basis deny same.

27 IV.

28 No response is necessary to Plaintiff 55 of the Amended Complaint.

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IV. SECOND CLAIM FOR RELIEF

**Breach of Express and Implied Warranties Pursuant to NRS 116.4113 and NRS 11.4114
and Common Law (Against All Defendants)**

I.

In answer to Paragraph 56 of the Amended Complaint, Defendants repeat and reallege each and every answering Paragraphs 1 through 55 of the Amended Complaint as though fully set forth herein.

II.

Defendants deny the allegations contained in Paragraphs 57, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71 and 72 of the Amended Complaint.

III.

Defendants are without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraphs 58 and 63 of the Amended Complaint, and upon such basis deny same.

IV.

No response is necessary to Paragraph 73 of the Amended Complaint.

V. THIRD CLAIM FOR RELIEF

**Negligent Misrepresentation and/or Failure to Disclose
(Against All Defendants)**

I.

In answer to Paragraph 74 of the Amended Complaint, Defendants repeat and reallege each and every answering Paragraphs 1 through 73 of the Amended Complaint as though fully set forth herein.

II.

Defendants are without sufficient knowledge or information with which to form a belief as to the truth of the allegations contained in Paragraph 75 of the Amended Complaint, and upon such basis deny same.

1 III.

2 Defendants deny the allegations contained in Paragraphs 76, 66, 78, 79 and 80 of the
3 Amended Complaint.

4 IV.

5 No response is necessary to Paragraph 81 of the Amended Complaint.

6 **VI. FOURTH CLAIM FOR RELIEF**

7 **Declaratory Relief**

8 **(Against All Defendants)**

9 I.

10 In answer to Paragraph 82 of the Amended Complaint, Defendants repeat and reallege
11 each and every answering Paragraphs 1 through 81 of the Amended Complaint as though fully
12 set forth herein.

13 II.

14 Defendants deny the allegations contained in Paragraphs 83, 84, 85, 86 and 87 of the
15 Amended Complaint.

16 **VII. FIFTH CLAIM FOR RELIEF**

17 **Breach of NRS 116.1113 and the Implied Covenant of Good Faith**

18 **(Against All Defendants)**

19 I.

20 In answer to Paragraph 88 of the Amended Complaint, Defendants repeat and reallege
21 each and every answering Paragraphs 1 through 87 of the Amended Complaint as though fully
22 set forth herein.

23 II.

24 Defendants deny the allegations contained in Paragraphs 89, 92 and 93 of the Amended
25 Complaint.

26 III.

27 In answer to Paragraphs 90 and 91 of the Amended Complaint, the referenced statute
28 speaks for itself.

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SECOND DEFENSE

Plaintiff's Amended Complaint on file herein fails to state a claim against these Defendants upon which relief may be granted.

THIRD DEFENSE

The claims asserted by Plaintiff are barred by the statute of repose.

FOURTH DEFENSE

The claims asserted by Plaintiff are barred by the statute of limitations.

FIFTH DEFENSE

The occurrence referred to in Plaintiff's Amended Complaint, and all damages, if any, arising therefrom, were caused by the acts or omissions of a third person or persons over whom these Defendants had no control.

SIXTH DEFENSE

Defendants allege that Plaintiff fails to name a party necessary for full and adequate relief essential in this action.

SEVENTH DEFENSE

Defendants allege that Plaintiff has failed to timely plead this matter and has thereby delayed the litigation and investigation of this claim to the prejudice of these Defendants and accordingly, this action should be dismissed.

EIGHTH DEFENSE

Upon information and belief, Plaintiff may have failed to mitigate its damages.

NINTH DEFENSE

Plaintiff is estopped from asserting any cause of action whatever against Defendants.

TENTH DEFENSE

Plaintiff, by its acts and conduct, has waived and abandoned any and all claims as alleged herein against these Defendants.

ELEVENTH DEFENSE

Defendants are informed and believe, and thereon allege, that Plaintiff's claims, in whole or in part, are reduced, modified and/or barred by the doctrine of consent.

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TWELFTH DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' answer, and therefore Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendants request relief as follows:

1. That Plaintiff's Amended Complaint be dismissed with prejudice in its entirety;
2. That Defendants be awarded reasonable attorney's fees and costs incurred in defending this matter;
3. For such other and further relief as the Court deems just and proper in the premises.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned hereby affirms that this document does not contain the Social Security number of any person.

DATED this 17 day of August, 2018.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: 

CHARLES L. BURCHAM, ESQ.
Nevada Bar No. 2673
WADE CARNER, ESQ.
Nevada Bar No. 11530
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
Attorneys for Defendants
SOMERSETT DEVELOPMENT
COMPANY, LTD, SOMERSETT, LLC,
and SOMERSETT DEVELOPMENT
CORPORATION

1 **CROSS-CLAIM**

2 COMES NOW Defendant/Cross-Claimant SOMERSETT DEVELOPMENT CO., LTD.,
3 ("SOMERSETT") by and through its attorneys of records, Thorndal Armstrong Delk Balkenbush
4 & Eisinger, and hereby brings this Cross-Claim against Cross-Defendants Q&D
5 CONSTRUCTION, INC., a Nevada Corporation; and PARSONS BROTHERS ROCKERIES,
6 INC., a Washington Corporation; and DOES 1-50 inclusive, and alleges as follows:

7 **GENERAL ALLEGATIONS**

- 8 1. Cross-Claimant incorporates herein that Plaintiff's Complaint solely for the purposes of
9 establishing that a Complaint has been filed against SOMERSETT but without admitting
10 the truth of any allegation therein except for such allegations which may have been
11 admitted in Cross-Claimant's Answer. Cross-Claimant is informed and believes and
12 therefore alleges that the matters referred to in Plaintiff's Complaint were proximately
13 caused by the acts and omissions of Cross-Defendants.
- 14 2. SOMERSETT is a Defendant in this matter, having been sued by Plaintiff, SOMERSETT
15 OWNERS ASSOCIATION ("SOA").
- 16 3. At all times relevant herein Q&D CONSTRUCTION, INC.; and PARSONS BROTHERS
17 ROCKERIES, INC.; and DOES 1-50 (collectively "Cross-Defendants") were either
18 individuals, sole proprietorships, partnerships, registered professionals, corporations, or
19 other legal entities licensed to do and were doing business in Washoe County, State of
20 Nevada and performed constructions-related work and/or supplied materials for the
21 construction of the lots identified by PLAINTIFF in its Complaint ("Subject Properties").
- 22 4. Cross-Defendants, and each of them, were developers, contractors, subcontractors, and/or
23 design professionals who, pursuant to the agreements between each of the Cross-
24 Defendants and SOMERSETT, performed construction related activities for
25 SOMERSETT, or were one of the subcontractors who supplied materials and/or items
26 which were installed into and/or became a part of said subject properties.
- 27 5. SOMERSETT alleges that that Cross-Defendants, including DOES 1-50, may have acted
28 as alter-egos of other individuals, sole proprietorships, partnerships, registered

1 professionals, corporations, or other legal entities, and that the true names and capacities
2 of any such persons or entities for which Cross-Defendants acted as alter egos are
3 currently unknown to SOMERSETT; therefore, SOMERSETT will seek leave of the
4 Court to amend this Cross-Claim to set forth the true names and capacities of any alter
5 ego entities and state appropriate charging allegations, if and when that information is
6 ascertained.

7 6. Cross-Defendants DOES 1-50 are sued herein under fictitious names and the true names
8 and capacities of said Cross-Defendants are not known by Cross-Claimant who will seek
9 leave of court to amend this Third-Party Complaint to set forth same as it becomes
10 known or ascertained.

11 7. The work performed and/or materials supplied by each of the Cross-Defendants was
12 pursuant to contracts, purchase orders, and/or agreements between Cross-Defendants and
13 SOMERSETT pursuant to plans and specifications for the Subject Properties.

14 8. SOMERSETT has been sued by Plaintiff SOMERSETT OWNERS ASSOCIATION in
15 the Second Judicial District Court in Washoe County, State of Nevada, Court Case
16 Number CV17-02427. The Plaintiffs in this case have alleged defective or deficient
17 design or construction giving rise to their claims for relief. Plaintiff's allegations
18 implicate the Cross-Defendants' work.

19 **FIRST CLAIM FOR RELIEF**

20 **(Implied Indemnity)**

21 9. Cross-Claimant realleges each and every allegation contained in paragraphs 1-8 as
22 though fully set forth herein.

23 10. SOMERSETT is informed and believes and thereon alleges that SOMERSETT entered
24 into written, oral, and/or implied agreements with Cross-Defendants.

25 11. By reason of the foregoing, if Plaintiffs recover against SOMERSETT, then
26 SOMERSETT is entitled to implied contractual indemnity from Cross-Defendants, and
27 each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums paid
28 by way of settlement or, in the alternative, judgment rendered against SOMERSETT in

1 the underlying action based upon Plaintiff's Complaint or any cross-claims filed herein.
2 12. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
3 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
4 fees and costs incurred herein pursuant to the contractual provisions of the agreements
5 and Nevada Law.

6 **SECOND CLAIM FOR RELIEF**

7 **(Contribution)**

8 13. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs
9 1-12 above as if though fully set forth herein.

10 14. Cross-Claimant is entitled to contribution from Cross-Defendants with respect to any
11 settlement, judgment, awards or any other type of resolution or claims brought forward
12 by the Plaintiff in its Complaint on file herein in an amount proportionate to the amount
13 of negligence and/or fault attributable to each of the Cross-Defendants.

14 15. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
15 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
16 fees and costs incurred herein pursuant to the contractual provisions of the agreements
17 and Nevada Law.

18 **THIRD CLAIM FOR RELIEF**

19 **(Equitable Indemnity)**

20 16. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs
21 1-15 above as if though fully set forth herein.

22 17. SOMERSETT is informed and believes and thereon alleges that any and all defects and
23 damages alleged by Plaintiff in their Complaint are all defects and damages to, or
24 destruction of, property and SOMERSETT is further informed and believes and thereon
25 alleges that any and all damages were caused by Cross-Defendants, and each of them,
26 arising out of and in connection with the performance of Cross-Defendants' operations
27 and work at the subject properties.

28 18. In equity and good conscience, if Plaintiff recovers against SOMERSETT herein, then

1 SOMERSETT is entitled to an equitable indemnity apportionment of the liability and
2 contribution among and from the Cross-Defendants, and each of them, according to their
3 respective faults for the injuries and damages allegedly sustained by Plaintiffs, if any, by
4 way of sums paid by settlement or, in the alternative, judgment rendered against
5 SOMERSETT based upon Plaintiff's Complaint.

6 19. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
7 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
8 fees and costs incurred herein pursuant to the contractual provisions of the agreements
9 and Nevada Law.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Apportionment)**

12 20. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs
13 1-19 above as if though fully set forth herein.

14 21. SOMERSETT is entitled to an apportionment of liability between Cross-Defendants, and
15 each of them.

16 22. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
17 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
18 fees and costs incurred herein pursuant to the contractual provisions of the agreements
19 and Nevada Law.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Express Indemnity)**

22 23. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs
23 1-22 above as if though fully set forth herein.

24 24. Pursuant to the terms of the agreements entered into between SOMERSETT and Cross-
25 Defendants, SOMERSETT has defense and indemnification rights from the Cross-
26 Defendants, and each of them.

27 25. Pursuant to the terms of the agreements entered into between SOMERSETT and Cross-
28 Defendants, Cross-Defendants, and each of them, have the duty to defend and indemnify

1 SOMERSETT in the action filed by Plaintiffs.

2 26. It has been necessary for SOMERSETT to retain the services of legal counsel to defend
3 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's
4 fees and costs incurred herein pursuant to the contractual provisions of the agreements
5 and Nevada Law.

6 WHEREFORE, Cross-Claimant demands judgment against Cross-Defendants as follows:

- 7 1. For indemnity, all damages, and/or economic losses that Plaintiffs and/or any
8 cross-claimant/Cross-Claimant recover against SOMERSETT by way of
9 judgment, order, settlement, compromise or trial;
- 10 2. For reasonable attorney's fees, costs and expert costs and expenses pursuant to
11 statutory and contract law and the terms of the contract(s);
- 12 3. For prejudgment interest;
- 13 4. For an apportionment of liability between the Cross-Defendants, an each of them;
- 14 5. For contribution pursuant to NRS 17.225; and

15 For such other and further relief as the Court may deem just, equitable and proper.

16 **AFFIRMATION**

17 **Pursuant to NRS 239B.030**

18 The undersigned hereby affirms that this document does not contain the Social Security
19 number of any person.

20 DATED this 17 day of August, 2018.

21 THORNDAL, ARMSTRONG,
22 DELK, BALKENBUSH & EISINGER

23 By: 

24 CHARLES L. BURCHAM, ESQ.
25 Nevada Bar No. 2673
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Attorneys for Defendants
SOMERSETT DEVELOPMENT
COMPANY, LTD, SOMERSETT, LLC,
and SOMERSETT DEVELOPMENT
CORPORATION

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this date I caused the foregoing **ANSWER TO FIRST AMENDED COMPLAINT AND CROSS-CLAIM** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ Second Judicial District Court Eflex ECF (Electronic Case Filing)

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

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Attorney for Defendant
Parsons Bros Rockeries**

DATED this 17th day of August, 2018.


An employee of Thorndal, Armstrong,
Delk, Balkenbush & Eisinger

EXHIBIT 4

EXHIBIT 4

1 Code: \$2200

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11 Attorneys for: Stantec Consulting Services Inc.
12 erroneously sued as Stantec Consulting, Inc.

13 THORNDAL, ARMSTRONG, DELK BALKENBUSH & EISINGER

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18 Attorneys for Somerset Development Co., Ltd.
19 and the dissolved Somerset entities

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Attorneys for Parsons Bros. Rockeries, Inc.

In the Second Judicial District Court of the State of Nevada
In and For the County of Washoe

SOMERSETT OWNERS ASSOCIATION, a Domestic
Non-Profit Corporation,
Plaintiff,

vs.

SOMERSETT DEVELOPMENT COMPANY., LTD., a
Nevada limited liability company;
SOMERSETT, LLC, a dissolved Nevada Limited
Liability Company; SOMERSETT DEVELOPMENT
CORPORATION, a dissolved Nevada
Corporation; Q&D CONSTRUCTION, INC., a
Nevada Corporation; PARSONS BROS
ROCKERIES, INC., a Washington Corporation;
PARSONS ROCKS!, LLC, a Nevada Limited
Liability Company, and Does 5-50, inclusive
Defendant.

Case No.: CV17-02427

Dept. No.: 10

SOMERSETT DEVELOPMENT CO., LTD.,
Third-Party Plaintiff

vs.

STANTEC CONSULTING, INC., an Arizona
corporation;
Third-Party Defendants.

Defendants' Motion for Summary Judgment

Statutes of repose, unlike statutes of limitations, define substantive rights to bring an action. *Colony Hill Condo. I Ass'n v. Colony Co.*, 70 N.C. App. 390, 394 (1984). "Failure to file within that period gives the defendant a vested right not to be sued." *Id.* Therefore, in addition to proving the elements of its claims, Plaintiff Somerset Owners Association ("SOA") must prove that it brought its claims within the time frame set forth by the statute

1 of repose. *G & H Assocs. v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 229, 233
2 (1997) (citing *Colony Hill Condo I Ass'n*, 70 N.C. App. at 394).

3 SOA has the burden to prove that it brought its claim for construction and design
4 deficiencies within six years after substantial completion. It cannot do that. Therefore,
5 Stantec Consulting Services, Inc., Somerset Development Company, Ltd., Somerset
6 Development Corporation (dissolved), Somerset LLC (dissolved), Q&D Construction, Inc.,
7 and Parson Bros. Rockeries, Inc. (dissolved) (collectively, “Defendants”) move for summary
8 judgment.
9

10 This motion is based on SOA’s inability to prove all of the elements of its claims, the
11 following memorandum of points and authorities, SOA’s complaint, SOA’s discovery
12 responses, and the Declaration of Theodore Chrissinger (“Chrissinger Decl.”) filed
13 concurrently herewith.
14

15 Memorandum of Points and Authorities

16 Background

17 On December 28, 2017, SOA served its NRS Chapter 40 Notice of Claims (the
18 “Chapter 40 Notice”) on Somerset Development Company, Ltd. (and the two dissolved
19 Somerset entities) (“SDC”), Q&D Construction, Inc. (“Q&D”), and Parsons Bros. Rockeries,
20 Inc. (“PBR”). The Chapter 40 Notice generally alleges defective design and construction of
21 commonly-owned rockery walls in the Somerset development in Reno.
22

23 The next day, SOA sued these same defendants for the same allegations. SOA alleges
24 the following claims for relief, all as a result of alleged design and construction defects in
25 the Somerset rockery walls:
26

- 27 1. Negligence and Negligence Per Se;



2. Breach of Express and Implied Warranties of Fitness, Merchantability, Quality and Habitability Pursuant to NRS Chapter 116 and Common Law;
3. Negligent Misrepresentation and/or Failure to Disclose;
4. Declaratory Relief; and
5. Breach of NRS 116.1113 and the Implied Covenant of Good Faith.

SOA brings these claims despite the fact these walls were all completed in the early to mid 2000's. As of the date of service of the Chapter 40 Notice, the statute of repose had run on all of the rockery walls in Somerset that are at issue in this case.

Procedural History – Discovery

At the September 18, 2018 Early Case Conference, the parties agreed to bifurcate discovery into two phases. Phase One was limited in scope to matters “impacting the statutes of repose and statutes of limitation.” The parties further agreed to file dispositive motions on the statute of repose by February 28, 2019, and later agreed to extend the deadline to March 28, 2019.

Consistent with the parties' agreement, on October 2, 2018, PBR served its first set of interrogatories on SOA. Exhibit 1.¹ Interrogatories 1, 2, and 4 sought to discover SOA's contentions and evidence of substantial completion:

Interrogatory #1 – With respect to any of the rockery walls at issue in this case, do you contend that any such wall was substantially completed after December 31, 2006?

Interrogatory #2 – If your response to Interrogatory Number 1 is anything other than an unqualified denial, please identify the total number of rockery walls which you claim were substantially completed after December 31, 2006.

¹ All Exhibits cited in this Motion are exhibits attached to, and authenticated by, the Declaration of Theodore Chrissinger, filed concurrently herewith.



Interrogatory #4 – Please set forth the specific facts upon which your Response to Interrogatory Number 2 is based.

Exhibit 1, p. 2.

After receiving an extension, SOA served its responses on November 30, 2018.

Exhibit 2. SOA refused to provide substantive responses, instead opting to provide three pages of general objections, along with objections to each interrogatory. *Id.*

On January 23, 2019, after meeting and conferring with PBR’s counsel, SOA served its first supplemental response to Interrogatory #1. Exhibit 3. Again, SOA failed to provide a substantive response to the question of whether SOA contended the rockery walls were substantially completed after December 31, 2006. Instead, SOA provided objections and legal argument. *Id.*

On February 20, 2018, after another meet and confer with PBR’s counsel, SOA served its second supplemental response to Interrogatory #1. Exhibit 4. Again, the response is preceded by pages of general objections. *Id.* The supplemental response to this contention interrogatory contains an objection that the interrogatory “improperly seeks a legal conclusion with regard to the term ‘substantially completed’”, but then goes on to state, “Subject to and without waiver of these objections and to Plaintiff’s First Supplemental Responses, Plaintiff responds as follows: yes.” *Id.* at 7.

On March 7, 2019, after another meet and confer with PBR’s counsel, SOA provided its Third Supplemental Responses, supplementing its original response to Interrogatory #2. Exhibit 5. However, the supplemental response is comprised only of objections and legal argument. *Id.* at 7-8.

1 SOA has never provided any substantive response to Interrogatory #4. *See* Exhibits
2 2-5. The inescapable conclusion is that there are not any facts that support its contention
3 that the rockery walls were substantially completed after December 31, 2006.

4 SOA has now had over 14 months from the filing of its complaint to discover
5 evidence that the rockery walls were completed within six years prior to initiation of this
6 action. It has not, and cannot, produce the required evidence, because that evidence does
7 not exist.
8

9 **Statement of Undisputed Facts**

10 The following facts are either (1) undisputed or (2) alleged by SOA and should be
11 deemed undisputed for the purposes of this motion:

12 1. SOA served its Chapter 40 Notice on or about December 29, 2017. May 3,
13 2018 Amended Complaint (“Amended Complaint”), ¶ 21.

14 2. SOA filed suit on December 29, 2017. December 29, 2017 Complaint.

15 3. SOA’s cause of action is for construction defects.² Amended Complaint, ¶¶
16 27-37, 40-93.

17 4. SOA does not allege in its amended complaint that it brought its claims
18 timely. *See generally, Id.*

19 5. SOA has not produced any admissible evidence to demonstrate if and when
20 the final building inspections occurred for the rockery walls. Exhibits 2-5.

21 6. SOA has not produced any admissible evidence to demonstrate if and when
22 any notices of completion for the rockery walls were recorded. *Id.*

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27 ² Defendants use the term “cause of action” to describe the gravamen of SOA’s complaint. SOA’s cause of
28 action is comprised of numerous claims for relief listed in the “Background” section of this brief.



1 7. SOA has not produced any admissible evidence to demonstrate if and when
2 the City of Reno issued certificates of occupancy for the rockery walls. *Id.*

3 8. SOA has not produced any admissible evidence to demonstrate when the
4 rockery walls were substantially complete under the common law. *Id.*

5 9. SOA has not produced any admissible evidence showing that any rockery
6 walls were substantially completed within six years of SOA serving its Chapter 40 Notice
7 and filing suit. *Id.*

9 **Summary Judgment Standard**

10 Because SOA has the burden to prove every element of its claims, including
11 compliance with the statute of repose, Defendants need not prove anything. Rather,
12 Defendants need only allege untimeliness, and the burden then shifts to SOA to
13 demonstrate, through competent, admissible evidence, that the claims were brought within
14 six years after substantial completion. *Cuzze v. University & Community College System of*
15 *Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007). *See also Riley v. OPP IX, L.P.*, 112 Nev.
16 826, 831 (1996) and *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005).

17 If SOA cannot produce the required admissible evidence rebutting Defendants' claim
18 of untimeliness, then there are no genuine issues of material fact, and Defendants are
19 entitled to judgment as a matter of law. *See* NRCP 56(a).

22 **Argument**

23 NRS 11.202 provides that no action for damages for any deficiency in the design,
24 planning, supervision, or observation of construction, or the construction of any
25 improvement may be commenced more than six years after substantial completion of the
26 improvement. NRS 11.202(1). The date of substantial completion is the later of (a) the
27 final building inspection of the improvement, (b) issuance of a notice of completion for the
28

improvement, or (c) issuance of a certificate of occupancy for the improvement. NRS 11.2055(1)(a)-(c). If none of these events occur, the date of substantial completion must be determined by the rules of the common law. NRS 11.2055(2).

Because SOA has the burden to prove every element of its claim, it must establish with competent, admissible evidence that the date of substantial completion of the rockery walls was less than six years prior to serving its Chapter 40 notice. This it cannot do.

I. SOA does not have any admissible evidence that it brought suit within the six-year statute of repose.

To prevail on its claims, SOA must establish that the dates of substantial completion for the rockery walls were no earlier than December 29, 2011. To do this, SOA must provide evidence of either (1) the final building inspection of each wall, (2) a notice of completion for each wall, or (3) a certificate of occupancy for each wall.³ If SOA contends that none of these exist, then SOA must produce admissible evidence of substantial completion under the rules of common law.⁴ If SOA contends the rockery walls are still not substantially complete after 13 years, then SOA must provide that evidence.

As detailed in the “Procedural History – Discovery” section above, Defendants, through PBR, attempted to discover SOA’s evidence of substantial completion. SOA failed to provide any substantive response, other than to state that it contends that some of the rockery walls were substantially completed after December 31, 2006. But SOA has not provided any evidence on which it bases its contention, despite being asked to do so.

³ Defendants have not found any instances of the City of Reno issuing a certificate of occupancy for a rockery wall.

⁴ Under common law, an improvement is substantially complete when the improvement is at such a stage that it can be used for its intended purpose. *See, e.g., Counts Co. v. Praters, Inc.*, 392 S.W.3d 80, 86 (Ct. App. Tenn. 2012); *Markham v. Kauffman*, 284 So.2d 416, 419 (Fla.App. 1973); *State ex rel. Stites v. Goodman*, 351 S.W.2d 763, 766 (Mo. 1961).

1 Because SOA cannot produce this evidence, SOA has not met its burden of
2 production, and Defendants are entitled to summary judgment.

3 **II. Statutes of repose are not subject to equitable or statutory** 4 **tolling.**

5 In its Motion to Strike Affirmative Defenses, SOA argued that the six-year statute of
6 repose was tolled during the period of declarant control, and Defendants anticipate that
7 SOA will make the same argument in its opposition to this motion.

8 As Defendants explain in their opposition to SOA's Motion, statutes of *limitations*
9 may be subject to tolling, but statutes of *repose* are not.

10 **A. While statutes of limitations are subject to equitable tolling,** 11 **statutes of repose are not.**

12 There are numerous cases throughout the United States discussing the differences
13 between statutes of limitations and statutes of repose. While the two types of statute share
14 many policy objectives, each has a distinct purpose and each is targeted at a different actor.
15 *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014). Statutes of limitations require plaintiffs to
16 pursue diligent prosecution of claims, and they promote justice by preventing surprises
17 through plaintiffs' revival of claims that have been allowed to slumber until evidence has
18 been lost, memories have faded, and witnesses have disappeared. *Id.* (citing *Railroad*
19 *Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944)).

20 Statutes of repose, on the other hand, "effect a legislative judgment that a defendant
21 should "be free from liability after the legislatively determined period of time.'" *CTS Corp.*,
22 573 U.S. at 9 (quoting 54 C.J.S., Limitations of Actions § 7, p. 24 (2010)). "Like a discharge in
23 bankruptcy, a statute of repose can be said to provide a fresh start or freedom from
24 liability." *Id.*



1 Because statutes of limitations focus on encouraging the plaintiff to pursue her
2 rights diligently, they may be subject to equitable tolling. *Id.* at 10. When the plaintiff is
3 prevented by extraordinary circumstance from bringing a timely action, barring the claim
4 does not further the statute's purpose. *Id.*

5
6 Statutes of repose, however, focus on the defendant's right to not be sued after a
7 certain period of time. *Id.* **Therefore, the policy justifications advanced by equitable**
8 **tolling do not apply to statutes of repose.** *Id.*

9 The Nevada Supreme Court recognizes this distinction:

10 The distinction between these two terms is often overlooked. A statute of
11 limitations prohibits a suit after a period of time that follows the accrual of
12 the cause of action. **Moreover, a statute of limitations can be equitably**
13 **tolled. In contrast, a statute of repose bars a cause of action after a**
14 **specified period of time regardless of when the cause of action was**
15 **discovered or a recoverable injury occurred.** It conditions the cause of
16 action on filing a suit within the statutory time period and defines the right
17 involved in terms of the time allowed to bring suit.

18 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (internal citations and quotations
19 omitted, emphasis added).

20 Allowing equitable tolling, whether based on estoppel or otherwise, would
21 eviscerate the policy behind having statutes of repose. In this case, it would allow SOA to
22 file suit well after the defendants obtained a vested right to not be sued for the work
23 performed and completed more than ten years ago.
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B. Because NRS 11.202 is a statute of repose, it is not subject to statutory tolling under NRS 116.3111.

NRS 11.202 is not a statute of limitation; it is a statute of repose:

Statutes of repose set an outside time limit, generally running from the date of substantial completion of the project and with no regard to the date of the injury, after which causes of action for personal injury or property damage allegedly caused by deficiencies in the improvements to real property may not be brought.

G&H Assocs. v. Ernest W. Hahn, Inc., 113 Nev. 265, 271, 934 P.2d 229, 233 (1997) (discussing the pre-2015 version of the statute of repose for design and construction deficiencies). *See also*, *Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 766 P.2d 904 (1988); *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 46 P.3d 62 (2002); *Dykema v. Del Webb Communities, Inc.*, 132 Nev. Adv. Op. 82, 385 P.3d 977 (2016); *Alsenz v. Twin Lakes Village, Inc.*, 108 Nev. 1117, 843 P.2d 834 (1992); *Wise v. Bechtel Corp.*, 104 Nev. 750, 766 P.2d 1317 (1988); *Lotter v. Clark County By and Through Bd. of Com'rs*, 106 Nev. 366, 793 P.2d 1320 (1990); *Nevada Lakeshore Company, Inc. v. Diamond Electric, Inc.*, 89 Nev. 293, 511 P.2d 113 (1973); *Tahoe Village Homeowners Ass'n v. Douglas County*, 106 Nev. 660, 799 P.2d 556 (1990).

NRS 116.3111 provides that “any statute of limitation affecting the association’s right of action against a declarant under this section is tolled until the period of declarant’s control terminates.” NRS 116.3111(3) (emphasis added). By its own language, NRS 116.3111(3) applies *only* to a statute of limitations, rather than to any statutes of repose.

NRS 116.3111 is not ambiguous as to its applicability. But even if it were unclear, NRS 116.3111 was enacted in 1991, after numerous cases interpreted NRS 11.202’s predecessors as statutes of repose, rather than statutes of limitations. “[T]he Legislature is presumed to be aware of [Nevada’s] case law ...” *Olson v. Richard*, 120 Nev. 240, 246, 89

1 P.3d 31, 35 (2004) (Becker, J., dissenting). Therefore, the Court must presume that the
2 Legislature was aware of the case law existing at the time, and nevertheless declined to
3 apply tolling to the statute of repose contained in NRS 11.202. If the Legislature intended
4 to apply NRS 116.3111 tolling to the statute of repose, it would have included the words “or
5 statute of repose” after “statute of limitation.”⁵
6

7 **III. All of SOA’s claims are subject to NRS 11.202.**

8 Defendants anticipate that SOA will try to argue that its warranty claims are not
9 subject to NRS 11.202. But the plain language of NRS 11.202 says otherwise.

10 Words of a statute “should be given their plain meaning.” *McKay v. Bd. of*
11 *Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). “Where a statute is clear on its
12 face, a court may not go beyond the language of the statute in determining the legislature’s
13 intent.” *Id.* A statute must be construed “to give meaning to all of [its] parts and language,
14 and [the] court will read each sentence, phrase, and word to render it meaningful within
15 the context of the purpose of the legislation.” *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev.
16 638, 642, 81 P.3d 532, 534 (2003) (internal citations and quotations omitted). A statute
17 should not be interpreted in a way that produces an absurd or unreasonable result. *Id.*
18

19 NRS 11.202(1) provides in no uncertain terms: “[n]o action may be commenced
20 against the owner, occupier or any person performing or furnishing the design, planning,
21 supervision or observation of construction, or the construction of an improvement to real
22 property more than 6 years after the substantial completion of such an improvement ...”
23 NRS Chapter 116 claims are not listed among the exceptions set forth in NRS 11.202(2).
24
25

26
27 ⁵ Concurrently with the filing of this Motion, SDC is filing its separate Motion for Summary Judgment based
28 primarily on the provisions of NRS 116 and in particular, how the Statute of Repose applies to CC&R
“declarant” warranty claims as to common elements pursuant to NRS 116.4114(4). Defendants incorporate
those additional arguments made on that issue in SDC’s separate motion herein by reference.

Therefore, there can be no question that NRS Chapter 116 warranty claims are included in the scope of the NRS 11.202 statute of repose.

IV. Whether the rockery walls were designed or constructed defectively does not affect the date of substantial completion.

In its Third Supplemental Responses to PBR's Interrogatories, SOA contends "there is a disputed question of fact as to whether the rockery walls were ever substantially completed." Exhibit 5 at 7. This contention appears to be based on the following argument, "Additionally, the certificates are subject to challenge because evidence exists which establishes that the rockery walls were not constructed to include all necessary engineering components, and are therefore partially assembled and not substantially complete." *Id.* at 8.⁶

Defendants anticipate that SOA will argue that because the walls were defectively designed and constructed, that the walls were never substantially completed. First, NRS 11.2055 and the numerous cases addressing Nevada's statute of repose contradict this position. Second, if this is a correct statement of the law, the statute of repose could never apply in any case alleging defective design and construction.

Conclusion

SOA has the burden to prove it brought its claims within six years after substantial completion. To meet that burden, SOA "must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts" that establish the date of substantial completion under NRS 11.2055. *Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Despite being

⁶ SOA did not provide any evidence to support this argument.




1 given multiple opportunities to do so, SOA has been unable to produce the required
2 evidence.

3 Defendants, therefore, are entitled to summary judgment as a matter of law.

4 March 26, 2019

5
6 HOY | CHRISSINGER | KIMMEL | VALLAS


THORNDAL, ARMSTRONG, DELK, BALKENBUSH &
EISINGER


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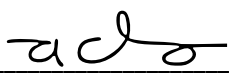
Privacy Affirmation and Certificate of Service

I hereby affirm that this document does not contain and social security numbers or other private information.

I hereby certify that on March 26, 2019, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

DAVID LEE for Q&D CONSTRUCTION, INC.
DON SPRINGMEYER for SOMERSETT OWNERS ASSOCIATION
STEPHEN CASTRONOVA for PARSONS BROS. ROCKERIES, CA, INC.
NATASHA LANDRUM for Q&D CONSTRUCTION, INC.
CHARLES BURCHAM, ESQ. for SOMERSETT DEVELOPMENT COMPANY, LTD.
WADE CARNER for SOMERSETT DEVELOPMENT COMPANY, LTD.
JOHN SAMBERG for SOMERSETT OWNERS ASSOCIATION
DIRK GASPAR for Q&D CONSTRUCTION, INC.

March 26, 2019



Theodore Chrissinger

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Attorneys for: Stantec Consulting Services Inc.
erroneously sued as Stantec Consulting, Inc.

In the Second Judicial District Court of the State of Nevada
In and For the County of Washoe

SOMERSETT OWNERS ASSOCIATION, a Domestic
Non-Profit Corporation,
Plaintiff,

vs.

SOMERSETT DEVELOPMENT COMPANY., LTD., a
Nevada limited liability company;
SOMERSETT, LLC, a dissolved Nevada Limited
Liability Company; SOMERSETT DEVELOPMENT
CORPORATION, a dissolved Nevada
Corporation; Q&D CONSTRUCTION, INC., a
Nevada Corporation; PARSONS BROS
ROCKERIES, INC., a Washington Corporation;
PARSONS ROCKS!, LLC, a Nevada Limited
Liability Company, and Does 5-50, inclusive
Defendant.

Case No.: CV17-02427

Dept. No.: 10

SOMERSETT DEVELOPMENT CO., LTD.,
Third-Party Plaintiff

vs.

STANTEC CONSULTING, INC., an Arizona
corporation;
Third-Party Defendants.





Declaration of Theodore Chrissinger in Support of Defendants’ Motion for Summary Judgment

I, Theodore Chrissinger, declare:

1. I am over the age of 18, and I am competent to testify to the facts contained in this declaration.

2. I am an attorney of record for Third-Party Defendant Stantec Consulting Services, Inc.

3. Exhibit 1 is a true and correct copy of “Parsons Bros Rokerries, Inc.’s First Set of Interrogatories to Plaintiff, Somerset Owners Association.”

4. Exhibit 2 is a true and correct copy of “Plaintiff’s Responses and Objections to Parsons Bros Rokerries, Inc.’s First Set of Interrogatories.”

5. Exhibit 3 is a true and correct copy of “Plaintiff’s Supplemental Responses and Objections to Parsons Bros Rokerries, Inc.’s First Set of Interrogatories.”

6. Exhibit 4 is a true and correct copy of “Plaintiff’s Second Supplemental Responses and Objections to Parsons Bros Rokerries, Inc.’s First Set of Interrogatories.”

7. Exhibit 5 is a true and correct copy of “Plaintiff’s Third Supplemental Responses and Objections to Parsons Bros Rokerries, Inc.’s First Set of Interrogatories.”

I declare under penalty of perjury under the laws of the state of Nevada that the foregoing is true.

Executed on March 26, 2019 in Reno, Nevada

A handwritten signature in black ink, appearing to read 'Theodore Chrissinger', written over a horizontal line.

Theodore Chrissinger


Privacy Affirmation and Certificate of Service

I hereby affirm that this document does not contain and social security numbers or other private information.

I hereby certify that on March 26, 2019, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

DAVID LEE for Q&D CONSTRUCTION, INC.
DON SPRINGMEYER for SOMERSETT OWNERS ASSOCIATION
STEPHEN CASTRONOVA for PARSONS BROS. ROCKERIES, CA, INC.
NATASHA LANDRUM for Q&D CONSTRUCTION, INC.
CHARLES BURCHAM, ESQ. for SOMERSETT DEVELOPMENT COMPANY, LTD.
WADE CARNER for SOMERSETT DEVELOPMENT COMPANY, LTD.
JOHN SAMBERG for SOMERSETT OWNERS ASSOCIATION
DIRK GASPAR for Q&D CONSTRUCTION, INC.

March 26, 2019



Theodore Chrissinger

Index of Exhibits

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2	SOA's Responses and Objections	14
3	SOA's Supplemental Responses	9
4	SOA's Second Supplemental Responses	10
5	SOA's Third Supplemental Responses	10

EXHIBIT 5

EXHIBIT 5

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,
a Nevada limited liability company;
SOMERSETT, LLC, a dissolved Nevada
limited liability company; SOMERSETT
DEVELOPMENT CORPORATION, a
dissolved Nevada corporation; Q&D
CONSTRUCTION, INC., PARSONS
BROTHERS ROCKERIES, INC., a
Washington corporation; PARSONS ROCKS!,
LLC, a Nevada limited liability company, and
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS

1 ASSOCIATION (“the Plaintiff”) filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS’
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) (“the Opposition”) on
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR
4 JUDICIAL NOTICE (“the RJN”).¹ The Defendants filed DEFENDANTS’ REPLY IN SUPPORT
5 OF THEIR MOTION FOR SUMMARY JUDGMENT (“the Reply”) on June 7, 2019. The Court
6 held a hearing on July 15, 2019, and took the matter under advisement.
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES
9 (CORRECTED) (“the FAC”) on May 3, 2018.² The Plaintiff is a homeowners association of a
10 common-interest community. The FAC is a construction defect matter which contains the
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114³ and Common Law; 3) Negligent
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff’s common-
16 interest community and breached the express and implied warranties associated with the
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.
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25 ¹ NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the
Opposition and will give them appropriate weight, if any.

28 ² The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

³ The Court presumes the Plaintiff intended to write “116.4144.”

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of
9 material fact regarding the date of substantial completion for the rockery walls because evaluations
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant
16 also argues the common law definition of substantial completion does not require an improvement
17 to be free from defects, and substantial completion cannot occur after actual completion. The
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*

1 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*
2 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). When the party moving for
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4 burden of production for summary judgment by “submitting evidence that negates an essential
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7 602-03, 172 P.3d 131, 134 (2007).

9 When considering a motion for summary judgment, the district court must view the
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20 NRS 11.202 enumerates the statute of repose for claims related to construction defects and
21 provides:

- 24 1. No action may be commenced against the owner, occupier or any person
25 performing or furnishing the design, planning, supervision or observation of
26 construction, or the construction of an improvement to real property more than 6
27 years after the substantial completion of such an improvement, for the recovery
28 of damages for:

- a. Any deficiency in the design, planning, supervision or observation of
construction or the construction of such an improvement;

- b. Injury to real or personal property caused by any such deficiency; or
- c. Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply:

- a. To a claim for indemnity or contribution.
- b. In an action brought against:
 - 1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.
 - 2) Any person on account of a defect in a product.

The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* ⁴ “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

Statutes of repose are distinct from statutes of limitation. As the *Rhodes* Court explained:

The distinction between these two terms [statute of limitations and statute of repose] is often overlooked. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action . . . Moreover, a statute of limitations can be equitably tolled . . . **In contrast**, a statute of repose bars a cause of action after a specified period of time **regardless of when the cause of action was discovered or a recoverable injury occurred.**

⁴ The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

1 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014) (emphasis added). *See also*
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7 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 299, 233 (1997) (internal citations omitted).

9 The Court will grant the Motion because there is no genuine dispute of material fact the
10 Plaintiff failed to file the FAC within the six-year statute of repose. Even when viewing the
11 evidence in the light most favorable to the Plaintiff, the Plaintiff has not identified any admissible
12 evidence proving the FAC was filed within the six-year statute of repose. Because the Plaintiff
13 bears the burden of persuasion on the statute of repose issue, the lack of affirmative evidence is
14 fatal. First, the statute of repose applies to all of the Plaintiff’s claims, not only the Negligence and
15 Negligence Per Se claims. All of the Plaintiff’s claims are premised on the design and construction
16 of the walls. The plain language of NRS 11.202(1) clearly states that “no action...for the recovery
17 of damages” for construction deficiency can be commenced more than six years after the
18 substantial completion of the improvement. The statute does not differentiate between types of
19 actions, and the only exemptions appear in NRS 11.202(2). Because the Plaintiff’s claims do not
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21 argument that evaluations from 2017 to 2018 confirm the lack of substantial completion is
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23 completion; however, this argument contradicts the purpose of and policy determination embodied
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6 such as roads, sidewalks, walls, parks, trails and developed open spaces constructed for the benefit
7 of all members of a community. The statute of repose is an absolute time bar based on substantial
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10 the statute of repose, render the substantial completion standard meaningless and expressly
11 contradict the policy determination made by the Legislature.
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13
14 Finally, statutes of repose are not subject to equitable or statutory tolling, a concept which
15 has been explained by the Nevada Supreme Court. *See Rhodes*, 130 Nev. at 899, 336 P.3d at 965
16 (explaining statutes of limitations can be tolled and statutes of repose cannot). *See also State Dep’t*
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21 defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result
22 from the revival of claims that have remained dormant for a period during which the evidence
23 vanished and memories faded.”). For all of these reasons, the Plaintiff has failed to carry its burden
24 to establish its claims were filed within the six-year statute of repose.
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28 //

1 **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby
2 **GRANTED.**

3 **DATED** this 2 day of October, 2019.
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7 ELLIOTT A. SATTLER
8 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this _____ day of October, 2019, I deposited in
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,
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11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
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22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.
24
25
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28


Sheila Mansfield
Judicial Assistant

EXHIBIT 6

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Code: 2540

Charles L. Burcham, Esq., Nevada Bar No. 2673
Wade Carner, Esq., Nevada Bar No. 11530
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 S. McCarran, Suite B
Reno, Nevada 89509
Tel: (775) 786-2882

Attorneys for Defendants
SOMERSETT DEVELOPMENT COMPANY, LTD;
SOMERSETT, LLC and SOMERSETT DEVELOPMENT CORPORATION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a
Domestic Non-Profit Corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 15

SOMERSETT DEVELOPMENT
COMPANY, LTD, a Nevada Limited
Liability Company; SOMERSETT, LLC a
dissolved Nevada Limited Liability Company;
SOMERSETT DEVELOPMENT
CORPORATION, a dissolved Nevada
Corporation; Q & D Construction, Inc., a
Nevada Corporation, PARSONS BROS
ROCKERIES, INC., a Washington
Corporation; PARSONS ROCKS!, LLC., a
Nevada Limited Liability Company, and
DOES 5 through 50, inclusive,

Defendants.

SOMERSETT DEVELOPMENT CO., LTD.,

Third-Party Plaintiff,

vs.

STANTEC CONSULTING, INC., an Arizona
Corporation; and DOES 1-50 inclusive,

Third-Party Defendant.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 2nd day of October, 2019, the above-entitled Court
entered its Order in the above-entitled matter.

1 PLEASE TAKE FURTHER NOTICE that on the 2nd day of October, 2019, said Order
2 was duly filed in the office of the Clerk of the above-entitled Court and that attached hereto is a
3 true and correct copy of said Order.

4 **AFFIRMATION**

5 **Pursuant to NRS 239B.030 and 603A.040**

6 The undersigned hereby affirms that this document does not contain the personal
7 information of any person.

8 DATED this 2nd day of October, 2019.

9 THORNDAL, ARMSTRONG,
10 DELK, BALKENBUSH & EISINGER

11 By: /s/ Charles Burcham
12 CHARLES L. BURCHAM, ESQ.
13 Nevada Bar No. 2673
14 WADE CARNER, ESQ.
15 Nevada Bar No. 11530
16 6590 S. McCarran Blvd., Suite B
17 Reno, Nevada 89509
18 Attorneys for Defendants
19 SOMERSETT DEVELOPMENT
20 COMPANY, LTD, SOMERSETT, LLC,
21 and SOMERSETT DEVELOPMENT
22 CORPORATION
23
24
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26
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28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,
3 Balkenbush & Eisinger, and that on this date I caused the foregoing NOTICE OF ENTRY OF
4 ORDER to be served on all parties to this action by:

5 _____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the
6 United States mail at Reno, Nevada.

7 X Second Judicial District Court Eflex ECF (Electronic Case Filing)

8 _____ personal delivery

9 _____ facsimile (fax)

10 _____ Federal Express/UPS or other overnight delivery

11 fully addressed as follows:

12 **Don Springmeyer, Esq.**
13 **John Samberg, Esq.**
14 **Royi Moas, Esq.**
15 **Wolf, Rifkin, Shapiro, Schulman &**
16 **Rabkin, LLP**
17 **5594 B Longley Lane**
18 **Reno, NV 89511**
19 **Attorneys for Plaintiff**

Natasha Landrum, Esq.
Dirk W. Gaspar, Esq.
Lee, Hernandez, Landrum & Garofalo
7575 Vegas Dr., Ste 150
Las Vegas, NV 89128
Attorneys for Defendant
Q & D Construction

17 **Steve Castronova, Esq.**
18 **Castronova Law Offices, P.C.**
19 **605 Forest Street**
20 **Reno, NV 89509**
21 **Attorney for Defendant**
22 **Parsons Bros Rockeries**

Theodore Chrissinger, Esq.
Hoy, Chrissinger, Kimmel & Vallas
50 W. Liberty Street, Suite 840
Reno, NV 89501
Attorney for Stantec Consulting

22 DATED this 2nd day of October, 2019.

24 /s/ Laura Bautista
25 An employee of Thorndal, Armstrong,
26 Delk, Balkenbush & Eisinger
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,
a Nevada limited liability company;
SOMERSETT, LLC, a dissolved Nevada
limited liability company; SOMERSETT
DEVELOPMENT CORPORATION, a
dissolved Nevada corporation; Q&D
CONSTRUCTION, INC., PARSONS
BROTHERS ROCKERIES, INC., a
Washington corporation; PARSONS ROCKS!,
LLC, a Nevada limited liability company, and
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS

1 ASSOCIATION (“the Plaintiff”) filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS’
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) (“the Opposition”) on
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR
4 JUDICIAL NOTICE (“the RJN”).¹ The Defendants filed DEFENDANTS’ REPLY IN SUPPORT
5 OF THEIR MOTION FOR SUMMARY JUDGMENT (“the Reply”) on June 7, 2019. The Court
6 held a hearing on July 15, 2019, and took the matter under advisement.
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES
9 (CORRECTED) (“the FAC”) on May 3, 2018.² The Plaintiff is a homeowners association of a
10 common-interest community. The FAC is a construction defect matter which contains the
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114³ and Common Law; 3) Negligent
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff’s common-
16 interest community and breached the express and implied warranties associated with the
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.
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25 ¹ NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the
Opposition and will give them appropriate weight, if any.

28 ² The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

³ The Court presumes the Plaintiff intended to write “116.4144.”

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of
9 material fact regarding the date of substantial completion for the rockery walls because evaluations
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant
16 also argues the common law definition of substantial completion does not require an improvement
17 to be free from defects, and substantial completion cannot occur after actual completion. The
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*

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2. The provisions of this section do not apply:

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The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* ⁴ “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

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⁴ The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

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9 The Court will grant the Motion because there is no genuine dispute of material fact the
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1 **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby
2 **GRANTED.**

3 **DATED** this 2 day of October, 2019.
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7 ELLIOTT A. SATTLER
8 District Judge
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20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.
24
25
26
27
28


Sheila Mansfield
Judicial Assistant

EXHIBIT 7

EXHIBIT 7

1 **3995**
2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**
3 **DON SPRINGMEYER, ESQ.**
4 Nevada Bar No. 1021
5 **JOHN SAMBERG, ESQ.**
6 Nevada Bar No. 10828
7 **ROYI MOAS, ESQ.**
8 Nevada Bar No. 10686
9 5594-B Longley Lane
10 Reno, Nevada 89511
11 (775) 853-6787/Fax: (775) 853-6774
12 dspringmeyer@wrslawyers.com
13 jsamberg@wrslawyers.com
14 rmoas@wrslawyers.com

15 *Attorneys for Somersett Owners Association*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **IN AND FOR THE COUNTY OF WASHOE**

18 **SOMERSETT OWNERS ASSOCIATION, a**
19 **Domestic Non-Profit Corporation,**

20 **Plaintiff,**

21 **vs.**

22 **SOMERSETT DEVELOPMENT COMPANY,**
23 **LTD, a Nevada Limited Liability Company;**
24 **SOMERSETT, LLC a dissolved Nevada**
25 **Limited Liability Company; SOMERSETT**
26 **DEVELOPMENT CORPORATION, a**
27 **dissolved Nevada Corporation; PARSONS**
28 **BROS ROCKERIES, INC. a Washington**
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott Sattler

**ORDER FOR PARTIAL
DISMISSAL OF CERTAIN CLAIMS,
WITHOUT PREJUDICE, FROM THE
SECOND CLAIM FOR RELIEF
AGAINST DEFENDANT PARSONS BROS
ROCKERIES, INC., WITHOUT
PREJUDICE**

AND RELATED CROSS-ACTIONS

The Court, having review the Stipulation for Partial Dismissal of Certain Claims, Without Prejudice, from the Second Claim For Relief (the "Stipulation") of March 4, 2019 and good cause appearing:

IT IS HEREBY ORDERED that:

1. Plaintiff's claims for breach of statutory warranties contained in NRS 116.4114 and

1 NRS 116.4115 as partially identified in Plaintiff's Second Claim for Relief, be dismissed as to
2 Defendant PARSONS BROS ROCKERIES, INC., **ONLY** and **WITHOUT PREJUDICE**.

3 2. Each party to bear their own costs and attorney's fees and with Plaintiff reserving
4 all rights and claims against the other parties.

5 3. No other claims are dismissed and Plaintiff reserves all its rights to prosecute any
6 and all other remaining claims in the Complaint against Defendant PARSONS BROS
7 ROCKERIES, INC., including claims for breach of common law warranties, if applicable.

8 4. In the event it is determined, through additional discovery investigation, testimony,
9 or other evidence and, at the sole discretion of Plaintiff, that the statutory warranty claims
10 contained in NRS 116.4114 and NRS 116.4115 as dismissed without prejudice herein, implicate
11 Defendant PARSONS BROS ROCKERIES, INC., Defendant PARSONS BROS ROCKERIES,
12 INC. through stipulation, will not oppose Plaintiff's Motion to Amend to re-assert such claims
13 against Defendant PARSONS BROS ROCKERIES, INC., at any time up through and including
14 trial. Any such amendments shall relate back to the date of the initial filing of the Complaint by
15 Plaintiff in this matter.

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

17 DATED this 7 day of MARCH, 2019.

18 
19 _____
20 DISTRICT COURT JUDGE
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EXHIBIT 8

EXHIBIT 8

1 **2540**

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

2 **DON SPRINGMEYER, ESQ.**

Nevada Bar No. 1021

3 **JOHN SAMBERG, ESQ.**

Nevada Bar No. 10828

4 **ROYI MOAS, ESQ.**

Nevada Bar No. 10686

5 5594-B Longley Lane

Reno, Nevada 89511

6 (775) 853-6787/Fax: (775) 853-6774

dspringmeyer@wrslawyers.com

7 JSamberg@wrslawyers.com

rmoas@wrslawyers.com

8 *Attorneys for Somersett Owners Association*

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12
13 **SOMERSETT OWNERS ASSOCIATION, a**
14 **Domestic Non-Profit Corporation,**

15 **Plaintiff,**

16 **vs.**

17 **SOMERSETT DEVELOPMENT COMPANY,**
18 **LTD, a Nevada Limited Liability Company;**
19 **SOMERSETT, LLC a dissolved Nevada**
20 **Limited Liability Company; SOMERSETT**
21 **DEVELOPMENT CORPORATION, a**
22 **dissolved Nevada Corporation; PARSONS**
23 **BROS ROCKERIES, INC. a Washington**
24 **Corporation; Q & D Construction, Inc., a**
25 **Nevada Corporation, and DOES 1 through 50,**
26 **inclusive,**

27 **Defendants.**

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

**NOTICE OF ENTRY OF ORDER FOR
PARTIAL DISMISSAL OF CERTAIN
CLAIMS WITHOUT PREJUDICE, FROM
THE SECOND CLAIM FOR RELIEF
AGAINST DEFENDANT PARSONS BROS
ROCKERIES, INC. WITHOUT
PREJUDICE**

28 **AND RELATED ACTIONS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on March 7, 2019, the Court duly entered its Order
for Partial Dismissal of Certain Claims Without Prejudice, from the Second Claim for Relief
Against Defendant Parsons Bros Rockeries, Inc., Without Prejudice in the above-captioned matter,

1 a true and correct copy of said Order is attached hereto and incorporated herein by this reference
2 as Exhibit 1.

3 **AFFIRMATION**

4 The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and
5 any attachments do not contain personal information as defined in NRS 603A.040 about any
6 person.

7 DATED this 14th day of Mach, 2019

8 **WOLF, RIFKIN, SHAPIRO,**
9 **SCHULMAN & RABKIN, LLP**

10
11 By: /s/ John Samberg, Esq.

12 DON SPRINGMEYER, ESQ.

13 Nevada Bar No. 1021

14 JOHN SAMBERG, ESQ.

15 Nevada Bar No. 10828

16 ROYI MOAS, ESQ.

17 Nevada Bar No. 10686

18 5594-B Longley Lane

19 Reno, Nevada 89511

20 (775) 853-6787/Fax: (775) 853-6774

21 *Attorneys for Somersett Owners Association*
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INDEX OF EXHIBITS

<u>Exhibit #</u>	<u>Description of Document</u>	<u>No. Pages</u>
1	Order For Partial Dismissal Of Certain Claims Without Prejudice, From The Second Claim For Relief Against Defendant Parsons Bros Rockeries, Inc. Without Prejudice	2

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 14th day of March, 2019, a true and correct copy of **NOTICE**
3 **OF ENTRY OF ORDER FOR PARTIAL DISMISSAL OF CERTAIN CLAIMS**
4 **WITHOUT PREJUDICE, FROM THE SECOND CLAIM FOR RELIEF AGAINST**
5 **DEFENDANT PARSONS BROS ROCKERIES, INC. WITHOUT PREJUDICE** was serve
6 via the Washoe County E-Flex Filing System on all parties or persons requesting notice as
7 follows:

8 Charles Brucham, Esq.
9 Wade Carner, Esq.
10 Thorndall, Armstrong, Delk, Blakenbush & Eisinger
11 for SOMERSETT DEVELOPMENT
12 CORPORATION, SOMERSTT, LLC., SOMERSETT
13 DEVELOPMENT COMPANY LTD
14 E-Mail: clb@thorndal.com
15 E-Mail: wnc@thorndal.com

Steve Castronova, Esq.
Castronova Law Offices, P.C.
for PARSONS BROS. ROCKERIES
E-Mail: sgc@castronovaLaw.com

12 Natasha Landrum, Esq.
13 Dirk W. Gaspar, Esq.
14 David Lee, Esq.
15 Lee, Hernandez, Landrum & Garofalo
16 for Q & D CONSTRUCTION, INC.
E-Mail: dgaspar@lee-lawfirm.com
E-Mail: nlandrum@lee-lawfirm.com
E-Mail: dlee@lee-lawfirm.com

Theodore E. Chrissinger, Esq.
Michael S. Kimmel, Esq.
Hoy, Chrissinger, Kimmel & Vallas
for STANTEC CONSULTING
SERVICES, INC.
Email: tchrissinger@nevadalaw.com
Email: mkimmel@nevadalaw.com

17
18 By /s/ Ercilia Noemy Valdez
19 Ercilia Noemy Valdez, an employee of
20 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
21 RABKIN, LLP
22
23
24
25
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FILED
Electronically
CV17-02427
2019-03-14 12:02:44 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7166333

EXHIBIT 1

ORDER FOR PARTIAL DISMISSAL OF CERTAIN CLAIMS,
WITHOUT PREJUDICE,
FROM THE SECOND CLAIM FOR RELIEF AGAINST
DEFENDANT PARSONS BROS ROCKERIES, INC.

EXHIBIT 1

1 **3995**
2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**
3 **DON SPRINGMEYER, ESQ.**
4 Nevada Bar No. 1021
5 **JOHN SAMBERG, ESQ.**
6 Nevada Bar No. 10828
7 **ROYI MOAS, ESQ.**
8 Nevada Bar No. 10686
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10 Reno, Nevada 89511
11 (775) 853-6787/Fax: (775) 853-6774
12 dspringmeyer@wrslawyers.com
13 jsamberg@wrslawyers.com
14 rmoas@wrslawyers.com

15 *Attorneys for Somersett Owners Association*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **IN AND FOR THE COUNTY OF WASHOE**

18 **SOMERSETT OWNERS ASSOCIATION, a**
19 **Domestic Non-Profit Corporation,**

20 **Plaintiff,**

21 **vs.**

22 **SOMERSETT DEVELOPMENT COMPANY,**
23 **LTD, a Nevada Limited Liability Company;**
24 **SOMERSETT, LLC a dissolved Nevada**
25 **Limited Liability Company; SOMERSETT**
26 **DEVELOPMENT CORPORATION, a**
27 **dissolved Nevada Corporation; PARSONS**
28 **BROS ROCKERIES, INC. a Washington**
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott Sattler

**ORDER FOR PARTIAL
DISMISSAL OF CERTAIN CLAIMS,
WITHOUT PREJUDICE, FROM THE
SECOND CLAIM FOR RELIEF
AGAINST DEFENDANT PARSONS BROS
ROCKERIES, INC., WITHOUT
PREJUDICE**

AND RELATED CROSS-ACTIONS

The Court, having review the Stipulation for Partial Dismissal of Certain Claims, Without Prejudice, from the Second Claim For Relief (the "Stipulation") of March 4, 2019 and good cause appearing:

IT IS HEREBY ORDERED that:

1. Plaintiff's claims for breach of statutory warranties contained in NRS 116.4114 and

1 NRS 116.4115 as partially identified in Plaintiff's Second Claim for Relief, be dismissed as to
2 Defendant PARSONS BROS ROCKERIES, INC., **ONLY** and **WITHOUT PREJUDICE**.

3 2. Each party to bear their own costs and attorney's fees and with Plaintiff reserving
4 all rights and claims against the other parties.

5 3. No other claims are dismissed and Plaintiff reserves all its rights to prosecute any
6 and all other remaining claims in the Complaint against Defendant PARSONS BROS
7 ROCKERIES, INC., including claims for breach of common law warranties, if applicable.

8 4. In the event it is determined, through additional discovery investigation, testimony,
9 or other evidence and, at the sole discretion of Plaintiff, that the statutory warranty claims
10 contained in NRS 116.4114 and NRS 116.4115 as dismissed without prejudice herein, implicate
11 Defendant PARSONS BROS ROCKERIES, INC., Defendant PARSONS BROS ROCKERIES,
12 INC. through stipulation, will not oppose Plaintiff's Motion to Amend to re-assert such claims
13 against Defendant PARSONS BROS ROCKERIES, INC., at any time up through and including
14 trial. Any such amendments shall relate back to the date of the initial filing of the Complaint by
15 Plaintiff in this matter.

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

17 DATED this 7 day of MARCH, 2019.

18 
19 _____
20 DISTRICT COURT JUDGE
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EXHIBIT 9

EXHIBIT 9

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,
a Nevada limited liability company;
SOMERSETT, LLC, a dissolved Nevada
limited liability company; SOMERSETT
DEVELOPMENT CORPORATION, a
dissolved Nevada corporation; Q&D
CONSTRUCTION, INC., PARSONS
BROTHERS ROCKERIES, INC., a
Washington corporation; PARSONS ROCKS!,
LLC, a Nevada limited liability company, and
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

ORDER DENYING MOTION TO STRIKE AS MOOT

Presently before the Court is the MOTION OF PLAINTIFF TO STRIKE CERTAIN
AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE;
REQUEST FOR JUDICIAL NOTICE AND DECLARATIONS OF JOHN SAMBERG, ESQ.

1 AND TRACY CARTER IN SUPPORT THEREOF¹ (“the Motion”) filed by Plaintiff
2 SOMERSETT OWNERS ASSOCIATION (“the Plaintiff”) on January 17, 2019. The Plaintiff also
3 filed PLAINTIFF SOMERSETT OWNERS ASSOCIATION’S REQUEST FOR JUDICIAL
4 NOTICE IN SUPPORT OF PLAINTIFF’S MOTION TO STRIKE CERTAIN AFFIRMATIVE
5 DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE (“the RJN”) on
6 January 17, 2019. Defendant STANTEC CONSULTING SERVICES INC. (“Stantec”) filed
7 STANTEC’S OBJECTION TO PLAINTIFF’S EVIDENCE OFFERED IN ITS MOTION TO
8 STRIKE (“the Objection”) on March 26, 2019. Stantec and SOMERSETT DEVELOPMENT CO.,
9 LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT CORPORATION; Q&D
10 CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES, INC. (collectively, “the
11 Defendants”) filed DEFENDANTS’ OPPOSITION TO SOMERSETT OWNERS
12 ASSOCIATION’S MOTION TO STRIKE (“the Opposition”) on March 26, 2019. The Plaintiff
13 filed the REPLY OF PLAINTIFF IN SUPPORT OF ITS MOTION TO STRIKE CERTAIN
14 AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE
15 (“the Reply”) on April 26, 2019. The Court held a hearing on July 15, 2019, and took the matter
16 under advisement.

17
18 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES
19 (CORRECTED) (“the FAC”) on May 3, 2018.² The Plaintiff is a homeowners association of a
20 common-interest community. The FAC is a construction defect matter which contains the
21 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied
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27 ¹ While styled as a motion to strike, the Plaintiff concedes the Motion is a motion for partial summary judgment. *See* the
28 Motion, p. 10 n. 1.

² The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

1 Warranties Pursuant to NRS 116.4113 and NRS 11.4114³ and Common Law; 3) Negligent
2 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS
3 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends
4 the Defendants negligently designed and constructed rockery walls within the Plaintiff's common-
5 interest community and breached the express and implied warranties associated with the
6 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently
7 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls
8 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.
9


10
11 The Plaintiff contends the Court should strike the Defendants' affirmative defenses
12 regarding the statute of limitations and the statute of repose because all of the Plaintiff's claims
13 were tolled until control of the Plaintiff's board was transferred from Defendant SOMERSETT
14 DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8, 2013. The Motion 8:14-28;
15 9:20-24; 11:11-25. The Plaintiff also contends the claims were timely filed within six years of
16 transfer of control and are subject to equitable tolling and equitable estoppel. The Motion 11:23-
17 26; 12:1-3; 15:13-28; 16:1-13. The Defendants respond the Plaintiff fails to appreciate the
18 distinction between statutes of repose and statutes of limitation as well as the applicability of
19 statutory and equitable tolling. The Opposition 5:9-18; 6:1-5; 7:1-15; 8:7-23. The Defendants also
20 argue all claims, including the warranty claims, are subject to the statute of repose. The Opposition
21 9:111-15; 10:1-8. The Plaintiff replies that the statute of repose is inapplicable to warranty claims
22 and, even if applicable, is subject to statutory tolling. The Reply 4:19-22; 5:1-3; 6:16-25; 7:13-15;
23 8:19-24; 9:1-5; 11:15-18.
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³ The Court presumes the Plaintiff intended to write "116.4144."

1 On October 2, 2019, the Court entered the ORDER GRANTING DEFENDANTS'
2 MOTION FOR SUMMARY JUDGMENT ("the MSJ Order"). In the MSJ Order, the Court ruled
3 that all of the Plaintiff's claims were subject to the six-year statute of repose contained in NRS
4 11.202. The MSJ Order 6:15-23. The Court further found the Plaintiff had failed to provide
5 specific evidence demonstrating the FAC was filed within the six-year statute of repose and entered
6 summary judgment in favor of the Defendants. The MSJ Order 6:9-28; 7:1-23. Given the ruling in
7 the MSJ Order, the Motion is moot.
8

9 **IT IS ORDERED** the MOTION OF PLAINTIFF TO STRIKE CERTAIN AFFIRMATIVE
10 DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE; REQUEST FOR
11 JUDICIAL NOTICE AND DECLARATIONS OF JOHN SAMBERG, ESQ. AND TRACY
12 CARTER IN SUPPORT THEREOF is hereby **DENIED** as moot.
13

14 **DATED** this 3 day of October, 2019.
15

16
17 
18 ELLIOTT A. SATTLER
19 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this _____ day of October, 2019, I deposited in
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:
6

7
8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of
10 Nevada, in and for the County of Washoe; that on the 3rd day of October, 2019, I electronically
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
12 electronic filing to the following:
13

14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

16 DIRK GASPAR, ESQ.

17 DAVID LEE, ESQ.

18 STEPHEN CASTRONOVA, ESQ.

19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.
24
25
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28



Sheila Mansfield
Judicial Assistant

EXHIBIT 10

EXHIBIT 10

1 **2540**
2 **WOLF, RIFKIN, SHAPIRO,**
3 **SCHULMAN & RABKIN, LLP**
4 DON SPRINGMEYER, ESQ. (NSB: 1021)
5 BRADLEY SCHRAGER, ESQ. (NSB: 10217)
6 JOHN SAMBERG, ESQ. (NSB 10828)
7 ROYI MOAS, ESQ. (NSB 10686)
8 5594-B Longley Lane
9 Reno, Nevada 89511
10 (775) 853-6787
11 dspringmeyer@wrslawyers.com
12 bschrager@wrslawyers.com
13 jsamberg@wrslawyers.com
14 rmoas@wrslawyers.com
15 *Attorneys for Somersett Owners Association*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND**
17 **FOR THE COUNTY OF WASHOE**

18 SOMERSETT OWNERS ASSOCIATION, a
19 Domestic Non-Profit Corporation,

20 Plaintiff,

21 vs.

22 SOMERSETT DEVELOPMENT COMPANY,
23 LTD, a Nevada Limited Liability Company;
24 SOMERSETT, LLC a dissolved Nevada
25 Limited Liability Company; SOMERSETT
26 DEVELOPMENT CORPORATION, a
27 dissolved Nevada Corporation; PARSONS
28 BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that an ORDER DENYING PLAINTIFF'S MOTION TO
STRIKE CERTAIN AFFIRMATIVE DEFENSES RELATING TO STATUTES OF
LIMITATIONS AND REPOSE was entered in the above-captioned matter on the 3rd day of
October, 2019. A true and correct copy of the Order is attached hereto as Exhibit 1.

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AFFIRMATION

The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603A.040 about any person.

DATED this 13th day of November, 2019.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

By: /s/ John Samberg

DON SPRINGMEYER, ESQ. (NSB: 1021)
BRADLEY SCHRAGER, ESQ. (NSB: 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
ROYI MOAS, ESQ. (NSB 10686)
5594 B Longley Lane
Reno, Nevada 89511
(775) 853-6787/Fax (775) 853-6774
*Attorneys for Plaintiff Somersett Owners
Association*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 3rd day of November, 2019, I electronically filed the foregoing
3 **NOTICE OF ENTRY OF ORDER** with the Clerk of the Court by electronic service, in
4 accordance with the Master Service List, pursuant to NEFCR 9 to the following:

5 Charles Burcham, Esq.
6 Wade Carner, Esq.
7 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
8 for SOMERSETT DEVELOPMENT
9 CORPORATION, SOMERSTT, LLC., SOMERSETT
DEVELOPMENT COMPANY LTD
E-Mail: clb@thorndal.com
E-Mail: wnc@thorndal.com

Steve Castronova, Esq.
Castronova Law Offices, P.C.
for PARSONS BROS. ROCKERIES
E-Mail: sgc@castronovaLaw.com

10 Natasha Landrum, Esq.
11 Dirk W. Gaspar, Esq.
12 David Lee, Esq.
13 Lee, Hernandez, Landrum & Garofalo
14 for Q & D CONSTRUCTION, INC.
E-Mail: dgaspar@lee-lawfirm.com
E-Mail: nlandrum@lee-lawfirm.com
E-Mail: dlee@lee-lawfirm.com

Theodore E. Chrissinger, Esq.
Michael S. Kimmel, Esq.
Hoy, Chrissinger, Kimmel, Vallas P.C.
for STANTEC CONSULTING
SERVICES, INC.
Email: tchrissinger@nevadalaw.com
Email: mkimmel@nevadalaw.com

15
16 By /s/ Dannielle Fresquez
17 Dannielle Fresquez, an employee of
18 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
19 RABKIN, LLP
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EXHIBIT INDEX

1. Order Denying Plaintiff’s Motion to Strike Certain Affirmative Defenses Relating to Statutes of Limitations And Repose

FILED
Electronically
CV17-02427
2019-11-13 10:51:56 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7585242

EXHIBIT 1

EXHIBIT 1

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,
a Nevada limited liability company;
SOMERSETT, LLC, a dissolved Nevada
limited liability company; SOMERSETT
DEVELOPMENT CORPORATION, a
dissolved Nevada corporation; Q&D
CONSTRUCTION, INC., PARSONS
BROTHERS ROCKERIES, INC., a
Washington corporation; PARSONS ROCKS!,
LLC, a Nevada limited liability company, and
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

ORDER DENYING MOTION TO STRIKE AS MOOT

Presently before the Court is the MOTION OF PLAINTIFF TO STRIKE CERTAIN
AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE;
REQUEST FOR JUDICIAL NOTICE AND DECLARATIONS OF JOHN SAMBERG, ESQ.

1 AND TRACY CARTER IN SUPPORT THEREOF¹ (“the Motion”) filed by Plaintiff
2 SOMERSETT OWNERS ASSOCIATION (“the Plaintiff”) on January 17, 2019. The Plaintiff also
3 filed PLAINTIFF SOMERSETT OWNERS ASSOCIATION’S REQUEST FOR JUDICIAL
4 NOTICE IN SUPPORT OF PLAINTIFF’S MOTION TO STRIKE CERTAIN AFFIRMATIVE
5 DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE (“the RJN”) on
6 January 17, 2019. Defendant STANTEC CONSULTING SERVICES INC. (“Stantec”) filed
7 STANTEC’S OBJECTION TO PLAINTIFF’S EVIDENCE OFFERED IN ITS MOTION TO
8 STRIKE (“the Objection”) on March 26, 2019. Stantec and SOMERSETT DEVELOPMENT CO.,
9 LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT CORPORATION; Q&D
10 CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES, INC. (collectively, “the
11 Defendants”) filed DEFENDANTS’ OPPOSITION TO SOMERSETT OWNERS
12 ASSOCIATION’S MOTION TO STRIKE (“the Opposition”) on March 26, 2019. The Plaintiff
13 filed the REPLY OF PLAINTIFF IN SUPPORT OF ITS MOTION TO STRIKE CERTAIN
14 AFFIRMATIVE DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE
15 (“the Reply”) on April 26, 2019. The Court held a hearing on July 15, 2019, and took the matter
16 under advisement.

17
18 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES
19 (CORRECTED) (“the FAC”) on May 3, 2018.² The Plaintiff is a homeowners association of a
20 common-interest community. The FAC is a construction defect matter which contains the
21 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied
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27 ¹ While styled as a motion to strike, the Plaintiff concedes the Motion is a motion for partial summary judgment. *See* the
28 Motion, p. 10 n. 1.

² The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

1 Warranties Pursuant to NRS 116.4113 and NRS 11.4114³ and Common Law; 3) Negligent
2 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS
3 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends
4 the Defendants negligently designed and constructed rockery walls within the Plaintiff's common-
5 interest community and breached the express and implied warranties associated with the
6 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently
7 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls
8 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.
9


10
11 The Plaintiff contends the Court should strike the Defendants' affirmative defenses
12 regarding the statute of limitations and the statute of repose because all of the Plaintiff's claims
13 were tolled until control of the Plaintiff's board was transferred from Defendant SOMERSETT
14 DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8, 2013. The Motion 8:14-28;
15 9:20-24; 11:11-25. The Plaintiff also contends the claims were timely filed within six years of
16 transfer of control and are subject to equitable tolling and equitable estoppel. The Motion 11:23-
17 26; 12:1-3; 15:13-28; 16:1-13. The Defendants respond the Plaintiff fails to appreciate the
18 distinction between statutes of repose and statutes of limitation as well as the applicability of
19 statutory and equitable tolling. The Opposition 5:9-18; 6:1-5; 7:1-15; 8:7-23. The Defendants also
20 argue all claims, including the warranty claims, are subject to the statute of repose. The Opposition
21 9:111-15; 10:1-8. The Plaintiff replies that the statute of repose is inapplicable to warranty claims
22 and, even if applicable, is subject to statutory tolling. The Reply 4:19-22; 5:1-3; 6:16-25; 7:13-15;
23 8:19-24; 9:1-5; 11:15-18.
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³ The Court presumes the Plaintiff intended to write "116.4144."

1 On October 2, 2019, the Court entered the ORDER GRANTING DEFENDANTS'
2 MOTION FOR SUMMARY JUDGMENT ("the MSJ Order"). In the MSJ Order, the Court ruled
3 that all of the Plaintiff's claims were subject to the six-year statute of repose contained in NRS
4 11.202. The MSJ Order 6:15-23. The Court further found the Plaintiff had failed to provide
5 specific evidence demonstrating the FAC was filed within the six-year statute of repose and entered
6 summary judgment in favor of the Defendants. The MSJ Order 6:9-28; 7:1-23. Given the ruling in
7 the MSJ Order, the Motion is moot.
8

9 **IT IS ORDERED** the MOTION OF PLAINTIFF TO STRIKE CERTAIN AFFIRMATIVE
10 DEFENSES RELATING TO STATUTES OF LIMITATION AND REPOSE; REQUEST FOR
11 JUDICIAL NOTICE AND DECLARATIONS OF JOHN SAMBERG, ESQ. AND TRACY
12 CARTER IN SUPPORT THEREOF is hereby **DENIED** as moot.
13

14 **DATED** this 3 day of October, 2019.
15

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18 ELLIOTT A. SATTLER
19 District Judge
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 of the State of Nevada, County of Washoe; that on this _____ day of October, 2019, I deposited in
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,
5 Nevada, a true copy of the attached document addressed to:
6

7
8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of
10 Nevada, in and for the County of Washoe; that on the 3rd day of October, 2019, I electronically
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of
12 electronic filing to the following:
13

14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

16 DIRK GASPAR, ESQ.

17 DAVID LEE, ESQ.

18 STEPHEN CASTRONOVA, ESQ.

19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.

24
25
26 

27 Sheila Mansfield
28 Judicial Assistant

EXHIBIT 11

EXHIBIT 11

1 **2540**
2 **WOLF, RIFKIN, SHAPIRO,**
3 **SCHULMAN & RABKIN, LLP**
4 DON SPRINGMEYER, ESQ. (NSB: 1021)
5 BRADLEY SCHRAGER, ESQ. (NSB: 10217)
6 JOHN SAMBERG, ESQ. (NSB 10828)
7 ROYI MOAS, ESQ. (NSB 10686)
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10 (775) 853-6787
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12 bschrager@wrslawyers.com
13 jsamberg@wrslawyers.com
14 rmoas@wrslawyers.com
15 *Attorneys for Somersett Owners Association*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND**
17 **FOR THE COUNTY OF WASHOE**

18 SOMERSETT OWNERS ASSOCIATION, a
19 Domestic Non-Profit Corporation,

20 Plaintiff,

21 vs.

22 SOMERSETT DEVELOPMENT COMPANY,
23 LTD, a Nevada Limited Liability Company;
24 SOMERSETT, LLC a dissolved Nevada
25 Limited Liability Company; SOMERSETT
26 DEVELOPMENT CORPORATION, a
27 dissolved Nevada Corporation; PARSONS
28 BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that an ORDER GRANTING PLAINTIFF'S NRCP 54(B)
MOTION FOR CERTIFICATION OF FINAL JUDGMENT FOR PURPOSES OF APPEAL was
entered in the above-captioned matter on the 9th day of December, 2019. A true and correct copy
of the Order is attached hereto as Exhibit 1.

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AFFIRMATION

The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603A.040 about any person.

DATED this 19th day of December, 2019.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

By: /s/ Bradley S. Schrager
DON SPRINGMEYER, ESQ. (NSB: 1021)
BRADLEY SCHRAGER, ESQ. (NSB: 10217)
JOHN SAMBERG, ESQ. (NSB 10828)
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*Attorneys for Plaintiff Somersett Owners
Association*

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of December, 2019, that the foregoing **NOTICE OF ENTRY OF ORDER** was served via the Washoe County E-Flex Filing System on all parties or persons requesting notice in accordance with the Master Service List.

By /s/ Dannielle Fresquez
Dannielle Fresquez, an employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

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EXHIBIT INDEX

1. ORDER GRANTING PLAINTIFF’S NRCP 54(B) MOTION FOR CERTIFICATION OF FINAL JUDGMENT FOR PURPOSES OF APPEAL

EXHIBIT 1

EXHIBIT 1

1 **3105**
2 **WOLF, RIFKIN, SHAPIRO,**
3 **SCHULMAN & RABKIN, LLP**
4 DON SPRINGMEYER, ESQ. (NSB: 1021)
5 BRADLEY SCHRAGER, ESQ. (NSB: 10217)
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14 rmoas@wrslawyers.com
15 *Attorneys for Somerset Owners Association*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND**
17 **FOR THE COUNTY OF WASHOE**

18 SOMERSETT OWNERS ASSOCIATION, a
19 Domestic Non-Profit Corporation,

20 Plaintiff,

21 vs.

22 SOMERSETT DEVELOPMENT COMPANY,
23 LTD, a Nevada Limited Liability Company;
24 SOMERSETT, LLC a dissolved Nevada
25 Limited Liability Company; SOMERSETT
26 DEVELOPMENT CORPORATION, a
27 dissolved Nevada Corporation; PARSONS
28 BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

**ORDER GRANTING
PLAINTIFF'S NRCP 54(B) MOTION FOR
CERTIFICATION OF FINAL
JUDGMENT FOR PURPOSES OF
APPEAL**

The Court, having reviewed Plaintiff Somerset Owners Association's NRCP 54(b) Motion for Certification of Final Judgment for Purposes of Appeal ("Motion"), filed on November 22, 2019, and no opposition having been filed, finds and orders as follows:

THE COURT FINDS that its order granting summary judgment for Defendants, entered on October 2, 2019, did not adjudicate all the claims and rights of the parties, as there remained cross claims for between Defendant/Cross-Claimant Somerset Development Co. Ltd. against

1 Cross-Defendants Q&D Construction, Inc. and Parsons Brothers Rockeries, Inc.; and third-party
2 claims for implied indemnity, contribution, equitable indemnity, apportionment, and express
3 indemnity by Defendant/Third-Party Plaintiff Somerset Development Co. Ltd. against Third-
4 Party Defendant Stantec Consulting Inc.

5 **THE COURT FURTHER FINDS** that, cause appearing, there is no just reason for delay
6 in certifying and entering final judgment for Defendants against Plaintiff, for purposes of appeal of
7 this Court's October 2, 2019 summary judgment order.

8 **IT IS HEREBY ORDERED** that Plaintiff's NRCP 54(b) motion is granted, and the Court
9 directs final judgment be entered for Defendants against Plaintiff on the basis of the October 2,
10 2019 order of the Court.

11 DATED this 9 day of DECEMBER 2019.

12
13 
14 DISTRICT COURT JUDGE

15 Respectfully Submitted By:

16
17 /s/ Bradley Schrager

18 **WOLF, RIFKIN, SHAPIRO,**
19 **SCHULMAN & RABKIN, LLP**
20 DON SPRINGMEYER, ESQ. (NSB: 1021)
21 BRADLEY SCHRAGER, ESQ. (NSB: 10217)
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