

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

SOMERSETT OWNERS
ASSOCIATION, a Domestic Non-
Profit Corporation,

Appellant,

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; and STANTEC
CONSULTING SERVICES, INC.,

Respondents.

Case No. 79921

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APPELLANT SOMERSETT OWNERS ASSOCIATION'S

APPENDIX

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DATED this 13th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2020, a true and correct copy of the foregoing Appellant Somerset Owners Association's Appendix was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

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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

18 4. SOA does not allege in its amended complaint that it brought its claims
19 timely. *See generally, Id.*
20

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

23 6. SOA has not produced any admissible evidence to demonstrate if and when
24 any notices of completion for the rockery walls were recorded. *Id.*
25

26
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.*

8 **Summary Judgment Standard**

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

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

19 **Argument**

20 NRS 11.202 provides that no action for damages for any deficiency in the design,
21 planning, supervision, or observation of construction, or the construction of any
22 improvement may be commenced more than six years after substantial completion of the
23 improvement. NRS 11.202(1). The date of substantial completion is the later of (a) the
24 final building inspection of the improvement, (b) issuance of a notice of completion for the
25
26
27
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
11 **A. While statutes of limitations are subject to equitable tolling,**
12 **statutes of repose are not.**

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

21
22 Statutes of repose, on the other hand, "effect a legislative judgment that a defendant
23 should "be free from liability after the legislatively determined period of time." *CTS Corp.*,
24 573 U.S. at 9 (quoting 54 C.J.S., Limitations of Actions § 7, p. 24 (2010)). "Like a discharge in
25 bankruptcy, a statute of repose can be said to provide a fresh start or freedom from
26 liability." *Id.*
27
28

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.
24
25
26
27
28



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


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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.
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STEPHEN CASTRONOVA for PARSONS BROS. ROCKERIES, CA, INC.
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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

Code: 1520
HOY | CHRISSINGER | KIMMEL | VALLAS
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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.

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

vs.

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

Case No.: CV17-02427

Dept. No.: 10



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



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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3	SOA's Supplemental Responses	9
4	SOA's Second Supplemental Responses	10
5	SOA's Third Supplemental Responses	10

Exhibit 1

Exhibit 1

1 **DISCOVERY**

2 CASTRONOVA LAW OFFICES, PC
3 Stephen G. Castronova, Esq. [SBN 7305]
4 605 Forest Street
5 Reno, NV 89509
6 (775) 323-2646 Fax: (775) 323-3181
7 Attorneys for Defendant,
8 Parsons Bros Rockeries, Inc.

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

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

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

14 Plaintiff,

15 vs.

16 SOMERSETT DEVELOPMENT COMPANY,
17 LTD., a Nevada Limited Liability Company;
18 SOMERSET, LLC, a dissolved Nevada Limited
19 Liability Company; SOMERSETT
20 DEVELOPMENT CORPORATION, a dissolved
21 Nevada Corporation; Q & D Construction, Inc., a
22 Nevada Corporation; PARSONS BROS
23 ROCKERIES, INC., a Washington Corporation;
24 PARSONS ROCKS!, LLC., a Nevada Limited
25 Liability Company, and DOES 5-50, inclusive,

26 Defendants.

27 And Related Actions

CASE NO. CV17-02427

DEPT.: 10

PARSONS BROS ROCKERIES, INC.'S
FIRST SET OF INTERROGATORIES TO
PLAINTIFF, SOMERSETT OWNERS
ASSOCIATION

28 PROPOUNDING PARTY: Defendant: Parsons Brothers Rockeries, Inc.

RESPONDING PARTY: Plaintiff: Somerset Owners Association

SET NUMBER: One (1)

Defendant, Parsons Brothers Rockeries, Inc., ("Parsons") hereby requests that Plaintiff,
Somerset Owners Association., ("SOA") answer the following specially prepared interrogatories
separately, fully and under oath pursuant to Nevada Rules of Civil Procedure, Rule 33, within thirty-

AA000226

1 five (35) days of service hereof.

2 **DEFINITIONS**

3 As used in these interrogatories, the following terms have the meanings indicated:

- 4
1. "You", and "your", refer to Plaintiff herein.
 2. "Identify" when used in reference to:
 - 6 (a) a natural person means to provide the name, last known address and telephone number;
 - 7 (b) a person other than a natural person means to state its full name and present address.
 3. "Project" refers to the Association Development as described by you in Paragraph 2 of your First Amended Complaint.
- 9

10 **SPECIAL INTERROGATORIES**

11 **Special Interrogatory No. 1:**

12 With respect to any of the rockery walls at issue in this case, do you contend that any such
13 wall was substantially completed after December 31, 2006?
14

15 **Special Interrogatory No. 2:**

16 If your response to Interrogatory Number 1 is anything other than an unqualified denial, please
17 identify the total number of rockery walls which you claim were substantially completed after
18 December 31, 2006.
19

20 **Special Interrogatory No. 3:**

21 With respect to the total number of rockery walls identified by you in your response to
22 Interrogatory Number 2, please identify the location within the project of each such wall.

23 **Special Interrogatory No. 4:**

24 Please set forth the specific facts upon which your Response to Interrogatory Number 2 is
25 based.
26

1 **Special Interrogatory No. 5:**

2 Please identify by name and address all persons known to you with knowledge of the
3 facts set forth in your Response to Interrogatory Number 4.

4 **Special Interrogatory No. 6:**

5 Please identify, by date and author, all documents in your control or possession which
6 support or evidence the facts set forth by you in your response to Interrogatory Number 4.

7 **Special Interrogatory No. 7:**

8 With respect to each rock wall at issue in this case which you claim is defective please:

9 (a) identify the location of each such wall within the project; and,

10 (b) for each such wall set forth the date you contend it was substantially completed.

11 **Special Interrogatory No. 8:**

12 Please set forth the specific facts upon which your Response to Interrogatory
13 Number 7 is based.

14 **Special Interrogatory No. 9:**

15 Please identify by name and address all persons known to you with knowledge of the
16 facts set forth in your Response to Interrogatory Number 7.

17 **Special Interrogatory No. 10:**

18 Please identify, by date and author, all documents in your control or possession which
19 support or evidence the facts set forth by you in your response to Interrogatory Number 7.

20 **Special Interrogatory No. 11:**

21 Was a vote to ratify this lawsuit conducted by the SOA's members pursuant to the provisions
22 of NRS 116.3115?
23
24

1 **Special Interrogatory No. 12:**

2 If your answer to Interrogatory Number 11 is in the affirmative, please set forth the:

3 (a) when the membership vote was conducted;

4 (b) total votes cast in favor of pursuing this litigation;

5 (c) total votes cast in opposition to pursuing this litigation;

6 (d) total votes cast in abstention.

7
8 **Special Interrogatory No. 13:**

9 Please set forth the total number of members of the SOA as of March 2018.

10
11 **AFFIRMATION**

12 The undersigned hereby affirms that the foregoing document does not contain the social
13 security number of any person.

14
15 DATED this 2nd day of October, 2018.

CASTRONOVA LAW OFFICES, P.C.

16
17 

18 _____
19 Stephen G. Castronova, Esq. [SBN 7305]
20 605 Forest Street
21 Reno, Nevada 89509
22 Telephone: (775) 323-2646
23 Fax: (775) 323-3181
24 Attorneys for Parsons Brothers Rockeries, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2018, I served a true and correct copy of the foregoing document, Via U.S. MAIL, addressed to the following recipients:

<u>NAME & ADDRESS</u>	<u>PARTY</u>
Don Springmeyer, Esq. John Samberg, Esq. Roi Moas, Esq. WOLF, RIFKIN, SHAPIRO, <i>et. al.</i> 5594 B Longley Lane Reno, NV 89511 dspringmeyer@wrslawyers.com jsamberg@wrslawyers.com rmoas@wrslawyers.com	Plaintiff
Charles L. Burcham, Esq. Wade Carner, Esq. Thorndal, Armstrong, Delk, Balkenbush & Eisinger 6590 S. McCarran Blvd., Ste. B Reno, NV 879509	Defendants Somerset Development Company, LTD, Somerset, LLC, and Somerset Development Corporation
David S. Lee, Esq. Natasha Landrum, Esq. Dirk W. Gaspar, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Ste. 150 Las Vegas, NV 89128 dlee@lee-lawfirm.com mlandrum@lee-lawfirm.com dgaspar@lee-lawfirm.com	Defendant Q & D Construction, Inc.
Theodore E. Chrissinger, Esq. Michael S. Kimmel, Esq. Hoy Chrissinger Kimmel Valas 50 W. Liberty Street, Ste. 840 Reno, NV 89501 tchrissinger@nevadalaw.com mkimmel@nevadalaw.com	Third-Party Defendant Stantec Consulting, Inc.



An employee of Castronova Law Offices, P.C.

Exhibit 2

Exhibit 2

DISCOVERY
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
DON SPRINGMEYER, ESQ.
Nevada Bar No. 1021
JOHN SAMBERG, ESQ.
Nevada Bar No. 10828
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JSamberg@wrslawyers.com
rmoas@wrslawyers.com

Attorneys for Somersett Owners Association

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; PARSONS
BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S RESPONSES AND
OBJECTIONS TO PARSONS BROS
ROCKERIES, INC.'S FIRST SET OF
INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its
attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the
following objections and responses to PARSONS BROS ROCKERIES, INC., ("Defendant") First
Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Without waiving its General Objections, Plaintiff answers the interrogatories in accordance
7 with applicable law and based on the understanding of the fair meaning of these interrogatories as
8 follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed.” Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants behalf. Investigation and discovery are continuing
19 and this answer will be supplemented as new information becomes available.

20 **Special Interrogatory No. 2:**

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

24 **Response to Special Interrogatory No. 2:**

25 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
26 the grounds that it dependent upon prior request that improperly seeks a legal conclusion with
27 regard to the term “substantially completed.” Subject to these objections, Plaintiff responds as
28 follows: Plaintiff is in the process of conducting discovery from Defendants to determine the

1 date the rockery walls were completed, including but not limited to any maintenance,
2 alterations, and or repairs that were conducted by the declarant, or on declarants behalf.
3 Investigation and discovery are continuing and this answer will be supplemented as new
4 information becomes available. Plaintiff acknowledges that commencement of construction of
5 some of the walls preceded December 31, 2006, based on the documents provided in this case
6 thus far, but does not have the information regarding all the walls. In fact, as part of the
7 discovery, propounded by the Plaintiff to the Defendants, on November 1, 2018, Plaintiff seeks
8 documents – solely in Defendants’ possession – addressing the completion dates.

9 **Special Interrogatory No. 3:**

10 With respect to the total number of rockery walls identified by you in your response to
11 Interrogatory Number 2, please identify the location within the project of each such wall.

12 **Response to Special Interrogatory No. 3:**

13 See Response to Interrogatory No. 1 and 2, above.

14 **Special Interrogatory No. 4:**

15 Please set forth the specific facts upon which your Response to Interrogatory Number 2
16 is based.

17 **Response to Special Interrogatory No. 4:**

18 See Response to Interrogatory No. 1 and 2, above.

19 **Special Interrogatory No. 5:**

20 Please identify by name and address all persons known to you with knowledge of the facts
21 set forth in your Response to Interrogatory Number 4.

22 **Response to Special Interrogatory No. 5:**

23 In addition to the General Objections, Plaintiff further objects to this Interrogatory on the
24 grounds that a request to identify “all persons” who has knowledge or information concerning
25 facts is overly broad and burdensome. Without waiving these objections, Plaintiff adopts by
26 reference the Witnesses List supplied in Plaintiff’s Third Disclosure of Witnesses & Documents,
27 Defendant Stantec Consulting, Inc., and Defendant Somerset Development Companies’ Initial
28 Disclosures of Witnesses & Documents served on this Propounding Party respectively on

1 October 1, 2018, October 9, 2018, and October 3, 2018. In addition, Plaintiff is in the process
2 of conducting discovery from Defendants to identify the individuals with knowledge relating to
3 the construction of the rockery walls; Investigation and discovery are continuing and this answer
4 will be supplemented as new information becomes available.

5 **Special Interrogatory No. 6:**

6 Please identify, by date and author, all documents in your control or possession which
7 support or evidence the facts set forth by you in your response to Interrogatory Number 4.

8 **Response to Special Interrogatory No. 6:**

9 Plaintiff adopts by reference the documents supplied in Plaintiff's First Pre-Mediation
10 Discovery Disclosures, Second Pre-Litigation Disclosure and Third Disclosure of Witnesses &
11 Documents, Defendant Stantec Consulting, Inc., and Defendant Somerset Development
12 Companies' Initial Disclosures of Witnesses & Documents served on this Propounding Party
13 respectively on June 7, 2018, July 31, 2018, October 1, 2018, October 9, 2018, and October 3,
14 2018. In addition, Plaintiff is in the process of conducting discovery from Defendants to
15 identify the individuals with knowledge relating to the construction of the rockery walls;
16 Investigation and discovery are continuing and this answer will be supplemented as new
17 information becomes available.

18 **Special Interrogatory No. 7:**

19 With respect to each rock wall at issue in this case which you claim is defective please:

20 (a) identify the location of each such wall within the project; and,

21 (b) for each such wall set forth the date you contend it was substantially completed.

22 **Response to Special Interrogatory No. 7:**

23 In addition to the General Objections, Plaintiff further objects to this Interrogatory on the
24 grounds that it is cumulative with information and specific identifications provided to all parties.
25 Subject to these objections, Plaintiff responds as follows:

26 (a) All rockery walls Plaintiff claims are defective are common area rockery walls within
27 the Somerset Development, and the exact location and defective condition is specifically
28 identified in maps/sub-maps previously provided in documents produced through Plaintiff's

1 Chapter 40 Notice, a CD labeled Exhibit 2a, previously Bates Labeled PSOA000028. The
2 documents within the CD are concurrently being produced in Plaintiff's 4th Supplemental
3 Disclosures bearing Bates Labels SPOA16087 – SPOA18152. Plaintiff's directs this propounding
4 party to Site Documentation Reference Map and referenced sub-set maps 1 – 28 bearing Bates
5 Labels SPOA016105 – SPOA16133 which identify the location and descriptions of each such wall
6 within the project. Investigation and discovery are continuing and this answer will be
7 supplemented as new information becomes available.

8 (b) *See* Response to Interrogatory No. 1 and No. 2, above.

9 **Special Interrogatory No. 8:**

10 Please set forth the specific facts upon which your Response to Interrogatory Number 7
11 is based.

12 **Response to Special Interrogatory No. 8:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory to
14 the extent that it is ambiguous, and refers to the previous interrogatory, which includes subparts
15 separate and distinct from the line of inquiry from the primary Interrogatory. Subject to these
16 objections, Plaintiff responds as follows as to Interrogatory No. 7, subpart (a): The request is
17 unduly burdensome in that it requests the facts supporting each and every defect identified in
18 over 13 miles of rockery walls, already provided with specificity in Plaintiff's Chapter 40.600
19 report, and concurrently being produced again in Plaintiff's 4th Supplemental Disclosures bearing
20 Bates Labels SPOA16087 – SPOA18152. Plaintiff relies upon the report from American
21 Geotechnical, Inc. and Edred T. Marsh, the engineer retained to investigate and prepare the
22 preliminary evaluation, and basis its response on such report. Investigation and discovery are
23 continuing and this answer will be supplemented as new information becomes available.

24 Subject to these objections, Plaintiff responds as follows as to Interrogatory No. 7,
25 subpart (b), Plaintiff responds as follows: *See* Response to Interrogatory No. 1 and No. 2,
26 above.

27 **Special Interrogatory No. 9:**

28 Please identify by name and address all persons known to you with knowledge of the

1 facts set forth in your Response to Interrogatory Number 7.

2 **Response to Special Interrogatory No. 9:**

3 In addition to the General Objections, Plaintiff further objects to this Interrogatory on the
4 grounds that a request to identify “all persons” who has knowledge or information concerning
5 facts is overly broad and burdensome. Without waiving these objections, Edred T. Marsh, P.E.,
6 Donny Cross, Jonathon Guillaume, Douglas Santo, Megan Johnson, and Kevin Rogers of
7 American Geotechnical, Inc., at 5764 Pacific Center Boulevard, Ste 112, San Diego, CA 92121,
8 current Board Members Tom Fitzgerald, Jason Roland, Frank Leto, Ryan Burns, Steve Guderian,
9 c/o Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP; Plaintiff further identifies Kevin L. German,
10 P.E., of CFA, Inc., 1150 Corporate Boulevard, Reno, NV 89502; Randal A. Reynolds, PE., Stella
11 A. Montalvo, PE of Construction Materials Engineers, Inc., 6980 Sierra Center Parkway, Ste 90,
12 Reno, NV 89511; William F. Kane, PhD, PG, PE of Kane GeoTech, Inc. and Seth Padovan of
13 Padovan Consulting, LLC., 830 Sequoia Pass Court, Sparks, NV 899436 and all individuals
14 previously disclosed by Defendants. Investigation and discovery are continuing and this answer
15 will be supplemented as new information becomes available.

16 **Special Interrogatory No. 10:**

17 Please identify, by date and author, all documents in your control or possession which
18 support or evidence the facts set forth by you in your response to Interrogatory Number 7.

19 **Response to Special Interrogatory No. 10:**

20 See Response to Interrogatory No. 1 and No. 2, above. In addition, see Response to
21 Interrogatory No. 9. Investigation and discovery are continuing and this answer will be
22 supplemented as new information becomes available.

23 **Special Interrogatory No. 11:**

24 Was a vote to ratify this lawsuit conducted by the SOA’s members pursuant to the
25 provisions of NRS 116.3115?

26 **Response to Special Interrogatory No. 11:**

27 Plaintiff objects to this requests in that it calls for a legal opinion. Notwithstanding the
28 same objection, Plaintiff responds as follows: Yes.

1 **Special Interrogatory No. 12:**

2 If your answer to Interrogatory Number 11 is in the affirmative, please set forth the:

3 (a) when the membership vote was conducted;

4 (b) total votes cast in favor of pursuing this litigation;

5 (c) total votes cast in opposition to pursuing this litigation;

6 (d) total votes cast in abstention.

7 **Response to Special Interrogatory No. 12:**

8 Plaintiff objects to this request to the extent that it is irrelevant and not likely to lead to
9 admissible evidence. Notwithstanding said objection, Plaintiff responds as follows:

10 (a) March of 2018;

11 (b) 716 votes in favor;

12 (c) 205 votes opposed; and

13 (d) 36 votes in abstention.

14 ///

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28 ///

1 **Special Interrogatory No. 13:**

2 Please set forth the total number of members of the SOA as of March 2018.

3 **Response to Special Interrogatory No. 13:**

4 As of March 2018, there were a total of 3,058 units in the SOA.

5 **AFFIRMATION**

6 The undersigned hereby affirms that the foregoing document does not contain the social
7 security number of any person.

8 DATED this 30th day of November, 2018

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

11
12 By: /s/ John Samberg
13 DON SPRINGMEYER, ESQ.
14 Nevada Bar No. 1021
15 ROYI MOAS, ESQ.
16 Nevada Bar No. 10686
17 JOHN SAMBERG, ESQ.
18 Nevada Bar No. 10828
19 3556 E. Russell Road, Second Floor
20 Las Vegas, Nevada 89120
21 (702) 341-5200/Fax: (702) 341-5300
22 *Attorneys for Somersett Owners Association*
23
24
25
26
27
28

1 **VERIFICATION**

2 STATE OF NEVADA)

3 COUNTY OF WASHOE)

4 Under penalty of perjury pursuant to the laws of the State of Nevada, the undersigned
5 declares:

6 That he is the President of the Plaintiff in this action, that he has read the foregoing
7 **PLAINTIFF'S RESPONSES AND OBJECTIONS TO PARSONS BROS ROCKERIES,**
8 **INC.'S FIRST SET OF INTERROGATORIES** and knows the contents thereof, and that all
9 information is true and correct to the best of his ability, based on information and belief.

10 Executed this 30 day of November, 2018, at Reno, Nevada

11 (City, State)

12 Tom Fitzgerald

13 Print Name

14
15 Thomas Fitzgerald

16 Signature
17
18
19
20
21
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 30th day of November 2018, a true and correct copy of
3 **SOMERSETT OWNERS ASSOCIATION'S RESPONSES TO PARSONS BROS**
4 **ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**
5 **SOMERSETT HOMEOWNERS ASSOCIATION** was submitted electronically for filing
6 and/or service with the Clerk of the Court using the Washoe County E-Flex Filing System, which
7 will send notification of such filing to all parties of record via their email address as follows:

8 Charles Brucham, Esq.
9 Wade Carner, Esq.
10 Thorndall, Armstrong, Delk, Blakenbush & Eisinger
11 for SOMERSETT DEVELOPMENT
12 CORPORATION, SOMERSTT, LLC., SOMERSETT
DEVELOPMENT COMPANY LTD
E-Mail: clb@thorndal.com
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Steve Castronova, Esq.
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for PARSONS BROS. ROCKERIES
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13 Natasha Landrum, Esq.
14 Dirk W. Gaspar, Esq.
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Hoy, Chrissinger, Kimmel & Vallas
for STANTEC CONSULTING
SERVICES, INC.
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18
19
20 By /s/ E. Noemy Valdez
An employee of WOLF, RIFKIN, SHAPIRO,
21 SCHULMAN & RABKIN, LLP
22
23
24
25
26
27
28

Exhibit 3

Exhibit 3

1 **DISCOVERY**
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.**
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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.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO
PARSONS BROS ROCKERIES, INC.'S
FIRST SET OF INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the following objections and supplemental responses to PARSONS BROS ROCKERIES, INC., ("Defendant") First Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Without waiving its General Objections, Plaintiff answers the interrogatories in accordance
7 with applicable law and based on the understanding of the fair meaning of these interrogatories as
8 follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed.” Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants’ behalf. Investigation and discovery are
19 continuing and this answer will be supplemented as new information becomes available.

20 **Supplemental Special Interrogatory No. 1:**

21 **In addition to the General Objections, Plaintiff further objects to this**
22 **Interrogatory on the grounds that it improperly seeks a legal conclusion with regard to**
23 **the term “substantially completed.” Subject to these objections, Plaintiff responds as**
24 **follows: The question is premature, as opposing parties have yet to provide Plaintiff with**
25 **complete information and documentation dealing with additional work and repairs**
26 **occurring during the declarant control period on the subject walls. Additionally,**
27 **Interrogatory No. 1 presumes that the walls were “substantially completed” on December**
28 **31, 2006, as this presumption lacks foundation and is an argumentative restatement of**

Defendants' arguments which are disputed by Plaintiff.

The evidence of completion provided by Defendants thus far is essentially limited to unrecorded documents that are insufficient to establish as a matter of law “substantial completion”. Unrecorded notices of completion are neither valid nor effective, as NRS 108.228 requires that to be effective Notices of Completion must be recorded. *See Dykema v. Del Webb Communities*, 385 P.3d 977 (2016). Further, the discovery and disclosure responses received thus far from the Defendants appear to be incomplete with regard to work done prior to the declarant turn over of the Board on or about January 3, 2013. Finally, in meet and confer discussions counsel for the developer/declarant has previously indicated that the developer/declarant is in possession of thousands of documents that had yet to be reviewed. Although the developer/declarant has made subsequent 16.1 disclosures, there has yet to be a representation from the developer/declarant that all records have been searched, and disclosed. Until there is an unequivocal representation from all defendants, including but not limited to the developer/declarant, that all records have been searched and disclosed, Plaintiff’s discovery is continuing as to the issues addressed in this interrogatory.

AFFIRMATION

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

1 DATED this 23rd day of January 2019

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

4
5 By: /s/ John Samberg

6 DON SPRINGMEYER, ESQ.

7 Nevada Bar No. 1021

8 ROYI MOAS, ESQ.

9 Nevada Bar No. 10686

10 JOHN SAMBERG, ESQ.

11 Nevada Bar No. 10828

12 3556 E. Russell Road, Second Floor

13 Las Vegas, Nevada 89120

14 (702) 341-5200/Fax: (702) 341-5300

15 *Attorneys for Somersett Owners Association*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 23rd day of January 2019, a true and correct copy of
3 **PLAINTIFF'S SUPPLEMENTAL RESPONSES TO PARSONS BROS ROCKERIES,**
4 **INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF SOMERSETT**
5 **HOMEOWNERS ASSOCIATION** was submitted electronically for filing and/or service with
6 the Clerk of the Court using the Washoe County E-Flex Filing System, which will send
7 notification of such filing to all parties of record via their email address as follows:

8 Charles Brucham, Esq.
9 Wade Carner, Esq.
10 Thorndall, Armstrong, Delk, Blakenbush & Eisinger
11 for SOMERSETT DEVELOPMENT
12 CORPORATION, SOMERSTT, LLC., SOMERSETT
DEVELOPMENT COMPANY LTD
E-Mail: clb@thorndal.com
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Steve Castronova, Esq.
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13 Natasha Landrum, Esq.
14 Dirk W. Gaspar, Esq.
15 David Lee, Esq.
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18
19
20 By /s/ E. Noemy Valdez
An employee of WOLF, RIFKIN, SHAPIRO,
21 SCHULMAN & RABKIN, LLP
22
23
24
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26
27
28

Exhibit 4

Exhibit 4

DISCOVERY
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
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Attorneys for Somerset Owners Association

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; PARSONS
BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S SECOND
SUPPLEMENTAL RESPONSES AND
OBJECTIONS TO PARSONS BROS
ROCKERIES, INC.'S FIRST SET OF
INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its
attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the
following objections and supplemental responses to PARSONS BROS ROCKERIES, INC.,
("Defendant") First Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Without waiving its General Objections, Plaintiff answers the interrogatories in accordance
7 with applicable law and based on the understanding of the fair meaning of these interrogatories as
8 follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed.” Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants’ behalf. Investigation and discovery are
19 continuing and this answer will be supplemented as new information becomes available.

20 **Supplemental Response to Special Interrogatory No. 1:**

21 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
22 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
23 completed.” Subject to these objections, Plaintiff responds as follows: The question is
24 premature, as opposing parties have yet to provide Plaintiff with complete information and
25 documentation dealing with additional work and repairs occurring during the declarant control
26 period on the subject walls. Additionally, Interrogatory No. 1 presumes that the walls were
27 “substantially completed” on December 31, 2006, as this presumption lacks foundation and is
28 an argumentative restatement of Defendants’ arguments which are disputed by Plaintiff.

1 The evidence of completion provided by Defendants thus far is essentially limited to
2 unrecorded documents that are insufficient to establish as a matter of law “substantial
3 completion”. Unrecorded notices of completion are neither valid nor effective, as NRS 108.228
4 requires that to be effective Notices of Completion must be recorded. *See Dykema v. Del Webb*
5 *Communities*, 385 P.3d 977 (2016). Further, the discovery and disclosure responses received
6 thus far from the Defendants appear to be incomplete with regard to work done prior to the
7 declarant turn over of the Board on or about January 3, 2013. Finally, in meet and confer
8 discussions counsel for the developer/declarant has previously indicated that the
9 developer/declarant is in possession of thousands of documents that had yet to be reviewed.
10 Although the developer/declarant has made subsequent 16.1 disclosures, there has yet to be a
11 representation from the developer/declarant that all records have been searched, and disclosed.
12 Until there is an unequivocal representation from all defendants, including but not limited to
13 the developer/declarant, that all records have been searched and disclosed, Plaintiff’s discovery
14 is continuing as to the issues addressed in this interrogatory.

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1 **Second Supplemental Response to Special Interrogatory No. 1:**

2 **In addition to the General Objections, Plaintiff further objects to this**
3 **Interrogatory on the grounds that it improperly seeks a legal conclusion with regard to**
4 **the term “substantially completed.” Subject to and without waiver of these objections**
5 **and to Plaintiff’s First Supplemental Responses, Plaintiff responds as follows: yes.**

6 **AFFIRMATION**

7 The undersigned hereby affirms that the foregoing document does not contain the social
8 security number of any person.

9 DATED this 12th day of February 2019

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

12
13 By: /s/ John Samberg
14 DON SPRINGMEYER, ESQ.
15 Nevada Bar No. 1021
16 ROYI MOAS, ESQ.
17 Nevada Bar No. 10686
18 JOHN SAMBERG, ESQ.
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20 3556 E. Russell Road, Second Floor
21 Las Vegas, Nevada 89120
22 (702) 341-5200/Fax: (702) 341-5300
23 *Attorneys for Somersett Owners Association*
24
25
26
27
28

1 **VERIFICATION**

2 STATE OF NEVADA)

3 COUNTY OF WASHOE)

4 Under penalty of perjury pursuant to the laws of the State of Nevada, the undersigned
5 declares:

6 That he is the President of the Plaintiff in this action, that he has read the foregoing
7 **PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO**
8 **PARSONS BROS ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES** and knows
9 the contents thereof, and that all information is true and correct to the best of his ability, based on
10 information and belief.

11 Executed this 21 day of February, 2019, at Reno, Nevada

12 (City, State)

13 Tom Fitzgerald

14 Print Name

15
16 

17 Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 12th day of February 2019, a true and correct copy of
3 **PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES TO PARSONS BROS**
4 **ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**
5 **SOMERSETT HOMEOWNERS ASSOCIATION** was submitted electronically for filing
6 and/or service with the Clerk of the Court using the Washoe County E-Flex Filing System, which
7 will send notification of such filing to all parties of record via their email address as follows:

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

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for PARSONS BROS. ROCKERIES
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13 Natasha Landrum, Esq.
14 Dirk W. Gaspar, Esq.
David Lee, Esq.
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17 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

18
19
20 By /s/ E. Noemy Valdez
An employee of WOLF, RIFKIN, SHAPIRO,
21 SCHULMAN & RABKIN, LLP
22
23
24
25
26
27
28

Exhibit 5

Exhibit 5

DISCOVERY
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
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JOHN SAMBERG, ESQ.
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Attorneys for Somersett Owners Association

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; PARSONS
BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S THIRD SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO
PARSONS BROS ROCKERIES, INC.'S
FIRST SET OF INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its
attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the
following objections and supplemental responses to PARSONS BROS ROCKERIES, INC.,
("Defendant") First Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Please note that supplements are in **bold** font throughout. Without waiving its General
7 Objections, Plaintiff supplements the interrogatories in accordance with applicable law and based
8 on the understanding of the fair meaning of these interrogatories as follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed”. Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants’ behalf. Investigation and discovery are
19 continuing and this answer will be supplemented as new information becomes available.

20 **Supplemental Response to Special Interrogatory No. 1:**

21 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
22 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
23 completed.” Subject to these objections, Plaintiff responds as follows: The question is
24 premature, as opposing parties have yet to provide Plaintiff with complete information and
25 documentation dealing with additional work and repairs occurring during the declarant control
26 period on the subject walls. Additionally, Interrogatory No. 1 presumes that the walls were
27 “substantially completed” on December 31, 2006, as this presumption lacks foundation and is
28 an argumentative restatement of Defendants’ arguments which are disputed by Plaintiff.

1 The evidence of completion provided by Defendants thus far is essentially limited to
2 unrecorded documents that are insufficient to establish as a matter of law “substantial
3 completion”. Unrecorded notices of completion are neither valid nor effective, as NRS 108.228
4 requires that to be effective Notices of Completion must be recorded. *See Dykema v. Del Webb*
5 *Communities*, 385 P.3d 977 (2016). Further, the discovery and disclosure responses received
6 thus far from the Defendants appear to be incomplete with regard to work done prior to the
7 declarant turnover of the Board on or about January 3, 2013. Finally, in meet and confer
8 discussions counsel for the developer/declarant has previously indicated that the
9 developer/declarant is in possession of thousands of documents that had yet to be reviewed.
10 Although the developer/declarant has made subsequent 16.1 disclosures, there has yet to be a
11 representation from the developer/declarant that all records have been searched, and disclosed.
12 Until there is an unequivocal representation from all defendants, including but not limited to
13 the developer/declarant, that all records have been searched and disclosed, Plaintiff’s discovery
14 is continuing as to the issues addressed in this interrogatory.

15 **Second Supplemental Response to Special Interrogatory No. 1:**

16 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
17 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
18 completed.” Subject to and without waiver of these objections and to Plaintiff’s First
19 Supplemental Responses, Plaintiff responds as follows: yes (**see below**).

20 **Special Interrogatory No. 2:**

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

24 **Response to Special Interrogatory No. 2:**

25 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
26 the grounds that it dependent upon prior request that improperly seeks a legal conclusion with
27 regard to the term “substantially completed.” Subject to these objections, Plaintiff responds as
28 follows: Plaintiff is in the process of conducting discovery from Defendants to determine the

1 date the rockery walls were completed, **if at all**, including but not limited to any **inspections,**
2 **removals,** maintenance, alterations, and/or repairs that were conducted by the declarant, or on
3 declarants behalf **or by others.** Investigation and discovery are continuing and this **response**
4 will be supplemented as new information becomes available. Plaintiff acknowledges that
5 commencement of construction of some of the walls preceded December 31, 2006, based on the
6 documents provided in this case thus far, but does not have the information regarding all the
7 walls. In fact, as part of the discovery, propounded by the Plaintiff to the Defendants, on
8 November 1, 2018, Plaintiff seeks documents – solely in **each of the** Defendants’ possession –
9 addressing the **issue of substantial** completion.

10 **Supplemental Response to Special Interrogatory No. 2:**

11 **In addition to the General Objections, Plaintiff further objects to this Interrogatory**
12 **and Interrogatory Number 1 on the grounds that Interrogatory Number 1 seeks a “yes” or**
13 **“no” response with regard to whether any of the subject walls were ever “substantially**
14 **completed”. The phrasing of the question is such that it invites an admission that the walls**
15 **were in fact at some point substantially completed. Subject to and without waiver of these**
16 **objections and to Plaintiff’s earlier Supplemental Responses, Plaintiff responds as follows:**
17 **Plaintiff’s response of “yes” to Interrogatory Number 1 is not to be taken as an admission**
18 **that any or all of the subject rockery walls were ever “substantially completed”.¹ It is not**
19 **Plaintiff’s burden to establish that the walls were ever substantially completed whether**
20 **before or after December 31, 2006. No evidence has been presented to establish as a matter**
21 **of law a date certain that any particular rockery walls were substantially completed. There**
22 **is a disputed question of fact as to whether the rockery walls were ever substantially**
23 **completed. To the extent that some of the rockery walls are substantially complete, those**
24 **are limited to the rockery walls that have failed or collapsed, and which have been**
25 **repaired or reconstructed, as those rockery walls are only now fit to be utilized for their**

26 _____
27 ¹ This is a loaded question logical fallacy, and presumes that at some point, the walls were substantially
28 completed, and that the only question is when. The issues of when, and if ever, are both disputed.

1 intended use. As to the vast majority of the rockery walls, including all of those identified
2 as part of this litigation and walls that may be added to the common area in the future, they
3 are not substantially complete as they are not fit to be utilized for their intended use,
4 either individually or as components of the rockery wall system throughout the Somerset
5 community.

6 The Stantec Final Project Reports (also known to the Parties as Stantec's Certificates
7 of Completion, signed off in 2006), have been offered as conclusive evidence of substantial
8 completion. However, the certificates do not establish substantial completion as a matter of
9 law. Additionally, the certificates are subject to challenge because evidence exists which
10 establishes that the rockery walls were not constructed to include all necessary engineering
11 components, and are therefore partially assembled and not substantially complete.

12 **AFFIRMATION**

13 The undersigned hereby affirms that the foregoing document does not contain the social
14 security number of any person.

15 DATED this 7th day of March 2019

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

18
19 By: /s/ John Samberg
20 DON SPRINGMEYER, ESQ.
21 Nevada Bar No. 1021
22 ROYI MOAS, ESQ.
23 Nevada Bar No. 10686
24 JOHN SAMBERG, ESQ.
25 Nevada Bar No. 10828
26 3556 E. Russell Road, Second Floor
27 Las Vegas, Nevada 89120
28 (702) 341-5200/Fax: (702) 341-5300
Attorneys for Somerset Owners Association

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 7th day of March, 2019, a true and correct copy of
3 **PLAINTIFF'S THIRD SUPPLEMENTAL RESPONSES TO PARSONS BROS**
4 **ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**
5 **SOMERSETT HOMEOWNERS ASSOCIATION** was served electronically to all parties of
6 record via their email address as follows:

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

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Castronova Law Offices, P.C.
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E-Mail: sgc@castronovaLaw.com

12 Natasha Landrum, Esq.
13 Dirk W. Gaspar, Esq.
14 David Lee, Esq.
15 Lee, Hernandez, Landrum & Garofalo
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17
18 By /s/ E. Noemy Valdez
19 An employee of WOLF, RIFKIN, SHAPIRO,
20 SCHULMAN & RABKIN, LLP
21
22
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Code: 1520
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mkimmel@nevadalaw.com

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.

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

vs.

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

Case No.: CV17-02427

Dept. No.: 10



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



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

<u>Exhibit #</u>	<u>Description</u>	<u>Pages</u>
1	Parsons Bros. Interrogatories	6
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 1

Exhibit 1

1 **DISCOVERY**

2 CASTRONOVA LAW OFFICES, PC
3 Stephen G. Castronova, Esq. [SBN 7305]
4 605 Forest Street
5 Reno, NV 89509
6 (775) 323-2646 Fax: (775) 323-3181
7 Attorneys for Defendant,
8 Parsons Bros Rockeries, Inc.

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

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

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

14 Plaintiff,

15 vs.

16 SOMERSETT DEVELOPMENT COMPANY,
17 LTD., a Nevada Limited Liability Company;
18 SOMERSET, LLC, a dissolved Nevada Limited
19 Liability Company; SOMERSETT
20 DEVELOPMENT CORPORATION, a dissolved
21 Nevada Corporation; Q & D Construction, Inc., a
22 Nevada Corporation; PARSONS BROS
23 ROCKERIES, INC., a Washington Corporation;
24 PARSONS ROCKS!, LLC., a Nevada Limited
25 Liability Company, and DOES 5-50, inclusive,

26 Defendants.

27 And Related Actions

CASE NO. CV17-02427

DEPT.: 10

PARSONS BROS ROCKERIES, INC.'S
FIRST SET OF INTERROGATORIES TO
PLAINTIFF, SOMERSETT OWNERS
ASSOCIATION

28 PROPOUNDING PARTY: Defendant: Parsons Brothers Rockeries, Inc.

RESPONDING PARTY: Plaintiff: Somerset Owners Association

SET NUMBER: One (1)

Defendant, Parsons Brothers Rockeries, Inc., ("Parsons") hereby requests that Plaintiff,
Somerset Owners Association., ("SOA") answer the following specially prepared interrogatories
separately, fully and under oath pursuant to Nevada Rules of Civil Procedure, Rule 33, within thirty-

AA000278

1 five (35) days of service hereof.

2 **DEFINITIONS**

3 As used in these interrogatories, the following terms have the meanings indicated:

- 4 1. "You", and "your", refer to Plaintiff herein.
5 2. "Identify" when used in reference to:
6 (a) a natural person means to provide the name, last known address and telephone
7 number;
8 (b) a person other than a natural person means to state its full name and present
9 address.
10 3. "Project" refers to the Association Development as described by you in Paragraph 2 of
11 your First Amended Complaint.

12 **SPECIAL INTERROGATORIES**

13 **Special Interrogatory No. 1:**

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

16 **Special Interrogatory No. 2:**

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

20 **Special Interrogatory No. 3:**

21 With respect to the total number of rockery walls identified by you in your response to
22 Interrogatory Number 2, please identify the location within the project of each such wall.

23 **Special Interrogatory No. 4:**

24 Please set forth the specific facts upon which your Response to Interrogatory Number 2 is
25 based.
26

1 **Special Interrogatory No. 5:**

2 Please identify by name and address all persons known to you with knowledge of the
3 facts set forth in your Response to Interrogatory Number 4.

4 **Special Interrogatory No. 6:**

5 Please identify, by date and author, all documents in your control or possession which
6 support or evidence the facts set forth by you in your response to Interrogatory Number 4.

7 **Special Interrogatory No. 7:**

8 With respect to each rock wall at issue in this case which you claim is defective please:

9 (a) identify the location of each such wall within the project; and,

10 (b) for each such wall set forth the date you contend it was substantially completed.

11 **Special Interrogatory No. 8:**

12 Please set forth the specific facts upon which your Response to Interrogatory
13 Number 7 is based.

14 **Special Interrogatory No. 9:**

15 Please identify by name and address all persons known to you with knowledge of the
16 facts set forth in your Response to Interrogatory Number 7.

17 **Special Interrogatory No. 10:**

18 Please identify, by date and author, all documents in your control or possession which
19 support or evidence the facts set forth by you in your response to Interrogatory Number 7.

20 **Special Interrogatory No. 11:**

21 Was a vote to ratify this lawsuit conducted by the SOA's members pursuant to the provisions
22 of NRS 116.3115?
23
24

1 **Special Interrogatory No. 12:**

2 If your answer to Interrogatory Number 11 is in the affirmative, please set forth the:

3 (a) when the membership vote was conducted;

4 (b) total votes cast in favor of pursuing this litigation;

5 (c) total votes cast in opposition to pursuing this litigation;

6 (d) total votes cast in abstention.

7
8 **Special Interrogatory No. 13:**

9 Please set forth the total number of members of the SOA as of March 2018.

10
11 **AFFIRMATION**

12 The undersigned hereby affirms that the foregoing document does not contain the social
13 security number of any person.

14
15 DATED this 2nd day of October, 2018.

CASTRONOVA LAW OFFICES, P.C.

16
17 

18 _____
19 Stephen G. Castronova, Esq. [SBN 7305]
20 605 Forest Street
21 Reno, Nevada 89509
22 Telephone: (775) 323-2646
23 Fax: (775) 323-3181
24 Attorneys for Parsons Brothers Rockeries, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2018, I served a true and correct copy of the foregoing document, Via U.S. MAIL, addressed to the following recipients:

<u>NAME & ADDRESS</u>	<u>PARTY</u>
Don Springmeyer, Esq. John Samberg, Esq. Roi Moas, Esq. WOLF, RIFKIN, SHAPIRO, <i>et. al.</i> 5594 B Longley Lane Reno, NV 89511 dspringmeyer@wrslawyers.com jsamberg@wrslawyers.com rmoas@wrslawyers.com	Plaintiff
Charles L. Burcham, Esq. Wade Carner, Esq. Thorndal, Armstrong, Delk, Balkenbush & Eisinger 6590 S. McCarran Blvd., Ste. B Reno, NV 879509	Defendants Somerset Development Company, LTD, Somerset, LLC, and Somerset Development Corporation
David S. Lee, Esq. Natasha Landrum, Esq. Dirk W. Gaspar, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, Ste. 150 Las Vegas, NV 89128 dlee@lee-lawfirm.com mlandrum@lee-lawfirm.com dgaspar@lee-lawfirm.com	Defendant Q & D Construction, Inc.
Theodore E. Chrissinger, Esq. Michael S. Kimmel, Esq. Hoy Chrissinger Kimmel Valas 50 W. Liberty Street, Ste. 840 Reno, NV 89501 tchrissinger@nevadalaw.com mkimmel@nevadalaw.com	Third-Party Defendant Stantec Consulting, Inc.



An employee of Castronova Law Offices, P.C.

Exhibit 2

Exhibit 2

DISCOVERY
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Attorneys for Somersett Owners Association

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; PARSONS
BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S RESPONSES AND
OBJECTIONS TO PARSONS BROS
ROCKERIES, INC.'S FIRST SET OF
INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its
attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the
following objections and responses to PARSONS BROS ROCKERIES, INC., ("Defendant") First
Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Without waiving its General Objections, Plaintiff answers the interrogatories in accordance
7 with applicable law and based on the understanding of the fair meaning of these interrogatories as
8 follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed.” Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants behalf. Investigation and discovery are continuing
19 and this answer will be supplemented as new information becomes available.

20 **Special Interrogatory No. 2:**

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

24 **Response to Special Interrogatory No. 2:**

25 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
26 the grounds that it dependent upon prior request that improperly seeks a legal conclusion with
27 regard to the term “substantially completed.” Subject to these objections, Plaintiff responds as
28 follows: Plaintiff is in the process of conducting discovery from Defendants to determine the

1 date the rockery walls were completed, including but not limited to any maintenance,
2 alterations, and or repairs that were conducted by the declarant, or on declarants behalf.
3 Investigation and discovery are continuing and this answer will be supplemented as new
4 information becomes available. Plaintiff acknowledges that commencement of construction of
5 some of the walls preceded December 31, 2006, based on the documents provided in this case
6 thus far, but does not have the information regarding all the walls. In fact, as part of the
7 discovery, propounded by the Plaintiff to the Defendants, on November 1, 2018, Plaintiff seeks
8 documents – solely in Defendants’ possession – addressing the completion dates.

9 **Special Interrogatory No. 3:**

10 With respect to the total number of rockery walls identified by you in your response to
11 Interrogatory Number 2, please identify the location within the project of each such wall.

12 **Response to Special Interrogatory No. 3:**

13 See Response to Interrogatory No. 1 and 2, above.

14 **Special Interrogatory No. 4:**

15 Please set forth the specific facts upon which your Response to Interrogatory Number 2
16 is based.

17 **Response to Special Interrogatory No. 4:**

18 See Response to Interrogatory No. 1 and 2, above.

19 **Special Interrogatory No. 5:**

20 Please identify by name and address all persons known to you with knowledge of the facts
21 set forth in your Response to Interrogatory Number 4.

22 **Response to Special Interrogatory No. 5:**

23 In addition to the General Objections, Plaintiff further objects to this Interrogatory on the
24 grounds that a request to identify “all persons” who has knowledge or information concerning
25 facts is overly broad and burdensome. Without waiving these objections, Plaintiff adopts by
26 reference the Witnesses List supplied in Plaintiff’s Third Disclosure of Witnesses & Documents,
27 Defendant Stantec Consulting, Inc., and Defendant Somerset Development Companies’ Initial
28 Disclosures of Witnesses & Documents served on this Propounding Party respectively on

1 October 1, 2018, October 9, 2018, and October 3, 2018. In addition, Plaintiff is in the process
2 of conducting discovery from Defendants to identify the individuals with knowledge relating to
3 the construction of the rockery walls; Investigation and discovery are continuing and this answer
4 will be supplemented as new information becomes available.

5 **Special Interrogatory No. 6:**

6 Please identify, by date and author, all documents in your control or possession which
7 support or evidence the facts set forth by you in your response to Interrogatory Number 4.

8 **Response to Special Interrogatory No. 6:**

9 Plaintiff adopts by reference the documents supplied in Plaintiff's First Pre-Mediation
10 Discovery Disclosures, Second Pre-Litigation Disclosure and Third Disclosure of Witnesses &
11 Documents, Defendant Stantec Consulting, Inc., and Defendant Somerset Development
12 Companies' Initial Disclosures of Witnesses & Documents served on this Propounding Party
13 respectively on June 7, 2018, July 31, 2018, October 1, 2018, October 9, 2018, and October 3,
14 2018. In addition, Plaintiff is in the process of conducting discovery from Defendants to
15 identify the individuals with knowledge relating to the construction of the rockery walls;
16 Investigation and discovery are continuing and this answer will be supplemented as new
17 information becomes available.

18 **Special Interrogatory No. 7:**

19 With respect to each rock wall at issue in this case which you claim is defective please:

20 (a) identify the location of each such wall within the project; and,

21 (b) for each such wall set forth the date you contend it was substantially completed.

22 **Response to Special Interrogatory No. 7:**

23 In addition to the General Objections, Plaintiff further objects to this Interrogatory on the
24 grounds that it is cumulative with information and specific identifications provided to all parties.
25 Subject to these objections, Plaintiff responds as follows:

26 (a) All rockery walls Plaintiff claims are defective are common area rockery walls within
27 the Somerset Development, and the exact location and defective condition is specifically
28 identified in maps/sub-maps previously provided in documents produced through Plaintiff's

1 Chapter 40 Notice, a CD labeled Exhibit 2a, previously Bates Labeled PSOA000028. The
2 documents within the CD are concurrently being produced in Plaintiff's 4th Supplemental
3 Disclosures bearing Bates Labels SPOA16087 – SPOA18152. Plaintiff's directs this propounding
4 party to Site Documentation Reference Map and referenced sub-set maps 1 – 28 bearing Bates
5 Labels SPOA016105 – SPOA16133 which identify the location and descriptions of each such wall
6 within the project. Investigation and discovery are continuing and this answer will be
7 supplemented as new information becomes available.

8 (b) *See* Response to Interrogatory No. 1 and No. 2, above.

9 **Special Interrogatory No. 8:**

10 Please set forth the specific facts upon which your Response to Interrogatory Number 7
11 is based.

12 **Response to Special Interrogatory No. 8:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory to
14 the extent that it is ambiguous, and refers to the previous interrogatory, which includes subparts
15 separate and distinct from the line of inquiry from the primary Interrogatory. Subject to these
16 objections, Plaintiff responds as follows as to Interrogatory No. 7, subpart (a): The request is
17 unduly burdensome in that it requests the facts supporting each and every defect identified in
18 over 13 miles of rockery walls, already provided with specificity in Plaintiff's Chapter 40.600
19 report, and concurrently being produced again in Plaintiff's 4th Supplemental Disclosures bearing
20 Bates Labels SPOA16087 – SPOA18152. Plaintiff relies upon the report from American
21 Geotechnical, Inc. and Edred T. Marsh, the engineer retained to investigate and prepare the
22 preliminary evaluation, and basis its response on such report. Investigation and discovery are
23 continuing and this answer will be supplemented as new information becomes available.

24 Subject to these objections, Plaintiff responds as follows as to Interrogatory No. 7,
25 subpart (b), Plaintiff responds as follows: *See* Response to Interrogatory No. 1 and No. 2,
26 above.

27 **Special Interrogatory No. 9:**

28 Please identify by name and address all persons known to you with knowledge of the

1 facts set forth in your Response to Interrogatory Number 7.

2 **Response to Special Interrogatory No. 9:**

3 In addition to the General Objections, Plaintiff further objects to this Interrogatory on the
4 grounds that a request to identify “all persons” who has knowledge or information concerning
5 facts is overly broad and burdensome. Without waiving these objections, Edred T. Marsh, P.E.,
6 Donny Cross, Jonathon Guillaume, Douglas Santo, Megan Johnson, and Kevin Rogers of
7 American Geotechnical, Inc., at 5764 Pacific Center Boulevard, Ste 112, San Diego, CA 92121,
8 current Board Members Tom Fitzgerald, Jason Roland, Frank Leto, Ryan Burns, Steve Guderian,
9 c/o Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP; Plaintiff further identifies Kevin L. German,
10 P.E., of CFA, Inc., 1150 Corporate Boulevard, Reno, NV 89502; Randal A. Reynolds, PE., Stella
11 A. Montalvo, PE of Construction Materials Engineers, Inc., 6980 Sierra Center Parkway, Ste 90,
12 Reno, NV 89511; William F. Kane, PhD, PG, PE of Kane GeoTech, Inc. and Seth Padovan of
13 Padovan Consulting, LLC., 830 Sequoia Pass Court, Sparks, NV 899436 and all individuals
14 previously disclosed by Defendants. Investigation and discovery are continuing and this answer
15 will be supplemented as new information becomes available.

16 **Special Interrogatory No. 10:**

17 Please identify, by date and author, all documents in your control or possession which
18 support or evidence the facts set forth by you in your response to Interrogatory Number 7.

19 **Response to Special Interrogatory No. 10:**

20 See Response to Interrogatory No. 1 and No. 2, above. In addition, see Response to
21 Interrogatory No. 9. Investigation and discovery are continuing and this answer will be
22 supplemented as new information becomes available.

23 **Special Interrogatory No. 11:**

24 Was a vote to ratify this lawsuit conducted by the SOA’s members pursuant to the
25 provisions of NRS 116.3115?

26 **Response to Special Interrogatory No. 11:**

27 Plaintiff objects to this requests in that it calls for a legal opinion. Notwithstanding the
28 same objection, Plaintiff responds as follows: Yes.

1 **Special Interrogatory No. 12:**

2 If your answer to Interrogatory Number 11 is in the affirmative, please set forth the:

3 (a) when the membership vote was conducted;

4 (b) total votes cast in favor of pursuing this litigation;

5 (c) total votes cast in opposition to pursuing this litigation;

6 (d) total votes cast in abstention.

7 **Response to Special Interrogatory No. 12:**

8 Plaintiff objects to this request to the extent that it is irrelevant and not likely to lead to
9 admissible evidence. Notwithstanding said objection, Plaintiff responds as follows:

10 (a) March of 2018;

11 (b) 716 votes in favor;

12 (c) 205 votes opposed; and

13 (d) 36 votes in abstention.

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1 **Special Interrogatory No. 13:**

2 Please set forth the total number of members of the SOA as of March 2018.

3 **Response to Special Interrogatory No. 13:**

4 As of March 2018, there were a total of 3,058 units in the SOA.

5 **AFFIRMATION**

6 The undersigned hereby affirms that the foregoing document does not contain the social
7 security number of any person.

8 DATED this 30th day of November, 2018

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

11
12 By: /s/ John Samberg
13 DON SPRINGMEYER, ESQ.
14 Nevada Bar No. 1021
15 ROYI MOAS, ESQ.
16 Nevada Bar No. 10686
17 JOHN SAMBERG, ESQ.
18 Nevada Bar No. 10828
19 3556 E. Russell Road, Second Floor
20 Las Vegas, Nevada 89120
21 (702) 341-5200/Fax: (702) 341-5300
22 *Attorneys for Somersett Owners Association*
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That he is the President of the Plaintiff in this action, that he has read the foregoing **PLAINTIFF'S RESPONSES AND OBJECTIONS TO PARSONS BROS ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES** and knows the contents thereof, and that all information is true and correct to the best of his ability, based on information and belief.

Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 30th day of November 2018, a true and correct copy of
3 **SOMERSETT OWNERS ASSOCIATION'S RESPONSES TO PARSONS BROS**
4 **ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**
5 **SOMERSETT HOMEOWNERS ASSOCIATION** was submitted electronically for filing
6 and/or service with the Clerk of the Court using the Washoe County E-Flex Filing System, which
7 will send notification of such filing to all parties of record via their email address as follows:

8 Charles Brucham, Esq.
9 Wade Carner, Esq.
10 Thorndall, Armstrong, Delk, Blakenbush & Eisinger
11 for SOMERSETT DEVELOPMENT
12 CORPORATION, SOMERSTT, LLC., SOMERSETT
DEVELOPMENT COMPANY LTD
E-Mail: clb@thorndal.com
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13 Natasha Landrum, Esq.
14 Dirk W. Gaspar, Esq.
15 David Lee, Esq.
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18
19
20 By /s/ E. Noemy Valdez
An employee of WOLF, RIFKIN, SHAPIRO,
21 SCHULMAN & RABKIN, LLP
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Exhibit 3

Exhibit 3

DISCOVERY
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Attorneys for Somersett Owners Association

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; PARSONS
BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO
PARSONS BROS ROCKERIES, INC.'S
FIRST SET OF INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its
attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the
following objections and supplemental responses to PARSONS BROS ROCKERIES, INC.,
("Defendant") First Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Without waiving its General Objections, Plaintiff answers the interrogatories in accordance
7 with applicable law and based on the understanding of the fair meaning of these interrogatories as
8 follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed.” Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants’ behalf. Investigation and discovery are
19 continuing and this answer will be supplemented as new information becomes available.

20 **Supplemental Special Interrogatory No. 1:**

21 **In addition to the General Objections, Plaintiff further objects to this**
22 **Interrogatory on the grounds that it improperly seeks a legal conclusion with regard to**
23 **the term “substantially completed.” Subject to these objections, Plaintiff responds as**
24 **follows: The question is premature, as opposing parties have yet to provide Plaintiff with**
25 **complete information and documentation dealing with additional work and repairs**
26 **occurring during the declarant control period on the subject walls. Additionally,**
27 **Interrogatory No. 1 presumes that the walls were “substantially completed” on December**
28 **31, 2006, as this presumption lacks foundation and is an argumentative restatement of**

Defendants' arguments which are disputed by Plaintiff.

The evidence of completion provided by Defendants thus far is essentially limited to unrecorded documents that are insufficient to establish as a matter of law “substantial completion”. Unrecorded notices of completion are neither valid nor effective, as NRS 108.228 requires that to be effective Notices of Completion must be recorded. *See Dykema v. Del Webb Communities*, 385 P.3d 977 (2016). Further, the discovery and disclosure responses received thus far from the Defendants appear to be incomplete with regard to work done prior to the declarant turn over of the Board on or about January 3, 2013. Finally, in meet and confer discussions counsel for the developer/declarant has previously indicated that the developer/declarant is in possession of thousands of documents that had yet to be reviewed. Although the developer/declarant has made subsequent 16.1 disclosures, there has yet to be a representation from the developer/declarant that all records have been searched, and disclosed. Until there is an unequivocal representation from all defendants, including but not limited to the developer/declarant, that all records have been searched and disclosed, Plaintiff’s discovery is continuing as to the issues addressed in this interrogatory.

AFFIRMATION

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

1 DATED this 23rd day of January 2019

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

4
5 By: /s/ John Samberg

6 DON SPRINGMEYER, ESQ.

7 Nevada Bar No. 1021

8 ROYI MOAS, ESQ.

9 Nevada Bar No. 10686

10 JOHN SAMBERG, ESQ.

11 Nevada Bar No. 10828

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15 *Attorneys for Somersett Owners Association*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 23rd day of January 2019, a true and correct copy of
3 **PLAINTIFF'S SUPPLEMENTAL RESPONSES TO PARSONS BROS ROCKERIES,**
4 **INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF SOMERSETT**
5 **HOMEOWNERS ASSOCIATION** was submitted electronically for filing and/or service with
6 the Clerk of the Court using the Washoe County E-Flex Filing System, which will send
7 notification of such filing to all parties of record via their email address as follows:

8 Charles Brucham, Esq.
9 Wade Carner, Esq.
10 Thorndall, Armstrong, Delk, Blakenbush & Eisinger
11 for SOMERSETT DEVELOPMENT
12 CORPORATION, SOMERSTT, LLC., SOMERSETT
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13 Natasha Landrum, Esq.
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20 By /s/ E. Noemy Valdez
An employee of WOLF, RIFKIN, SHAPIRO,
21 SCHULMAN & RABKIN, LLP
22
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27
28

Exhibit 4

Exhibit 4

DISCOVERY
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
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Attorneys for Somerset Owners Association

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; PARSONS
BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S SECOND
SUPPLEMENTAL RESPONSES AND
OBJECTIONS TO PARSONS BROS
ROCKERIES, INC.'S FIRST SET OF
INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its
attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the
following objections and supplemental responses to PARSONS BROS ROCKERIES, INC.,
("Defendant") First Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Without waiving its General Objections, Plaintiff answers the interrogatories in accordance
7 with applicable law and based on the understanding of the fair meaning of these interrogatories as
8 follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed.” Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants’ behalf. Investigation and discovery are
19 continuing and this answer will be supplemented as new information becomes available.

20 **Supplemental Response to Special Interrogatory No. 1:**

21 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
22 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
23 completed.” Subject to these objections, Plaintiff responds as follows: The question is
24 premature, as opposing parties have yet to provide Plaintiff with complete information and
25 documentation dealing with additional work and repairs occurring during the declarant control
26 period on the subject walls. Additionally, Interrogatory No. 1 presumes that the walls were
27 “substantially completed” on December 31, 2006, as this presumption lacks foundation and is
28 an argumentative restatement of Defendants’ arguments which are disputed by Plaintiff.

1 The evidence of completion provided by Defendants thus far is essentially limited to
2 unrecorded documents that are insufficient to establish as a matter of law “substantial
3 completion”. Unrecorded notices of completion are neither valid nor effective, as NRS 108.228
4 requires that to be effective Notices of Completion must be recorded. *See Dykema v. Del Webb*
5 *Communities*, 385 P.3d 977 (2016). Further, the discovery and disclosure responses received
6 thus far from the Defendants appear to be incomplete with regard to work done prior to the
7 declarant turn over of the Board on or about January 3, 2013. Finally, in meet and confer
8 discussions counsel for the developer/declarant has previously indicated that the
9 developer/declarant is in possession of thousands of documents that had yet to be reviewed.
10 Although the developer/declarant has made subsequent 16.1 disclosures, there has yet to be a
11 representation from the developer/declarant that all records have been searched, and disclosed.
12 Until there is an unequivocal representation from all defendants, including but not limited to
13 the developer/declarant, that all records have been searched and disclosed, Plaintiff’s discovery
14 is continuing as to the issues addressed in this interrogatory.

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1 **Second Supplemental Response to Special Interrogatory No. 1:**

2 **In addition to the General Objections, Plaintiff further objects to this**
3 **Interrogatory on the grounds that it improperly seeks a legal conclusion with regard to**
4 **the term “substantially completed.” Subject to and without waiver of these objections**
5 **and to Plaintiff’s First Supplemental Responses, Plaintiff responds as follows: yes.**

6 **AFFIRMATION**

7 The undersigned hereby affirms that the foregoing document does not contain the social
8 security number of any person.

9 DATED this 12th day of February 2019

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

12
13 By: /s/ John Samberg
14 DON SPRINGMEYER, ESQ.
15 Nevada Bar No. 1021
16 ROYI MOAS, ESQ.
17 Nevada Bar No. 10686
18 JOHN SAMBERG, ESQ.
19 Nevada Bar No. 10828
20 3556 E. Russell Road, Second Floor
21 Las Vegas, Nevada 89120
22 (702) 341-5200/Fax: (702) 341-5300
23 *Attorneys for Somersett Owners Association*
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28

1 **VERIFICATION**

2 STATE OF NEVADA)

3 COUNTY OF WASHOE)

4 Under penalty of perjury pursuant to the laws of the State of Nevada, the undersigned
5 declares:

6 That he is the President of the Plaintiff in this action, that he has read the foregoing
7 **PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES AND OBJECTIONS TO**
8 **PARSONS BROS ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES** and knows
9 the contents thereof, and that all information is true and correct to the best of his ability, based on
10 information and belief.

11 Executed this 21 day of February, 2019, at Reno, Nevada
12 (City, State)

13 Tom Fitzgerald

14 Print Name

15
16 

17 Signature

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 12th day of February 2019, a true and correct copy of
3 **PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSES TO PARSONS BROS**
4 **ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**
5 **SOMERSETT HOMEOWNERS ASSOCIATION** was submitted electronically for filing
6 and/or service with the Clerk of the Court using the Washoe County E-Flex Filing System, which
7 will send notification of such filing to all parties of record via their email address as follows:

8 Charles Brucham, Esq.
9 Wade Carner, Esq.
10 Thorndall, Armstrong, Delk, Blakenbush & Eisinger
11 for SOMERSETT DEVELOPMENT
12 CORPORATION, SOMERSTT, LLC., SOMERSETT
DEVELOPMENT COMPANY LTD
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13 Natasha Landrum, Esq.
14 Dirk W. Gaspar, Esq.
15 David Lee, Esq.
16 Lee, Hernandez, Landrum & Garofalo
17 for Q & D CONSTRUCTION, INC.
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20 By /s/ E. Noemy Valdez
An employee of WOLF, RIFKIN, SHAPIRO,
21 SCHULMAN & RABKIN, LLP
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Exhibit 5

Exhibit 5

DISCOVERY
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Attorneys for Somersett Owners Association

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; PARSONS
BROS ROCKERIES, INC. a Washington
Corporation; Q & D Construction, Inc., a
Nevada Corporation, and DOES 1 through 50,
inclusive,

Defendants.

AND RELATED ACTIONS

Case No. CV-1702427

Dept. No.: 10

**PLAINTIFF'S THIRD SUPPLEMENTAL
RESPONSES AND OBJECTIONS TO
PARSONS BROS ROCKERIES, INC.'S
FIRST SET OF INTERROGATORIES**

Plaintiff SOMERSETT OWNERS ASSOCIATION ("Plaintiff"), by and through its
attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, hereby provides the
following objections and supplemental responses to PARSONS BROS ROCKERIES, INC.,
("Defendant") First Set of Interrogatories as follows:

1 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

2 The answers herein of Plaintiff's Interrogatories ("Answers") are subject to the following
3 general objections (the "General Objections"). The General Objections may be specifically
4 referred to in the Answers for the purpose of clarity. The failure of specifically incorporated a
5 General Objection, however, should not be construed as a waiver of the General Objections.

6 1. Nothing herein shall be construed as an admission or waiver by Plaintiff of: (a) its
7 rights respecting admissibility, competency, relevance, privilege, materiality, and authenticity of
8 any information provided in the Answers, any documents identified herein, or the subject matter
9 thereof; (b) its objection due to vagueness, ambiguity, or undue burden; and (c) its rights to object
10 to the use of any information provided in the Answers, any document identified therein, or the
11 subject matter contained in the Answers during a subsequent proceeding, including the trial of this
12 or any other action.

13 2. The Answers are made solely for the purposes of, and in relation to, this litigation.

14 3. Plaintiff objects to the Interrogatories to the extent they seek information and
15 documents that are currently in Defendant's possession, custody, or control, or are, by reason of
16 public filing, or otherwise, readily accessible to Defendant.

17 4. Plaintiff objects to the Interrogatories to the extent they seek to require Plaintiff to
18 search for or produce information and documents which are not currently in its possession,
19 custody, or control, or to identify or describe persons, entities, or events that are not known to it on
20 the grounds that such request would seek to require more of Plaintiff than any obligation imposed
21 by law, would subject it to unreasonable and undue annoyance, oppression, burden, and expense,
22 and would seek to impose upon Plaintiff an obligation to investigate or discover information or
23 materials from third-parties or sources that are equally accessible to Defendant.

24 5. Plaintiff may have not completed: (a) its investigation of facts, witnesses, or
25 documents relating to this case, (b) discovery in this action, (c) its analysis of available data, and
26 (d) its preparations for trial. Thus, although a good faith effort has been made to supply pertinent
27 information where the same has been requested, it is not possible in some instances for unqualified
28 Answers to be made to the Interrogatories. Further, the Answers are necessarily made without

1 prejudice to Plaintiff's right to produce evidence of subsequently discovered facts, witnesses, or
2 documents, as well as any new theories or contentions that Plaintiff may adopt. The Answers are
3 further given without prejudice to Plaintiff's right to provide information concerning facts,
4 witnesses, or documents omitted by the Answers as a result of oversight, inadvertence, good faith
5 error, or mistake. Plaintiff has responded to the Interrogatories based on information that is
6 presently available to it and to the best of its knowledge to date. The Answers may include
7 hearsay and other forms of evidence that may be neither reliable nor admissible.

8 6. The definitions of "Plaintiff," "you" and "your" in the Interrogatories are
9 insufficiently defined as the defined terms "Plaintiff," "you" and "your" include persons or entities
10 over which Plaintiff has no control or knowledge and persons protected by privilege, including but
11 not limited to the attorney-client privilege, the attorney work-product doctrine, or confidential
12 proprietary, trade secret, financial or commercially sensitive information, including relating to
13 individuals and/or entities who are not a party to this action, the disclosure of which could violate
14 those individual's or entities' constitutionally protected right to privacy. Without waiving these
15 objections, rather than restating this objection for each reference, for the purposes of these
16 Answers it will be assumed that any such reference was intended to mean "Somerset Owners
17 Association" only and will be responded to accordingly.

18 7. To the extent that Defendant requests information that is protected by attorney
19 client privilege and information that is entirely work product, Plaintiff objects and will not
20 produce information responsive thereto.

21 8. Answers will be made on the basis of information and writings available to and
22 located by the Association at this time. There may be other information respecting the request
23 propounded by Plaintiff of which the Association, despite its reasonable investigation and inquiry,
24 is presently unaware. The Association, therefore, reserves the right to modify or enlarge any
25 answer with such pertinent additional information as it may subsequently discover. Much
26 "supporting" evidence called for by these request is currently in the possession of Plaintiff and
27 third parties, and the Association is attempting to discover it.

28 9. No incidental or implied admissions will be made by the Plaintiff's answers to

1 Defendant's Interrogatories. The fact that Plaintiff may answer or object to any request, or part
2 thereof, shall not be deemed an admission that Plaintiff cannot establish the existence of any fact
3 set forth or assumed by such request, or that such answer constitutes admissible evidence. The
4 fact that Plaintiff responds to any part of any request is not to be deemed a waiver by it of its
5 objections, including privilege, to other parts of the interrogatory in question.

6 10. Plaintiff objects to the request to the extent they seek information and/or production
7 of materials protected by the attorney-client privilege, the work product doctrine, or any other
8 legally recognized privilege, immunity, or exemption from discovery. Plaintiff hereby claims
9 such privileges and protections and objects to the production of any information or materials
10 subject thereto. This general objection is intended to prevent any waiver of these privileges or
11 protections as to any specific interrogatory. If any privileged or protected information or material
12 is inadvertently produced, the Association does not waive or intend to waive any privilege or
13 protection pertaining to such information or materials.

14 11. Plaintiff objects to the interrogatories to the extent that they seek information that is
15 neither relevant to the subject matter of this lawsuit nor reasonably calculated to lead to the
16 discovery of admissible evidence.

17 12. Plaintiff objects to each and every request that relates to periods of time,
18 geographical areas, or activities outside the scope of the allegations of the underlying complaint in
19 that such request seeks irrelevant information, is overly broad, not reasonably calculated to lead to
20 the discovery of admissible evidence, and would impose an unnecessary burden on Plaintiff to
21 search out, review, organize and produce information and documents not relevant to any issue in
22 this case, and it would be oppressive to require this party to do so.

23 13. Plaintiff objects to each discovery request to the extent that it prematurely requests
24 information that may be the subject of expert testimony, or requests information from experts who
25 may not be called to testify at trial.

26 14. Plaintiff reserves the right to, at any time, assert additional objections, review,
27 correct, add to, or clarify any of the responses propounded herein and to supplement these
28 objections and responses as necessary.

1 15. These general objections are applicable to each and every one of the following
2 responses and objections, and failure to repeat the objection and response to a specific request
3 shall not be deemed a waiver of any such objection. Moreover, when Plaintiff specifically repeats
4 one or more of the general objections in response to a specific request, such a specific response
5 shall not be deemed a waiver of any other of these general objections.

6 Please note that supplements are in **bold** font throughout. Without waiving its General
7 Objections, Plaintiff supplements the interrogatories in accordance with applicable law and based
8 on the understanding of the fair meaning of these interrogatories as follows:

9 **Special Interrogatory No. 1:**

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

12 **Response To Special Interrogatory No. 1:**

13 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
14 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
15 completed”. Subject to these objections, Plaintiff responds as follows: Plaintiff is in the
16 process of conducting discovery from Defendants to determine the date the rockery walls were
17 completed, including but not limited to any maintenance, alterations, and or repairs that were
18 conducted by the declarant, or on declarants’ behalf. Investigation and discovery are
19 continuing and this answer will be supplemented as new information becomes available.

20 **Supplemental Response to Special Interrogatory No. 1:**

21 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
22 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
23 completed.” Subject to these objections, Plaintiff responds as follows: The question is
24 premature, as opposing parties have yet to provide Plaintiff with complete information and
25 documentation dealing with additional work and repairs occurring during the declarant control
26 period on the subject walls. Additionally, Interrogatory No. 1 presumes that the walls were
27 “substantially completed” on December 31, 2006, as this presumption lacks foundation and is
28 an argumentative restatement of Defendants’ arguments which are disputed by Plaintiff.

1 The evidence of completion provided by Defendants thus far is essentially limited to
2 unrecorded documents that are insufficient to establish as a matter of law “substantial
3 completion”. Unrecorded notices of completion are neither valid nor effective, as NRS 108.228
4 requires that to be effective Notices of Completion must be recorded. *See Dykema v. Del Webb*
5 *Communities*, 385 P.3d 977 (2016). Further, the discovery and disclosure responses received
6 thus far from the Defendants appear to be incomplete with regard to work done prior to the
7 declarant turnover of the Board on or about January 3, 2013. Finally, in meet and confer
8 discussions counsel for the developer/declarant has previously indicated that the
9 developer/declarant is in possession of thousands of documents that had yet to be reviewed.
10 Although the developer/declarant has made subsequent 16.1 disclosures, there has yet to be a
11 representation from the developer/declarant that all records have been searched, and disclosed.
12 Until there is an unequivocal representation from all defendants, including but not limited to
13 the developer/declarant, that all records have been searched and disclosed, Plaintiff’s discovery
14 is continuing as to the issues addressed in this interrogatory.

15 **Second Supplemental Response to Special Interrogatory No. 1:**

16 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
17 the grounds that it improperly seeks a legal conclusion with regard to the term “substantially
18 completed.” Subject to and without waiver of these objections and to Plaintiff’s First
19 Supplemental Responses, Plaintiff responds as follows: yes (**see below**).

20 **Special Interrogatory No. 2:**

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

24 **Response to Special Interrogatory No. 2:**

25 In addition to the General Objections, Plaintiff further objects to this Interrogatory on
26 the grounds that it dependent upon prior request that improperly seeks a legal conclusion with
27 regard to the term “substantially completed.” Subject to these objections, Plaintiff responds as
28 follows: Plaintiff is in the process of conducting discovery from Defendants to determine the

1 date the rockery walls were completed, **if at all**, including but not limited to any **inspections,**
2 **removals,** maintenance, alterations, and/or repairs that were conducted by the declarant, or on
3 declarants behalf **or by others.** Investigation and discovery are continuing and this **response**
4 will be supplemented as new information becomes available. Plaintiff acknowledges that
5 commencement of construction of some of the walls preceded December 31, 2006, based on the
6 documents provided in this case thus far, but does not have the information regarding all the
7 walls. In fact, as part of the discovery, propounded by the Plaintiff to the Defendants, on
8 November 1, 2018, Plaintiff seeks documents – solely in **each of the** Defendants’ possession –
9 addressing the **issue of substantial** completion.

10 **Supplemental Response to Special Interrogatory No. 2:**

11 **In addition to the General Objections, Plaintiff further objects to this Interrogatory**
12 **and Interrogatory Number 1 on the grounds that Interrogatory Number 1 seeks a “yes” or**
13 **“no” response with regard to whether any of the subject walls were ever “substantially**
14 **completed”. The phrasing of the question is such that it invites an admission that the walls**
15 **were in fact at some point substantially completed. Subject to and without waiver of these**
16 **objections and to Plaintiff’s earlier Supplemental Responses, Plaintiff responds as follows:**
17 **Plaintiff’s response of “yes” to Interrogatory Number 1 is not to be taken as an admission**
18 **that any or all of the subject rockery walls were ever “substantially completed”.¹ It is not**
19 **Plaintiff’s burden to establish that the walls were ever substantially completed whether**
20 **before or after December 31, 2006. No evidence has been presented to establish as a matter**
21 **of law a date certain that any particular rockery walls were substantially completed. There**
22 **is a disputed question of fact as to whether the rockery walls were ever substantially**
23 **completed. To the extent that some of the rockery walls are substantially complete, those**
24 **are limited to the rockery walls that have failed or collapsed, and which have been**
25 **repaired or reconstructed, as those rockery walls are only now fit to be utilized for their**

26 _____
27 ¹ This is a loaded question logical fallacy, and presumes that at some point, the walls were substantially
28 completed, and that the only question is when. The issues of when, and if ever, are both disputed.

1 intended use. As to the vast majority of the rockery walls, including all of those identified
2 as part of this litigation and walls that may be added to the common area in the future, they
3 are not substantially complete as they are not fit to be utilized for their intended use,
4 either individually or as components of the rockery wall system throughout the Somerset
5 community.

6 The Stantec Final Project Reports (also known to the Parties as Stantec's Certificates
7 of Completion, signed off in 2006), have been offered as conclusive evidence of substantial
8 completion. However, the certificates do not establish substantial completion as a matter of
9 law. Additionally, the certificates are subject to challenge because evidence exists which
10 establishes that the rockery walls were not constructed to include all necessary engineering
11 components, and are therefore partially assembled and not substantially complete.

12 **AFFIRMATION**

13 The undersigned hereby affirms that the foregoing document does not contain the social
14 security number of any person.

15 DATED this 7th day of March 2019

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

18
19 By: /s/ John Samberg
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Attorneys for Somerset Owners Association

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 7th day of March, 2019, a true and correct copy of
3 **PLAINTIFF'S THIRD SUPPLEMENTAL RESPONSES TO PARSONS BROS**
4 **ROCKERIES, INC.'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**
5 **SOMERSETT HOMEOWNERS ASSOCIATION** was served electronically to all parties of
6 record via their email address as follows:

7 Charles Brucham, Esq.
8 Wade Carner, Esq.
9 Thorndall, Armstrong, Delk, Blakenbush & Eisinger
10 for SOMERSETT DEVELOPMENT
11 CORPORATION, SOMERSTT, LLC., SOMERSETT
12 DEVELOPMENT COMPANY LTD
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17
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