

IN THE SUPREME COURT OF THE STATE OF NEVADA

PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation,

Appellant,

vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a
Nevada limited liability company;
PANORAMA TOWERS I MEZZ,
LLC, a Nevada limited liability
company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,

Respondents.

Supreme Court No. 80615

District Court Case No. A-16-744146D
Electronically Filed
Mar 11 2020 05:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District: Eighth Department: 22
County: Clark Judge: Hon. Susan H. Johnson
District Ct. Case No.: A-16-744146-D

2. Attorneys filing this docketing statement:

Attorneys: Michael J. Gayan
Joshua D. Carlson

Telephone: (702) 385-6000

Firm Address: KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

Attorneys: Francis I. Lynch

Telephone: (702) 868-1115

Firm Address: LYNCH & ASSOCIATES LAW GROUP
1445 American Pacific Drive, Suite 110 #293
Henderson, Nevada 89074

Attorneys: Scott Williams (*pro hac vice*)

Telephone: (415) 755-1880

Firm Address: WILLIAMS & GUMBINER, LLP
1010 B Street, Suite 200
San Rafael, California 94901

Client(s): PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit corporation.

3. Attorneys representing respondents:

Attorneys: Peter C. Brown
Jeffrey W. Saab
Devin R. Gifford

Telephone: (702) 258-6665

Firm Address: BREMER WHYTE BROWN & O'MERA LLP
1160 N. Town Center Drive
Las Vegas, Nevada 89144

Attorneys: Daniel F. Polsenberg
Joel D. Henriod
Abraham G. Smith

Telephone: (775) 949-8200

Firm Address: LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Client(s): LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

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

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☒ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of injunction
- ☐ Grant/denial of declaratory relief
- ☐ Review of agency determination

- ☐ Dismissal
 - ☐ Lack of jurisdiction
 - ☐ Failure to state a claim
 - ☐ Failure to prosecute
 - ☐ Other (specify): _____
- ☐ Divorce decree
 - ☐ Original ☐ Modification
- ☐ Other disposition (specify):

5. Does this appeal raise issues concerning any of the following: No.

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

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

N/A

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

N/A

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

In February 2016, Defendant/Counterclaimant Panorama Towers Condominium Unit Owner's Association, Inc. (the "Association") served Plaintiffs/Counterdefendant Laurent Hallier; Panorama Towers I, LLC; Panorama Towers I Mezz, LLC; and M.J. Dean Construction, Inc. (collectively, the "Builders") with a Notice of Defect pursuant to NRS 40.645 alleging construction defects in the Association's two high-rise condominium towers (the "Chapter 40 Notice"). After the Builders conducted perfunctory pre-litigation inspections and disclaimed in writing all liability for any of the construction defects, the parties participated in the statutorily required pre-litigation mediation. On September 28, 2016, just two days after that mediation ended without any resolution of the Association's claims, the Builders pre-emptively filed this action against the Association seeking to enforce a prior contractual agreement and obtain declaratory relief related to the Association's construction defect claims. On March 1, 2017, after the Association's unsuccessfully sought to dismiss the Builders' Complaint, the Association timely filed its Answer and Counterclaim against the Builders. The Association's Counterclaim contained the construction defect claims described within the Chapter 40 Notice.

On March 20, 2017, the Builders filed their first motion for summary judgment to challenge the sufficiency of the Chapter 40 Notice based on the then-effective notice

requirements of NRS 40.645. On September 15, 2017, the district court entered its order partially granting the Builders’ motion and staying the case for six months to allow the Association to amend its Chapter 40 Notice. In April 2018, after the district court extended the stay, the Association served its amended Chapter 40 Notice on the Builders.

On June 3, 2018, the Builders filed their second motion for summary judgment, this time challenging the sufficiency of the amended Chapter 40 Notice. On November 30, 2018, the district court entered its order partially granting the Builders’ motion and allowing the Association’s most substantial claim—related to defectively designed window assemblies—to proceed.

On October 22, 2018, the Builders filed their third motion for summary judgment to challenge the Association’s standing to pursue the defect claims. On December 17, 2018, the Builders moved for reconsideration of the district court’s order that found the Association’s amended Chapter 40 Notice provided the Builders with sufficient notice of the window-assembly defect. On February 12, 2019, the district court, after hearing extensive oral argument, denied both of these motions.

On February 11, 2019, after the case had been pending for more than two years, the Builders filed their fourth motion for summary judgment, this time challenging the timeliness of the Association’s construction defect claims under the statute of repose (NRS 11.202(1)). On March 1, 2019, the Association filed its opposition to counter-moved for relief pursuant to NRS 40.695(2) (i.e., toll the statute of repose for good cause). On May 23, 2019, the district court entered its order granting the Builders’ motion and denying the Association’s countermotion (“May 23, 2019 Order”). In that order, the district court determined (1) the dates of substantial completion for the two high-rise towers at issue are “January 16, 2008 (Tower I) and March 16, 2008 (Tower II) . . .” and (2) the Association timely served its Chapter 40 Notice before expiration of the statute of repose and applicable grace period. However, the district court determined the Association did not file its complaint before the tolling period expired under NRS 40.695(1)(b), the Association’s claims were not compulsory counterclaims and did not relate back to the date of the Builders’ complaint, and there was no good cause to extend the tolling period pursuant to NRS 40.695(2). On May 28, 2019, the Builders filed a notice of entry for the May 23, 2019 Order.

On June 1, 2019, less than 10 days later, the Nevada Legislature passed Assembly Bill 421 and delivered it to Governor Sisolak for consideration. In pertinent part, AB 421 amended NRS 11.202 by extending the statute of repose period from six (6) to ten (10) years and expressly stated the extended statute of repose period is to be applied retroactively. On June 3, 2019, the Association filed a motion for reconsideration of the

May 23, 2019 Order. In the reconsideration motion, the Association noted the status of AB 421 and the possibility of filing another motion for reconsideration should the bill become law. On June 13, 2019, the Association filed a separate motion for reconsideration of the May 23, 2019 Order based on AB 421's enactment. On July 16, 2019, the Court heard both of the Association's motions and denied the Association's June 3, 2019, reconsideration request, but took the June 13, 2019 reconsideration request under advisement. On August 9, 2019, the district court entered its order denying the Association's motion for reconsideration specifically related to AB 421 because the new law did not go into effect until October 1, 2019 ("August 9, 2019 Reconsideration Order"). Later on August 9, 2019, the Builders filed a notice of entry of the August 9, 2019 Reconsideration Order.

On July 22, 2019, the Builders filed their motion requesting to certify the May 23, 2019 Order as a final judgment pursuant to NRCp 54(b) and did so on an ex parte order shortening time. On August 12, 2019, the district court filed its order granting the Builders' motion and certifying the May 23, 2019 Order as final judgment under NRCp 54(b) ("Rule 54(b) Order"). On August 13, 2019, the Builders filed a notice of entry of the Rule 54(b) Order.

On September 9, 2019, the Association filed its motion, pursuant to NRCp 59(e), to alter or amend the May 23, 2019 Order based on the change in controlling law—the retroactive lengthening of the statute of repose—brought about by the enactment of AB 421. On January 14, 2020, the district court entered its order denying the Association's request to alter or amend the May 23, 2019 Order. ("Rule 59(e) Order"). On January 16, 2020, the Builders filed a notice of entry of the Rule 59(e) Order.

On February 13, 2020, the Association filed its Notice of Appeal of the district court's various orders made final by the Rule 54(b) Order, including but not limited to the May 23, 2019 Order, the August 9, 2019 Reconsideration Order, and the Rule 59(e) Order.

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

- Whether the district court erred in granting the Builders' motion for summary judgment challenging the timeliness of the Association's construction defect counterclaims under NRS 11.202(1) and denying the Association's countermotion (i.e., the May 23, 2019 Order), including but not limited to the court's interpretation of various aspects of NRS 40.695 (e.g., tolling of the statute of repose, good cause to extend the automatic tolling period).

- Whether the district court erred in denying the Association's motions to reconsider the May 23, 2019 Order based on the enactment of AB 421, including but not limited to the court's determination that AB 421's express retroactivity provision did not go into effect until October 1, 2019.
- Whether the district court erred in denying the Association's motion to alter or amend the May 23, 2019 Order pursuant to NRCP 59(e) after AB 421's effective date, including but not limited to the court's determination that the new law did not apply to the Association's claims.

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

Unknown

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

■ N/A

☐ Yes

☐ No,

If not, explain:

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

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

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

■ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain: This appeal involves more than one substantial issue of first impression, including but not limited to:

(1) what factors should guide the good-cause determination under NRS 40.695(2) for district courts to extend the automatic tolling period in residential construction defect actions that are subject to the mandatory pre-litigation procedures;

(2) whether construction defect claims are compulsory counterclaims and/or relate back to the date of the complaint where the recipient(s) of a Chapter 40 Notice preemptively files suit against the claimant;

(3) whether contract-based construction defect claims are subject to the statute of repose period;

(4) the date on which the express retroactivity provision of AB 421 (2019) went into effect; and

(5) under what circumstances the district courts should alter or amend an order pursuant to NRCP 59(e) based on “a change in the controlling law.” *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (citing *Coury v. Robison*, 115 Nev. 84, 91 n.4, 976 P.2d 518, 522 n.4 (1999)) (internal quotations omitted).

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

This matter is not presumptively retained by the Supreme Court pursuant to NRAP 17(a) or presumptively assigned to the Court of Appeals pursuant to NRAP 17(b). Therefore, the Supreme Court retains jurisdiction of this matter unless and until ordered otherwise. Due to the numerous substantial issues of first impression, the Association believes the Supreme Court should retain jurisdiction of this case.

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

Was it a bench or jury trial? N/A

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

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment on order appealed from: August 12, 2019.

17. Date written notice of entry or order was served: August 13, 2019.

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

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

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

- | | |
|---|---|
| <input type="checkbox"/> NRCP 50(b) | Date of filing: <u>N/A</u> |
| <input type="checkbox"/> NRCP 52(b) | Date of filing: <u>N/A</u> |
| <input checked="" type="checkbox"/> NRCP 59 | Date of filing: <u>September 9, 2019, service via</u>
<u>electronic means to all parties on the Court's service list</u> |

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: January 14, 2020

(c) Date written notice of entry of order resolving tolling motion was served:
January 16, 2020

Was service by:

- ☐ Delivery
- ☒ Mail/electronic/fax

19. Date notice of appeal filed:

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

- PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation, filed its Notice of Appeal on February 13, 2020.

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

NRAP (4)(a)(4)(C).

SUBSTANTIVE APPEALABILITY

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

(a)

- NRAP 3A(b)(1)
- ☐ NRAP 3A(b)(2)
- ☐ NRAP 3A(b)(3)
- ☐ Other (specify): NRS 155.190(1)(n)
- ☐ NRS 38.205
- ☐ NRS 233B.150
- ☐ NRS 703.376

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

NRAP 3A(b)(1) permits an appeal from a final judgment. The Association appeals from a judgment that the district court certified as final pursuant to NRCP 54(b).

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

(a) Parties:

- Appellant:
Defendant/Counterclaimant Panorama Towers Condominium Unit Owners' Association, a Nevada non-profit corporation

- Respondents:

Plaintiffs/Counter-defendants Laurent Hallier; Panorama Towers I, LLC; Panorama Towers I Mezz, LLC; and M.J. Dean Construction, Inc.

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

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

- (a) Plaintiffs' Claims: Plaintiffs' Complaint alleges the following six claims for relief: (i) declaratory relief – application of AB 125, (ii) declaratory relief – claim preclusion, (iii) failure to comply with NRS 40.600 et seq., (iv) suppression of evidence/spoliation, (v) breach of contract regarding a settlement agreement in a prior litigation matter, (vi) declaratory relief – duty to defend allegedly arising out of settlement agreement, (vii) declaratory relief – duty to indemnify. The Builders' claims remain pending.
- (b) Defendant's Counterclaims: Defendants' Counterclaims alleges the following six claims for relief: (i) breach of NRS 116.4113 express warranties, NRS 116.4114 implied warranties, and implied warranty of habitability, and breach of express and implied warranties of fitness, quality, and workmanship, (ii) negligence and negligence per se, (iii) products liability, (iv) breach of contract; (v) intentional/negligent nondisclosure, (vi) duty of good faith and fair dealing, violation of NRS 116.1113.

On May 23, 2019, the district court entered its order granting the Builders' motion challenging the timeliness of the Association's construction defect counterclaims under NRS 11.202(1). On July 22, 2019, the Builders filed their motion requesting to certify the May 23, 2019 Order as a final judgment pursuant to NRCP 54(b). On August 12, 2019, the district court filed its order granting the Builders' motion and certifying the May 23, 2019 Order as final judgment under NRCP 54(b). On August 13, 2019, the Builders filed a notice of entry of the Rule 54(b) Order. On January 24, 2020, the district court entered its order declining to alter or amend the May 23, 2019 Order pursuant to NRCP 59(e).

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

- ☐ Yes
- ☒ No

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

- (a) Specify the claims remaining pending below: The Builders’ claims that remain pending: declaratory relief – claim preclusion, breach of contract regarding a settlement agreement in a prior litigation matter, declaratory relief – duty to defend allegedly arising out of settlement agreement, declaratory relief – duty to indemnify.
- (b) Specify the parties remaining below: Laurent Hallier; Panorama Towers I, LLC; Panorama Towers I Mezz, LLC; and M.J. Dean Construction, Inc.; and Panorama Towers Condominium Unit Owners’ Association, a Nevada non-profit corporation.
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
 - ☒ Yes
 - ☐ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
 - ☒ Yes
 - ☐ No

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

N/A

///

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

- The latest-filed complaint, counterclaims, crossclaims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim counterclaims, crossclaims, and/or third-party claims asserted in the action
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

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

Panorama Towers Condominium

Unit Owner's Association, Inc.

Name of Appellants

Michael J. Gayan

Name of counsel of record

March 11, 2020

Date

/s/Michael J. Gayan

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2020, I served a copy of this completed Docketing Statement upon all counsel of record via electronic service:

BREMER WHYTE BROWN & O'MERA LLP

Peter C. Brown, Esq.

Jeffrey W. Saab, Esq.

Devin R. Gifford, Esq.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

Daniel F. Polsenberg, Esq.

Joel D. Henriod, Esq.

Abraham G. Smith, Esq.

I further hereby certify that on the 11th day of March, 2020, I served a copy of this completed Docketing Statement via U.S. Mail, postage prepaid, to the following:

William C. Turner, Esq.

Settlement Judge

59 Oakmarsh Drive

Henderson, Nevada 89074

/s/ Pamela Montgomery

An employee of Kemp Jones, LLP

DISTRICT COURT CIVIL COVER SHEET

A-16-744146-D

County, Nevada

Case No. _____

XXII

(Assigned by Clerk's Office)

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

Plaintiff(s) (name/address/phone):

Laurent Hallier, an individual; Panorama Towers, I, LLC, a Nevada limited liability company; Panorama Towers I Mezz, LLC, a Nevada limited liability company; and M.J. Dean Construction, Inc., a Nevada corporation

Defendant(s) (name/address/phone):

Panorama Towers Condominium Unit Owners' Association
a Nevada non-profit corporation

Attorney (name/address/phone):

Peter C. Brown, Esq. and Darlene M. Cartier, Esq.

Bremer, Whyte, Brown & O'Meara, LLP

1160 N. Town Center Drive, Suite 250

Las Vegas, Nevada 89144; 702-258-6665

Attorney (name/address/phone):

OCT 3 2016

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

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

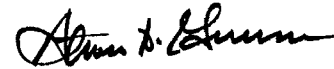
Business Court filings should be filed using the Business Court civil coversheet.

9/28/2016

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

PETER C. BROWN, ESQ.
Nevada Bar No. 5887
DARLENE M. CARTIER, ESQ.
Nevada Bar No. 8775
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
dcartier@bremerwhyte.com

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;	)	Case No. A-16-744146-D
PANORAMA TOWERS I, LLC, a Nevada	)	Dept. No. XXI
limited liability company; PANORAMA)	
TOWERS I MEZZ, LLC, a Nevada limited	)	COMPLAINT
liability company; and M.J. DEAN)	
CONSTRUCTION, INC., a Nevada Corporation,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
PANORAMA TOWERS CONDOMINIUM)	
UNIT OWNERS' ASSOCIATION, a Nevada)	
non-profit corporation,)	
)	
Defendant.)	

COMES NOW Plaintiffs LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ LLC; and M.J. DEAN CONSTRUCTION, INC. (hereinafter
collectively referred to as "Plaintiffs"), by and through their attorneys of record, the law firm of
Bremer, Whyte, Brown & O'Meara LLP, and hereby bring their Complaint against Defendant
PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION (hereinafter
referred to as "Defendant"), and complain and allege as follows:

///

1 **PARTIES**

2 1. At all times relevant herein, Plaintiff LAURENT HALLIER, was an individual
3 domiciled in Clark County, Nevada.

4 2. At all times relevant herein, Plaintiff PANORAMA TOWERS I, LLC, was a
5 Nevada corporation duly licensed and authorized to conduct business in Clark County, Nevada.

6 3. At all times relevant herein, Plaintiff PANORAMA TOWERS I MEZZ, LLC, was a
7 Nevada corporation duly licensed and authorized to conduct business in Clark County, Nevada.

8 4. At all times relevant herein, Plaintiff M.J. DEAN CONSTRUCTION, INC. was a
9 Nevada corporation duly licensed and authorized to conduct business in Clark County, Nevada.

10 5. Upon information and belief, Plaintiffs allege that at all times relevant herein,
11 Defendant PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, was
12 incorporated as a Nevada non-profit Nevada corporation with its principal place of business in
13 Clark County, Nevada.

14 **JURISDICTION AND VENUE**

15 6. This Court has jurisdiction in this matter, and venue is proper in that this Complaint
16 involves claims for alleged construction defects and/or deficiencies at the Panorama Towers
17 Condominiums, located at 4525 Dean Martin Drive (Tower I) and 4575 Dean Martin Drive, Las
18 Vegas, Nevada, Clark County, Nevada (hereinafter "Subject Property").

19 **GENERAL ALLEGATIONS**

20 7. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 6,
21 inclusive, as though fully set forth herein.

22 8. Defendant is an "Association" or "Unit-Owners' Association" as defined in NRS
23 116.011.

24 9. On or about February 24, 2016, Defendant, through its counsel, served Plaintiffs
25 with a "Notice to Contractor Pursuant to Nevada Revised Statutes, Section 40.645" (hereinafter
26 "Chapter 40 Notice").

27 10. Defendant's Chapter 40 Notice alleges defects and resulting damages involving: (1)
28 residential tower windows, (2) residential tower fire blocking; (3) mechanical room piping; and (4)

1 sewer piping.

2 11. Defendant's Chapter 40 Notice fails to comply with NRS 40.645(3)(b) and (c) in
3 that it does not identify in specific detail, the alleged damages and the exact location of the damage(s)
4 relating to the alleged residential tower windows, residential tower fire blocking defects or the
5 alleged sewer piping defects.

6 12. Defendant's Chapter 40 Notice includes as an Exhibit, a report by Gregory Fehr,
7 P.E. of Advanced Technology & Marketing Group ("ATMG"), dated November 17, 2011, in
8 support of Defendant's mechanical room piping claims. The ATMG report states that ATMG
9 observed alleged corrosion damage and alleged leaking connections in the mechanical rooms at the
10 Subject Property on or about September 20, 2011. Thus, Defendant had knowledge of the alleged
11 mechanical room piping defects more than 3½ years prior to the date it served Plaintiffs with
12 Defendant's Chapter 40 Notice.

13 13. With respect to the alleged sewer piping defect allegation, Defendant's Chapter 40
14 Notice states "This deficiency has been repaired. In addition to causing, damage, the defective
15 installation presented an unreasonable risk of injury to a person or property resulting from the
16 disbursement of unsanitary matter." Such alleged risk of injury does not and did not alleviate
17 Defendant from its obligation to provide timely Chapter 40 Notice to Plaintiffs of the alleged
18 defect, and to provide a Chapter 40 Notice prior to Defendant performing repairs of the alleged
19 defect.

20 14. Defendant's Chapter 40 Notice also alleges Defendant (i.e. Claimant) is "still in the
21 process of investigating the alleged conditions at the Development, and accordingly, this
22 preliminary list of defects is not intended as a complete statement of all the defects in or at the
23 Development. Claimant reserves the right to amend or update this list in the event that new defects
24 and/or resulting damages are discovered during the course of investigation."

25 15. On March 24, 2016, pursuant to NRS 40.646, Plaintiffs inspected the defects alleged
26 in Defendant's Chapter 40 Notice.

27 16. During Plaintiffs' March 24, 2016, inspection, Plaintiffs observed that the majority
28 of the allegedly defective (i.e. corroded) mechanical room piping had been removed and replaced

1 prior to Plaintiffs' inspection. Defendant did not provide notice to Plaintiffs of the allegedly
2 defective mechanical room piping prior to performing said repair work, including, but not limited
3 to, a Chapter 40 Notice.

4 17. During Plaintiffs' March 24, 2016, inspection, Plaintiffs also became aware that the
5 allegedly defective sewer piping had also been repaired prior to Plaintiffs' inspection. Defendant
6 did not provide notice to Plaintiffs of the allegedly defective sewer piping prior to performing this
7 repair work, including, but not limited to, a Chapter 40 Notice.

8 18. On March 29, 2016, Plaintiffs sent correspondence to Defendant's counsel
9 requesting information and documents relating to (1) the sewer line defect allegations identified in
10 Defendant's Chapter 40 Notice, including the date of occurrence and date of repair of the alleged
11 defects, and requesting the current location of any sewer line materials that were removed and
12 replaced as part of Defendant's repair; and (2) the mechanical room piping defect allegations
13 identified in Defendant's Chapter 40 Notice, including the date when the allegedly corroded pipes
14 were replaced, the date the repair work was performed, the identity of the contractor(s) who
15 performed the repair work, and also requesting Defendant confirm whether and where the removed
16 mechanical room pipe materials have been stored for safekeeping. Defendant did not respond to
17 Plaintiffs' March 29, 2016 correspondence.

18 19. On April 29, 2016, Plaintiffs sent follow up correspondence to Defendant's counsel
19 requesting Defendant promptly provide information and documents relating to (1) the alleged
20 sewer line defect allegations identified in Defendant's Chapter 40 Notice, including the date of
21 occurrence and date of repair of the alleged defects, and requesting the current location of any
22 sewer line materials that were removed and replaced as part of Defendant's repair; and (2) the
23 alleged mechanical room piping defects identified in Defendant's Chapter 40 Notice, including the
24 date when the allegedly corroded pipes were replaced, the date the repair work was performed, the
25 identity of the contractor(s) who performed the repair work, and also requesting Defendant confirm
26 whether and where the removed mechanical room pipe materials have been stored for safekeeping.
27 Plaintiff requested a response from Defendant no later than May 3, 2016. Defendant did not
28 respond to Plaintiffs' April 29, 2016 correspondence.

1 20. On May 24, 2016, Plaintiffs served Defendant with Plaintiffs' Response to
2 Defendant's Chapter 40 Notice.

3 21. On September 26, 2016, Plaintiffs and Defendant participated in a pre-litigation
4 mediation regarding the claims and defects included in Defendant's Chapter 40 Notice, as required
5 by NRS 40.680, but were unable to reach a resolution. As a result, the mandatory pre-litigation
6 process has concluded.

7 22. On February 24, 2015, the Nevada Legislature enacted the Homeowner Protection
8 Act of 2015 (aka Assembly Bill 125) (hereinafter referred to as "AB 125"). AB 125, Section 17,
9 amended NRS 11.202(1), abolishing the previously applicable statutes of limitation and shortening
10 the statute of repose for all claims to six (6) years from the date of substantial completion of an
11 improvement.

12 23. Pursuant to AB 125, Section 21(5) and Section 22, the six-year statute of repose
13 applies retroactively to actions in which substantial completion of the improvement to real property
14 occurred before February 6, 2015.

15 24. Upon information and belief, the Clark County Building Department issued a
16 Certificate of Occupancy for Tower I (4525 Dean Martin Drive) on January 16, 2008.

17 25. Upon information and belief, the Clark County Building Department issued a
18 Certificate of Occupancy for Tower II (4572 Dean Martin Drive) on March 31, 2008.

19 26. Plaintiffs contend the date of substantial completion of Tower I (4525 Dean Martin
20 Drive) (as provided in NRS 11.2055(1)) is on or about January 16, 2008.

21 27. Plaintiffs contend the date of substantial completion of Tower II (4572 Dean Martin
22 Drive) (as provided in NRS 11.2055(1)) is on or about March 31, 2008.

23 28. Plaintiffs are informed and believe, and thereon allege, that the six-year statute of
24 repose applies retroactively to Defendant's Chapter 40 Notice and the defects alleged therein,
25 because substantial completion of the Subject Property occurred prior to enactment of AB 125.
26 Therefore, Plaintiffs are informed and believe, and thereon allege, that Defendant's claims in its
27 Chapter 40 Notice are all time barred by AB 125/NRS 11.202(1).

28 29. The one-year "grace period" contained in AB 125, Section 21(6)(a) allows a

1 construction defect claim to proceed under the pre-AB 125 statutes of repose (i.e. eight-year, ten-
2 year, or unlimited statutes of repose) only if the claim “accrued before the effective date of [the] act
3 [February 24, 2015] and was commenced within 1 year of the effective date of [the] act [February
4 24, 2016]”.

5 30. Plaintiffs are informed and believe, and thereon allege, that in order to be able to
6 rely on AB 125, Section 21(6)(a)’s one-year “grace period,” Defendant was required to provide
7 Chapter 40 Notice to Plaintiffs prior to the effective date of the act [February 24, 2015] and to
8 commence any lawsuit with regard to any unresolved claims prior to the expiration of AB 125,
9 Section 21(6)(a)’s one-year “grace period” [February 24, 2016].

10 31. Defendant did not mail its Chapter 40 Notice to Plaintiffs until February 24, 2016,
11 almost one year after the effective date of AB 125 (i.e. February 24, 2015).

12 32. Defendant did not contend in its Chapter 40 Notice that the claims alleged in its
13 Chapter 40 Notice “accrued before the effective date” of AB 125.

14 33. Defendant did not commence a lawsuit within AB 125, Section 21(6)(a)’s one-year
15 “grace period” (i.e. by February 24, 2016).

16 34. Plaintiffs are informed and believe, and thereon allege, that Defendant’s claims in its
17 Chapter 40 Notice are all time barred by AB 125/NRS 11.202(1).

18 35. Pursuant to NRS 40.615, as amended by AB 125, Section 6, a “Constructional
19 Defect” must present an “unreasonable risk of injury to a person or property” or “proximately cause
20 physical damage to the residence, an appurtenance or the real property to which the residents or
21 appurtenance is affixed.”

22 36. Plaintiffs contend that Defendant’s Chapter 40 Notice failed to provide any evidence
23 that any of the alleged defects involved an unreasonable risk of injury to a person or property or
24 proximately cause physical damage to the Subject Property.

25 37. Pursuant to NRS 40.615, as amended by AB 125, Section 8, a claimant’s Chapter 40
26 Notice must “identify in specific detail each defect, damage and injury to each residence or
27 appurtenance that is the subject of the claim, including, without limitation, the exact location of
28 each such defect, damage and injury...”

1 38. Plaintiffs contend that Defendant's Chapter 40 Notice failed to identify in specific
2 detail, each defect, damage and injury to the Subject Property, including, without limitation, the
3 exact location of each such alleged defect, damage and injury.

4 39. Pursuant to NRS 116.3102 (1)(d), as amended by AB 125, Section 20, "...The
5 association may not institute, defend or intervene in litigation or in arbitration, mediation or
6 administrative proceedings in its own name on behalf of itself of units' owners with respect to an
7 action for constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3
8 of the act unless the action pertains exclusively to common elements."

9 40. Plaintiffs are informed and believe, and thereon allege, that the Declaration of
10 Covenants, Conditions and Restrictions and Grant and Reservation of Easements for Panorama
11 Towers ("CC&Rs") for the Subject Property, were recorded by the Clark County Recorder on or
12 about November 7, 2006.

13 41. Article 1 of the Subject Property's CC&Rs relates to Definitions. Section 1.39
14 provides that "Common Elements shall mean all portions of the [Subject] Property other than the
15 Units..."

16 42. Article 4 of the Subject Property's CC&Rs relates to the Unit and Boundary
17 Descriptions. Section 4.2 (e) governs "apertures" and provides "Where there are apertures in any
18 boundary, including, but not limited to, windows, doors, bay windows and skylights, such
19 boundaries shall be extended to include the windows, doors and other fixtures located in such
20 apertures, including all frameworks window casings and weather stripping thereof, except that the
21 exterior surfaces made of glass and other transparent materials ...shall not be included in the
22 boundaries of the Unit and shall therefore be Common Elements."

23 43. Article 6 of the Subject Property's CC&Rs relates to Maintenance. Section 6.4
24 governs maintenance of "units and limited common elements" and provides "Each Owner shall
25 maintain, repair, replace, finish and restore or cause to be so maintained, repaired, replaced and
26 restored, at such Owner's sole expense all portions of such Owner's Unit..."

27 44. Plaintiffs are informed and believe, and thereon allege, that Defendant's claims
28 relating to the residential tower windows as alleged in the Chapter 40 Notice, fall within Article 4,

1 Section 4 (e) and Article 6, Section 6.4, of the Property's CC&Rs and are not within the "Common
2 Elements" as defined in the CC&Rs. Therefore, Plaintiffs contend that Defendant lacks standing
3 under AB 125 to bring claims relating to the residential tower windows.

4 45. On September 9, 2009, Defendant filed a Complaint for construction defects against
5 Plaintiffs PANORAMA TOWERS I, LLC and PANORAMA TOWERS II, LLC, entitled
6 Panorama Towers Condominium Unit Owners' Association v. Panorama Towers I, LLC, et al.
7 (Eighth Judicial District Court, Department XXII, Case No. A-09-598902) (hereinafter referred to
8 as "the Prior Litigation").

9 46. On January 17, 2011, Defendant filed an Amended Complaint in the Prior
10 Litigation, naming Plaintiff M.J. DEAN CONSTRUCTION, INC. and others as additional
11 defendants.

12 47. The parties in the Prior Litigation reached a settlement, and the terms of the
13 settlement were set forth in writing in a Settlement Agreement and Release (hereinafter "Settlement
14 Agreement").

15 48. The Settlement Agreement provides that "...the Agreement may be disclosed and
16 shall be deemed admissible as may be necessary to enforce the terms hereof..."

17 49. Parties to the Settlement Agreement in the Prior Litigation include Plaintiffs
18 PANORAMA TOWERS I, LLC, PANORAMA TOWERS II, LLC, and "all of their past, present
19 and future managers, members, officers, directors, predecessors, successors-in-interest, and assigns
20 and all other persons, firms or entities with whom any of the former have been, are now, or may
21 hereinafter be affiliated," Plaintiff M.J. DEAN CONSTRUCTION, INC., and others.

22 50. Upon information and belief, the Settlement Agreement in the Prior Litigation was
23 executed by Defendant on June 1, 2011, and approved as to form and content by Defendant's
24 counsel on June 3, 2011.

25 51. The Settlement Agreement in the Prior Litigation provides an irrevocable and
26 unconditional release by Defendant of Plaintiffs PANORAMA TOWERS I, LLC, PANORAMA
27 TOWERS II, LLC, and M.J. DEAN CONSTRUCTION, INC., and "all of their respective heirs,
28 executors, administrators, third party administrators, insurers, trustors, trustees, beneficiaries,

1 predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates,
2 and related entities and each of the foregoing respective officers, directors, stockholders,
3 controlling persons, principals, agents, servants, employees, representatives, and all persons, firms
4 and entities connective with them, including, without limitation, their insurers and sureties, who are
5 or who may ever become liable to them as to any and all demands, liens, claims, defects,
6 assignments, contracts, covenants, actions, suits, causes of action, costs, expenses, attorneys [sic]
7 fees, damages, losses, controversies, judgments, orders and liabilities of whatsoever kind and
8 nature, at equity or otherwise, either now known with respect to the construction defect claims ever
9 asserted in the SUBJECT ACTION or related to the alleged defect claims ever asserted in the
10 SUBJECT ACTION...This release specifically does not extend to claims arising out of defects not
11 presently known to the HOA.”

12 52. Plaintiffs PANORAMA TOWERS I, LLC, M.J. DEAN CONSTRUCTION, INC.
13 and/or their privies, Plaintiffs LAURENT HALLIER, PANORAMA TOWERS I MEZZ LLC, and
14 Defendant PANORAMA TOWERS CONDOMINIUM UNIT OWNERS’ ASSOCIATION are the
15 same in the instant matter as in the Prior Litigation. Therefore, Plaintiffs are informed and believe,
16 and thereon allege, that claim preclusion applies to the defects alleged in Defendant’s Chapter 40
17 Notice and prevents Defendants from bringing said claims against Plaintiffs in a subsequent action.

18 53. The Settlement Agreement in the Prior Litigation provides that Plaintiffs (and
19 others) “shall bear no responsibility whatsoever as to the re-design, repairs, remediation, corrective
20 work, maintenance, and/or damage arising therefrom, or how the settlement funds shall be divided,
21 distributed, or spent, or to remedy any of the claims released herein.”

22 54. The Settlement Agreement in the Prior Litigation also provides that Defendant
23 “covenants and agrees that it shall not bring any other claim, action, suit or proceeding” against
24 Plaintiffs (and others) “regarding the matters settled, released and dismissed hereby.”

25 55. Furthermore, the Settlement Agreement in the Prior Litigation also provides that if
26 Defendant, “or any person or organization on its behalf, including an insurer, ever pursues
27 litigation related to the PROJECT which seeks to impose liability for defects that were known to
28 [Defendant]” at the time the Settlement Agreement was executed by Defendant, than “[Defendant]

1 will defend, indemnify, and hold harmless” Plaintiffs (and others) “and their insurers with respect
2 to such litigation.”

3 56. On September 26, 2016, Plaintiffs’ counsel personally tendered Plaintiffs’ defense
4 and indemnity pursuant to the express terms of the Settlement Agreement in the Prior Litigation, to
5 Defendant’s counsel.

6 57. On January 19, 2012, the Court entered an Order based upon the stipulation of
7 counsel and the parties, ordering all claims against Plaintiffs PANORAMA TOWERS I, LLC, M.J.
8 DEAN CONSTRUCTION, INC. and others in the Prior Litigation, be dismissed with prejudice.

9 58. Notice of Entry of the Order dismissing the Prior Litigation against PANORAMA
10 TOWERS I, LLC, M.J. DEAN CONSTRUCTION, INC. and others, with prejudice, was entered
11 on January 23, 2012.

12 59. The dismissal with prejudice of Plaintiffs’ asserted claims and/or related to the
13 asserted claims in the Prior Litigation operates as a final judgment (i.e. an adjudication on the
14 merits) in the Prior Litigation, pursuant to NRCP 41(b). Thus, the final judgment in the Prior
15 Litigation is valid. Therefore, Plaintiffs are informed and believe, and thereon allege, that claim
16 preclusion applies to the defects alleged in Defendant’s Chapter 40 Notice and all grounds of
17 recovery by Defendant against Plaintiffs related thereto.

18 60. Plaintiffs are informed and believe, and thereon allege, that the defects alleged by
19 Defendant in Defendant’s Chapter 40 Notice were asserted in the Prior Litigation and/or are related
20 to alleged defect claims asserted in the Prior Litigation, and were irrevocably released in the
21 Settlement Agreement. Thus, the defects alleged in Defendant’s Chapter 40 Notice are based on
22 the same claims or are part of the same claims brought against Plaintiffs in the Prior Litigation.
23 Therefore, Plaintiffs are informed and believe, and thereon allege, that claim preclusion applies to
24 the defects alleged in Defendant’s Chapter 40 Notice and prevents Defendants from bringing said
25 claims against Plaintiffs in a subsequent action.

26 **FIRST CLAIM FOR RELIEF**

27 **(Declaratory Relief – Application of AB 125)**

28 61. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 60

1 inclusive, as though fully set forth herein.

2 62. Upon information and belief, Defendant intends to file a Complaint against
3 Plaintiffs for the alleged construction defects identified in Defendant's Chapter 40 Notice.

4 63. Upon information and belief, Defendant will seek damages against Plaintiffs for
5 Defendant's prior repair costs, the costs of future repairs, its expert fees and costs, attorney's fees
6 and interest, as well as other damages, relating to the alleged construction defects identified in
7 Defendant's Chapter 40 Notice.

8 64. A justiciable controversy now exists between Plaintiffs and Defendant as to their
9 respective rights and liabilities relating to Defendant's Chapter 40 Notice and the defects alleged
10 therein, including whether any or all of Defendant's claims are all time barred by AB 125/NRS
11 11.202(1), and/or whether Defendant has standing to bring claims relating to the residential tower
12 windows.

13 65. Plaintiffs' and Defendant's interests in the controversy are adverse. Plaintiffs
14 contend Defendant may not recover damages against Plaintiffs relating to the claims in Defendant's
15 Chapter 40 Notice. Upon information and belief, Defendant contends otherwise. Thus, Plaintiffs'
16 and Defendant's interests are adverse to each other.

17 66. Plaintiffs assert a claim of a legally protectible right with respect to Defendant's
18 Chapter 40 Notice and the construction defects alleged therein. Plaintiffs have a legally protectible
19 interest with respect to whether a jury awards damages against them in favor or Defendant.

20 67. Plaintiffs and Defendant have completed the mandatory pre-litigation process for the
21 construction defect claims alleged in Defendant's Chapter 40 Notice. As a result, the controversy
22 is ripe for judicial determination.

23 68. All the rights and obligations of the parties hereto arose out of what is actually one
24 transaction or one series of transactions, happenings or events, all of which can be settled and
25 determined in a judgment in this one action.

26 69. Plaintiffs allege that an actual controversy exists between Plaintiffs and Defendant
27 under the circumstances alleged, which Plaintiffs request the Court resolve. A declaration of
28 rights, responsibilities and obligations of Plaintiffs and Defendant, and each of them, is essential to

1 determine their respective obligations in connection with Defendant's Chapter 40 Notice and the
2 claims alleged therein, and Plaintiffs have no true and speedy remedy at law of any kind.

3 70. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown
4 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their
5 reasonable attorneys' fees and costs incurred therein.

6 **SECOND CLAIM FOR RELIEF**

7 **(Declaratory Relief – Claim Preclusion)**

8 71. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 70,
9 inclusive, as though fully set forth herein.

10 72. Upon information and belief, Defendant intends to file a Complaint against
11 Plaintiffs for the alleged construction defects identified in Defendant's Chapter 40 Notice.

12 73. Upon information and belief, Defendant will seek damages against Plaintiffs for
13 Defendant's prior repair costs, the costs of future repairs, its expert fees and costs, attorney's fees
14 and interest, as well as other damages, relating to the alleged construction defects identified in
15 Defendant's Chapter 40 Notice.

16 74. A justiciable controversy now exists between Plaintiffs and Defendant as to their
17 respective rights and liabilities relating to the Settlement Agreement in the Prior Litigation and the
18 defects alleged and released therein.

19 75. Plaintiffs' and Defendant's interests in the controversy are adverse. Plaintiffs
20 contend Defendant may not recover damages against Plaintiffs relating to the alleged
21 defects/claims released in the Settlement Agreement in the Prior Litigation. Upon information and
22 belief, Defendant contends otherwise. Thus, Plaintiffs' and Defendant's interests are adverse to
23 each other.

24 76. Plaintiffs assert a claim of a legally protectible right with respect to the Settlement
25 Agreement in the Prior Litigation and the defects alleged and released therein. Plaintiffs have a
26 legally protectible interest with respect to whether a jury awards damages against them in favor or
27 Defendant.

28

1 without limitation, the exact location of the alleged defect, damage and injury, relating to the alleged
2 mechanical room piping defects.

3 85. Defendant failed to comply with NRS 40.645(2)(b) and (c) in that Defendant's
4 Chapter 40 Notice does not identify in specific detail the alleged defect, damage and injury, including
5 without limitation, the exact location of the alleged defect, damage in injury, relating to the alleged
6 sewer line defects.

7 86. Defendant failed to comply with NRS 40.645(1)(a) in that Defendant failed to
8 provide a Chapter 40 Notice to Plaintiffs regarding the alleged residential tower windows defects
9 prior to performing repairs, thereby denying Plaintiffs' statutory rights under NRS 40.6472.

10 87. Defendant failed to comply with NRS 40.645(1)(a) in that Defendant failed to
11 provide a Chapter 40 Notice to Plaintiffs regarding the alleged mechanical room piping defects
12 prior to performing repairs, thereby denying Plaintiffs' statutory rights under NRS 40.6472.

13 88. Defendant failed to comply with NRS 40.645(1)(a) in that Defendant failed to
14 provide a Chapter 40 Notice to Plaintiffs regarding the alleged sewer piping defects prior to
15 performing repairs, thereby denying Plaintiffs' statutory rights under NRS 40.6472.

16 89. As a result of Defendant's failure to comply with NRS 40.600 et seq., Plaintiffs
17 have been denied their statutory rights under NRS 40.600 et seq.

18 90. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown
19 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their
20 reasonable attorneys' fees and costs incurred therein.

21 **FOURTH CLAIM FOR RELIEF**

22 **(Suppression of Evidence/Spoliation)**

23 91. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 90,
24 inclusive, as though fully set forth herein.

25 92. Plaintiffs are informed and believe, and thereon allege that Defendant and/or its
26 agents have intentionally suppressed and/or destroyed evidence relating to Defendant's claims
27 against Plaintiffs and/or Plaintiffs' defenses to such claims with the intent to harm Plaintiffs, or
28 Defendants negligently lost or destroyed such evidence.

93. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their reasonable attorneys' fees and costs incurred therein.

FIFTH CLAIM FOR RELIEF

(Breach of Contract)

94. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 93, inclusive, as though fully set forth herein.

95. Plaintiffs and Defendant entered into a Settlement Agreement in the Prior Litigation; whereby: (1) in full and complete settlement of the claims asserted in the Prior Litigation, Plaintiffs paid a monetary settlement to Defendant, the amount of which is confidential; (2) Defendant expressly agreed it would not bring any other claim, action, suit or proceeding against Plaintiffs (and others) regarding the matters settled, released and dismissed in the Prior Litigation; and (3) Defendant agreed to defend and indemnify Plaintiffs (and others) and to hold Plaintiffs (and others) harmless with respect to any litigation relating to defects that were known to Defendant at the time Defendant executed the Settlement Agreement.

96. Plaintiffs have performed all the terms, conditions, covenants and promises required of Plaintiffs in the Settlement Agreement. Defendant failed and refused to perform the terms, conditions, covenants and promises required of Defendant in the Settlement Agreement, despite Plaintiffs' demand to do so, thereby materially breaching the terms of the settlement and the Settlement Agreement.

97. As a proximate cause of Defendant's breaches of the Settlement Agreement, Plaintiffs have and continue to suffer damages, which include, without limitation, attorney's fees, costs, statutory interest and costs, expended in pursuant of this Complaint.

98. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their reasonable attorneys' fees and costs incurred therein.

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1 **SIXTH CLAIM FOR RELIEF**

2 **(Declaratory Relief - Duty to Defend)**

3 99. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 98,
4 inclusive, as though fully set forth herein.

5 100. Pursuant to the Settlement Agreement in the Prior Litigation, Plaintiffs contend
6 Defendant has a duty to defend Plaintiffs (and others) with respect to any subsequent litigation
7 relating to defects that were known to Defendant at the time Defendant executed the Settlement
8 Agreement, and upon information and belief, Defendant contends otherwise.

9 101. A justiciable controversy now exists between Plaintiffs and Defendant as to their
10 respective rights and obligations in the Settlement Agreement in the Prior Litigation in that
11 Plaintiffs contend that Defendant has a duty to defend Plaintiffs (and others) involving the alleged
12 defects/claims released in the Settlement Agreement in the Prior Litigation, including, but not
13 limited to, Defendant's alleged residential tower windows, and residential tower fire blocking
14 defects, which Plaintiffs assert were known to Defendant at the time Defendant executed the
15 Settlement Agreement or are reasonably related to claims that were known to Defendant at the time
16 Defendant executed the Settlement Agreement. Upon information and belief, Defendant contends
17 otherwise. Thus, Plaintiffs' and Defendant's interests in the controversy are adverse.

18 102. Plaintiffs assert a claim of a legally protectible right with respect to the Settlement
19 Agreement in the Prior Litigation and the defects alleged and settled therein. Plaintiffs have a
20 legally protectible interest with respect to whether a jury awards damages against them in favor or
21 Defendant.

22 103. Plaintiffs and Defendant have completed the mandatory pre-litigation process for the
23 construction defect claims alleged in Defendant's Chapter 40 Notice. As a result, the controversy
24 is ripe for judicial determination.

25 104. All the rights and obligations of the parties hereto arose out of what is actually one
26 transaction or one series of transactions, happenings or events, all of which can be settled and
27 determined in a judgment in this one action.

28 105. Plaintiffs allege that an actual controversy exists between Plaintiffs and Defendant

1 under the circumstances alleged, which Plaintiffs request the Court resolve. A declaration of
2 rights, responsibilities and obligations of Plaintiffs and Defendant, and each of them, is essential to
3 determine their respective obligations in connection with the Settlement Agreement in the Prior
4 Litigation, and Plaintiffs have no true and speedy remedy at law of any kind.

5 106. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown
6 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their
7 reasonable attorneys' fees and costs incurred therein.

8 **SEVENTH CLAIM FOR RELIEF**

9 **(Declaratory Relief - Duty to Indemnify)**

10 107. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 106,
11 inclusive, as though fully set forth herein.

12 108. Pursuant to the Settlement Agreement in the Prior Litigation, Plaintiffs contend
13 Defendant has a duty indemnify Plaintiffs and to hold Plaintiffs (and others) harmless with respect
14 to any subsequent litigation relating to defects that were known to Defendant at the time Defendant
15 executed the Settlement Agreement, and upon information and belief, Defendant contends
16 otherwise.

17 109. A justiciable controversy now exists between Plaintiffs and Defendant as to their
18 respective rights and obligations in the Settlement Agreement in the Prior Litigation in that
19 Plaintiffs contend that Defendant has a duty to defend Plaintiffs (and others) involving the alleged
20 defects/claims released in the Settlement Agreement in the Prior Litigation, including, but not
21 limited to, Defendant's alleged residential tower windows, and residential tower fire blocking
22 defects, which Plaintiffs assert were known to Defendant at the time Defendant executed the
23 Settlement Agreement or are reasonably related to claims that were known to Defendant at the time
24 Defendant executed the Settlement Agreement. Upon information and belief, Defendant contends
25 otherwise. Thus, Plaintiffs' and Defendant's interests in the controversy are adverse.

26 110. Plaintiffs assert a claim of a legally protectible right with respect to the Settlement
27 Agreement in the Prior Litigation and the defects alleged and settled therein. Plaintiffs have a
28

1 legally protectible interest with respect to whether a jury awards damages against them in favor or
2 Defendant.

3 111. Plaintiffs and Defendant have completed the mandatory pre-litigation process for the
4 construction defect claims alleged in Defendant's Chapter 40 Notice. As a result, the controversy
5 is ripe for judicial determination.

6 112. All the rights and obligations of the parties hereto arose out of what is actually one
7 transaction or one series of transactions, happenings or events, all of which can be settled and
8 determined in a judgment in this one action.

9 113. Plaintiffs allege that an actual controversy exists between Plaintiffs and Defendant
10 under the circumstances alleged, which Plaintiffs request the Court resolve. A declaration of
11 rights, responsibilities and obligations of Plaintiffs and Defendant, and each of them, is essential to
12 determine their respective obligations in connection with the Settlement Agreement in the Prior
13 Litigation, and Plaintiffs have no true and speedy remedy at law of any kind.

14 114. It has been necessary for Plaintiffs to retain the services of Bremer, Whyte, Brown
15 & O'Meara LLP to bring this action. Accordingly, Plaintiffs are entitled to recover their
16 reasonable attorneys' fees and costs incurred therein.

17 **WHEREFORE**, Plaintiffs pray for judgment against Defendant, as follows:

- 18 1. For a declaration of rights and obligations as between Plaintiffs and Defendant
19 pursuant to NRS 30.010;
20 2. For general and special damages in excess of \$10,000.00;
21 3. For reasonable attorney's fees, costs, expert costs and expenses, pursuant to
22 statutory law, common law, and contract law;

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- 1 4. For prejudgment interest; and
2 5. For such other and further relief as this Court may deem just, equitable and proper.

3 Dated: September 28, 2016

BREMER WHYTE BROWN & O'MEARA LLP

4

5

By: 

6

Peter C. Brown, Esq.
Nevada State Bar No. 5887
Darlene M. Cartier, Esq.
Nevada State Bar No. 8775

7

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA
TOWERS I, LLC; PANORAMA
TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

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1 PETER C. BROWN, ESQ.
Nevada Bar No. 5887
2 DARLENE M. CARTIER, ESQ.
Nevada Bar No. 8775
3 BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
4 SUITE 250
LAS VEGAS, NV 89144
5 TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
6 pbrown@bremerwhyte.com
dcartier@bremerwhyte.com
7

Attorneys for Plaintiffs,
8 LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
9 CONSTRUCTION, INC.

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**
12

13 LAURENT HALLIER, an individual;	) Case No.
PANORAMA TOWERS I, LLC, a Nevada	) Dept. No.
14 limited liability company; PANORAMA)
TOWERS I MEZZ, LLC, a Nevada limited	) INITIAL APPEARANCE FEE
15 liability company; and M.J. DEAN	) DISCLOSURE
CONSTRUCTION, INC., a Nevada Corporation,)
16)
Plaintiffs,)
17)
vs.)
18)
PANORAMA TOWERS CONDOMINIUM)
19 UNIT OWNERS' ASSOCIATION, a Nevada)
non-profit corporation,)
20)
Defendant.)
21)

22 Pursuant to N.R.S. Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
23 the party appearing in the above-entitled action as indicated below:

24 CONSTRUCTION DEFECT FILING FEE:	\$520.00
25 LAURENT HALLIER:	\$30.00
26 PANORAMA TOWERS I, LLC:	\$30.00
27 PANORAMA TOWERS I MEZZ, LLC:	\$30.00

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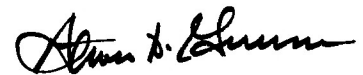
M.J. DEAN CONSTRUCTION, INC.: \$30.00

TOTAL REMITTED: \$640.00

Dated: September 28, 2016 BREMER WHYTE BROWN & O'MEARA LLP

By: 

Peter C. Brown, Esq.
Nevada State Bar No. 5887
Darlene M. Cartier, Esq.
Nevada State Bar No. 8775
Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA
TOWERS I, LLC; PANORAMA
TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.



CLERK OF THE COURT

ORDER

PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
DARLENE M. CARTIER, ESQ.
Nevada State Bar No. 8775
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
dcartier@bremerwhyte.com

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LAURENT HALLIER, an individual;	)	Case No. A-16-744146-D
PANORAMA TOWERS I, LLC, a Nevada	)	Dept. XXII
limited liability company; PANORAMA)	
TOWERS I MEZZ, LLC, a Nevada limited	)	ORDER DENYING DEFENDANT
liability company; and M.J. DEAN	)	PANORAMA TOWERS
CONSTRUCTION, INC., a Nevada Corporation,	)	CONDOMINIUM UNIT OWNERS'
	)	ASSOCIATION'S MOTION TO
Plaintiffs,	)	DISMISS COMPLAINT
)	
vs.)	
)	
PANORAMA TOWERS CONDOMINIUM)	
UNIT OWNERS' ASSOCIATION, a Nevada)	
non-profit corporation,)	
)	
Defendant.)	

On January 24, 2017, Defendant Panorama Towers Unit Owners Association's Motion to Dismiss Complaint came for hearing before this Court. The Court, having reviewed the papers and pleadings currently on file herein, having heard the arguments of counsel relating to the facts and law, and with good cause appearing and there being no just cause for delay, the Court concludes as follows:

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Panorama
2 Towers Unit Owners Association's Motion to Dismiss Complaint is DENIED.

3 Defendant Panorama Towers Unit Owners Association will file an Answer within Twenty
4 (20) days of the entry of this Order

5 DATED this 7th day of Feb, 2017.

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8 
9 DISTRICT COURT JUDGE
10 1744146

11 Submitted by:

12 BREMER, WHYTE, BROWN & O'MEARA, LLP

13 By: 

14 Peter C. Brown, Esq.

15 Nevada State Bar No. 5887

16 Darlene M. Cartier, Esq.

17 Nevada State Bar No. 8775

18 Attorneys for Plaintiffs,

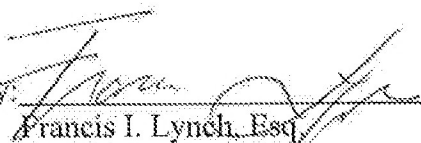
19 LAURENT HALLIER; PANORAMA TOWERS I, LLC;

20 PANORAMA TOWERS I MEZZ, LLC; and

21 M.J. DEAN CONSTRUCTION, INC.

22 Approved for Form and Content:

23 LYNCH HOPPER, LLP

24 By: 

25 Francis I. Lynch, Esq.

26 Nevada State Bar No. 4515

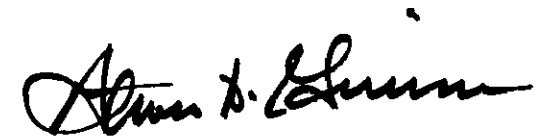
27 Charles "Dee" Hopper, Esq.

28 Nevada State Bar No. 6346

Attorneys for Defendant,

PANORAMA TOWERS UNIT

OWNERS ASSOCIATION



CLERK OF THE COURT

1 **NEOJ**
PETER C. BROWN, ESQ.
2 Nevada State Bar No. 5887
DARLENE M. CARTIER, ESQ.
3 Nevada State Bar No. 8775
BREMER WHYTE BROWN & O'MEARA LLP
4 1160 N. TOWN CENTER DRIVE
SUITE 250
5 LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
6 FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
7 dcartier@bremerwhyte.com

8 Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
9 PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

10 **DISTRICT COURT**
11
12 **CLARK COUNTY, NEVADA**

13 LAURENT HALLIER, an individual;
14 PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
15 TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
16 CONSTRUCTION, INC., a Nevada Corporation,

17 Plaintiffs,

18 vs.

19 PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
20 non-profit corporation,

21 Defendant.

) Case No. A-16-744146-D
) Dept. XXII

) **NOTICE OF ENTRY OF ORDER**
) **DENYING DEFENDANT PANORAMA**
) **TOWERS CONDOMINIUM UNIT**
) **OWNERS' ASSOCIATION'S MOTION**
) **TO DISMISS COMPLAINT**

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1 PLEASE TAKE NOTICE that an **ORDER DENYING DEFENDANT PANORAMA**
2 **TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S MOTION TO DISMISS**
3 **COMPLAINT** was entered in the above-subject matter on February 7, 2017, a copy of which is
4 attached hereto.

5 Dated: February 9, 2017

BREMER WHYTE BROWN & O'MEARA LLP

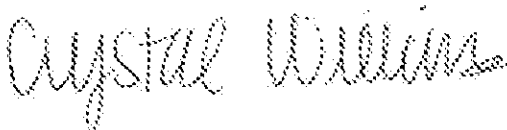
6
7 By: 

Peter C. Brown, Esq.
Nevada State Bar No. 5887
Darlene M. Cartier, Esq.
Nevada State Bar No. 8775
Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA
TOWERS I, LLC; PANORAMA
TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

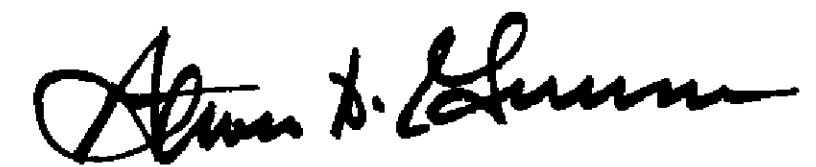
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2017, a true and correct copy of the foregoing document was electronically served through Wiznet upon all parties on the master e-file and serve list.



Crystal Williams, an Employee of
BREMER, WHYTE, BROWN & O’MEARA, LLC



CLERK OF THE COURT

ORDR
PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
DARLENE M. CARTIER, ESQ.
Nevada State Bar No. 8775
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
dcartier@bremerwhyte.com

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;	)	Case No. A-16-744146-D
PANORAMA TOWERS I, LLC, a Nevada	)	Dept. XXII
limited liability company; PANORAMA)	
TOWERS I MEZZ, LLC, a Nevada limited	)	ORDER DENYING DEFENDANT
liability company; and M.J. DEAN	)	PANORAMA TOWERS
CONSTRUCTION, INC., a Nevada Corporation,	)	CONDOMINIUM UNIT OWNERS'
	)	ASSOCIATION'S MOTION TO
Plaintiffs,	)	DISMISS COMPLAINT
)	
vs.)	
)	
PANORAMA TOWERS CONDOMINIUM)	
UNIT OWNERS' ASSOCIATION, a Nevada)	
non-profit corporation,)	
)	
Defendant.)	

On January 24, 2017, Defendant Panorama Towers Unit Owners Association's Motion to Dismiss Complaint came for hearing before this Court. The Court, having reviewed the papers and pleadings currently on file herein, having heard the arguments of counsel relating to the facts and law, and with good cause appearing and there being no just cause for delay, the Court concludes as follows:

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Panorama
2 Towers Unit Owners Association's Motion to Dismiss Complaint is DENIED.

3 Defendant Panorama Towers Unit Owners Association will file an Answer within Twenty
4 (20) days of the entry of this Order

5 DATED this 7th day of Feb, 2017.

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9

10

Submitted by:

11

12 BREMER, WHYTE, BROWN & O'MEARA, LLP

13

By: 

14

Peter C. Brown, Esq.

15

Nevada State Bar No. 5887

16

Darlene M. Cartier, Esq.

17

Nevada State Bar No. 8775

18

Attorneys for Plaintiffs,

19

LAURENT HALLIER; PANORAMA TOWERS I, LLC;

20

PANORAMA TOWERS I MEZZ, LLC; and

21

M.J. DEAN CONSTRUCTION, INC.

22

23

Approved for Form and Content:

24

LYNCH HOPPER, LLP

25

By: 

26

Francis I. Lynch, Esq.

27

Nevada State Bar No. 4515

28

Charles "Dee" Hopper, Esq.

29

Nevada State Bar No. 6346

30

Attorneys for Defendant,

31

PANORAMA TOWERS UNIT

32

OWNERS ASSOCIATION

33

34

35

36

AACC

Francis I. Lynch, Esq. (Nevada Bar No. 4145)
Charles "Dee" Hopper, Esq. (Nevada Bar No. 6346)
LYNCH HOPPER, LLP
1210 S. Valley View Blvd., Suite 208
Las Vegas, Nevada 89102
Telephone:(702) 868-1115
Facsimile:(702) 868-1114

Scott Williams (California Bar No. 78588)
WILLIAMS & GUMBINER LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904
Telephone:(415) 755-1880
Facsimile:(415) 419-5469
(Admitted Pro Hac Vice)

Counsel for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company and M.J. DEAN
CONSTRUCTION, INC., a Nevada Corporation,

Plaintiffs,

vs.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Defendant.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation, and Does 1 through 1000,

Counterclaimants,

vs.

CASE NO.: A-16-744146-D

DEPT. NO.: XXII

**DEFENDANT PANORAMA TOWER
CONDOMINIUM UNIT OWNERS'
ASSOCIATION'S ANSWER TO
COMPLAINT AND COUNTERCLAIM**

1 LAURENT HALLIER, an individual;
2 PANORAMA TOWERS I, LLC, a Nevada
3 limited liability company; PANORAMA
4 TOWERS I MEZZ, LLC, a Nevada limited
5 liability company; M.J. DEAN
6 CONSTRUCTION, INC., a Nevada Corporation;
7 SIERRA GLASS & MIRROR, INC.; F.
8 ROGERS CORPORATION;; DEAN ROOFING
9 COMPANY; FORD CONTRACTING, INC.;
10 INSULPRO, INC.; XTREME XCAVATION;
11 SOUTHERN NEVADA PAVING, INC.;
12 FLIPPINS TRENCHING, INC.; BOMBARD
13 MECHANICAL, LLC; R. RODGERS
14 CORPORATION; FIVE STAR PLINBING &
15 HEATING, LLC, dba Silver Star Plumbing; and
16 ROES 1 through 1000, inclusive,

Counterdefendants.

12 COMES NOW Defendant and Counterclaimant PANORAMA TOWERS
13 CONDOMINIUM UNIT OWNER'S ASSOCIATION (hereinafter "Panorama", "the
14 Association", or "Counterclaimant"), by and through its counsel of record, hereby pleads and
15 answers Plaintiffs' Complaint as follows:

16 **PARTIES**

17 1. Answering Paragraph 1 of the Complaint, The Association lacks sufficient
18 knowledge or information to admit or deny the allegations contained in said paragraphs and on
19 that basis denies them.

20 2. Answering Paragraph 2 of the Complaint, The Association admits the allegations
21 contained therein.

22 3. Answering Paragraph 3 of the Complaint, The Association admits the allegations
23 contained therein.

24 4. Answering Paragraph 4 of the Complaint, The Association lacks sufficient
25 knowledge or information to admit or deny the allegations contained in said paragraphs and on
26 that basis denies them.

27 5. Answering Paragraph 5 of the Complaint, The Association admits the allegations
28 contained therein.

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6. Answering Paragraph 6 of the Complaint, The Association admits the allegations contained therein.

GENERAL ALLEGATIONS

7. Answering Paragraph 7 of the Complaint, The Association incorporates by reference their responses to Paragraphs 1 through 6 of the Complaint, inclusive.

8. Answering Paragraph 8 of the Complaint, The Association admits the allegations contained therein.

9. Answering Paragraph 9 of the Complaint, The Association admits the allegations contained therein.

10. Answering Paragraph 10 of the Complaint, The Association admits the allegations contained therein.

11. Answering Paragraph 11 of the Complaint, The Association denies the allegations contained therein.

12. Answering Paragraph 12 of the Complaint, The Association admits that their Chapter 40 Notice includes as an Exhibit a report by Gregory Fehr, P.E. of Advanced Technology & Marketing Group (“ATMG”) as alleged. The Association further admits that the Exhibit states that ATMG observed corrosion damage and leaking connections in the mechanical rooms at the Development. The Association states that the remainder of this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

13. Answering Paragraph 13 of the Complaint, The Association admits that their Chapter 40 Notice contains the quoted statement. The Association denies the remainder of the allegations contained therein.

14. Answering Paragraph 14 of the Complaint, The Association admits the allegations contained therein.

15. Answering Paragraph 15 of the Complaint, The Association admits the allegations contained therein.

1 16. Answering Paragraph 16 of the Complaint, The Association lacks sufficient
2 knowledge or information to admit or deny the allegations in said paragraph and on that basis
3 denies them.

4 17. Answering Paragraph 17 of the Complaint, The Association lacks sufficient
5 knowledge or information to admit or deny the allegations in said paragraph and on that basis
6 denies them.

7 18. Answering Paragraph 18 of the Complaint, The Association admits the allegations
8 contained therein.

9 19. Answering Paragraph 19 of the Complaint, The Association admits the allegations
10 contained therein.

11 20. Answering Paragraph 20 of the Complaint, The Association admits the allegations
12 contained therein.

13 21. Answering Paragraph 21 of the Complaint, The Association admits the allegations
14 contained therein.

15 22. Answering Paragraph 22 of the Complaint, The Association admits that on
16 February 24, 2015, the Nevada Legislature enacted Homeowner Protection Act of 2015 (*aka* AB
17 125). The Association states that the remainder of this paragraph contains conclusions of law
18 requiring no response. To the extent that a response is deemed required, The Association denies
19 the allegations contained therein.

20 23. Answering Paragraph 23 of the Complaint, The Association states that this
21 paragraph contains conclusions of law requiring no response. To the extent a response is deemed
22 required, The Association lacks sufficient knowledge or information to admit or deny the
23 allegations contained therein and on that basis denies them.

24 24. Answering Paragraph 24 of the Complaint, The Association lacks sufficient
25 knowledge or information to admit or deny the allegations in said paragraph and on that basis
26 denies them.

27 25. Answering Paragraph 25 of the Complaint, The Association lacks sufficient
28 knowledge or information to admit or deny the allegations in said paragraph and on that basis

1 denies them.

2 26. Answering Paragraph 26 of the Complaint, The Association lacks sufficient
3 knowledge or information to admit or deny the allegations in said paragraph and on that basis
4 denies them.

5 27. Answering Paragraph 27 of the Complaint, The Association lacks sufficient
6 knowledge or information to admit or deny the allegations in said paragraph and on that basis
7 denies them.

8 28. Answering Paragraph 28 of the Complaint, The Association states that this
9 paragraph contains conclusions of law requiring no response. To the extent a response is deemed
10 required, The Association denies that the claims contained in its Chapter 40 Notice are time barred
11 by AB 125/NRS 11.202(1).

12 29. Answering Paragraph 29 of the Complaint, The Association states that this
13 paragraph contains conclusions of law requiring no response. To the extent that a response is
14 deemed required, The Association denies the allegations contained therein.

15 30. Answering Paragraph 30 of the Complaint, The Association states that this
16 paragraph contains conclusions of law requiring no response. To the extent that a response is
17 deemed required, The Association denies the allegations contained therein.

18 31. Answering Paragraph 31 of the Complaint, The Association states that this
19 paragraph contains conclusions of law requiring no response. To the extent that a response is
20 deemed required, The Association denies the allegations contained therein.

21 32. Answering Paragraph 32 of the Complaint, The Association states that this
22 paragraph contains conclusions of law requiring no response. To the extent that a response is
23 deemed required, The Association denies the allegations contained therein.

24 33. Answering Paragraph 33 of the Complaint, The Association states that this
25 paragraph contains conclusions of law requiring no response. The Association contends that AB
26 125 requires that the “claim” be commenced on or before February 24, 2016, and that The
27 Association commenced its claim before that date by serving its Chapter 40 Notice.

28 34. Answering Paragraph 34 of the Complaint, The Association denies the allegations

1 contained therein.

2 35. Answering Paragraph 35 of the Complaint, The Association states that this
3 paragraph contains conclusions of law requiring no response. To the extent that a response is
4 deemed required, The Association denies the allegations contained therein.

5 36. Answering Paragraph 36 of the Complaint, The Association states that this
6 paragraph contains conclusions of law requiring no response. To the extent that a response is
7 deemed required, The Association denies the allegations contained therein.

8 37. Answering Paragraph 37 of the Complaint, The Association states that this
9 paragraph contains conclusions of law requiring no response. To the extent that a response is
10 deemed required, The Association denies the allegations contained therein.

11 38. Answering Paragraph 38 of the Complaint, The Association denies the allegations
12 contained therein.

13 39. Answering Paragraph 39 of the Complaint, The Association states that this
14 paragraph contains conclusions of law requiring no response. To the extent that a response is
15 deemed required, The Association denies the allegations contained therein.

16 40. Answering Paragraph 40 of the Complaint, The Association admits the allegations
17 contained therein.

18 41. Answering Paragraph 41 of the Complaint, The Association admits that the
19 CC&R's contain the quoted sections. As to the effect of their meaning, The Association states that
20 this calls for a legal conclusion to which no response is required. To the extent that a response is
21 deemed required, The Association lacks sufficient knowledge to admit or deny the allegations,
22 which has the effect of a denial.

23 42. Answering Paragraph 42 of the Complaint, The Association admits that the
24 CC&R's contain the quoted sections. As to the effect of their meaning, The Association states that
25 this calls for a legal conclusion to which no response is required. To the extent that a response is
26 deemed required, The Association lacks sufficient knowledge to admit or deny the allegations,
27 which has the effect of a denial.

28 43. Answering Paragraph 43 of the Complaint, The Association admits that the

1 CC&R's contain the quoted sections. As to the effect of their meaning, The Association states that
2 this calls for a legal conclusion to which no response is required. To the extent that a response is
3 deemed required, The Association lacks sufficient knowledge to admit or deny the allegations,
4 which has the effect of a denial.

5 44. Answering Paragraph 44 of the Complaint, The Association denies the allegations
6 contained therein.

7 45. Answering Paragraph 45 of the Complaint, The Association admits the allegations
8 contained therein.

9 46. Answering Paragraph 46 of the Complaint, The Association admits the allegations
10 contained therein.

11 47. Answering Paragraph 47 of the Complaint, The Association admits the allegations
12 contained therein.

13 48. Answering Paragraph 48 of the Complaint, The Association states that this
14 paragraph contains conclusions of law requiring no response. To the extent that a response is
15 deemed required, The Association denies the allegations contained therein.

16 49. Answering Paragraph 49 of the Complaint, The Association states that this
17 paragraph contains conclusions of law requiring no response. To the extent that a response is
18 deemed required, The Association denies the allegations contained therein.

19 50. Answering Paragraph 50 of the Complaint, The Association lacks sufficient
20 knowledge or information to admit or deny the allegations in said paragraph and on that basis
21 denies them.

22 51. Answering Paragraph 51 of the Complaint, The Association denies that the
23 Settlement Agreement in the Prior Litigation contains an unconditional release by Defendant of
24 Plaintiffs PANORAMA TOWERS I, LLC, PANORAMA TOWERS II, LLC, and M.J. DEAN
25 CONSTRUCTION, INC.

26 52. Answering Paragraph 52 of the Complaint, The Association denies the allegations
27 contained therein.

28 53. Answering Paragraph 53 of the Complaint, The Association denies the allegations

1 contained therein.

2 54. Answering Paragraph 54 of the Complaint, The Association denies the allegations
3 contained therein.

4 55. Answering Paragraph 55 of the Complaint, The Association denies the allegations
5 contained therein.

6 56. Answering Paragraph 56 of the Complaint, The Association admits the allegations
7 contained therein.

8 57. Answering Paragraph 57 of the Complaint, The Association lacks sufficient
9 knowledge or information to admit or deny the allegations in said paragraph and on that basis
10 denies them.

11 58. Answering Paragraph 58 of the Complaint, The Association lacks sufficient
12 knowledge or information to admit or deny the allegations in said paragraph and on that basis
13 denies them.

14 59. Answering Paragraph 59 of the Complaint, The Association denies the allegations
15 contained therein.

16 60. Answering Paragraph 60 of the Complaint, The Association denies the allegations
17 contained therein.

18 **FIRST CLAIM FOR RELIEF**

19 **(Declaratory Relief – Application of AB 125)**

20 61. Answering Paragraph 61 of the Complaint, The Association incorporates by
21 reference their responses to Paragraphs 1 through 60 of the Complaint, inclusive.

22 62. Answering Paragraph 62 of the Complaint, The Association admits the allegations
23 contained therein.

24 63. Answering Paragraph 63 of the Complaint, The Association admits the allegations
25 contained therein.

26 64. Answering Paragraph 64 of the Complaint, The Association states that this
27 paragraph contains conclusions of law requiring no response. To the extent that a response is
28 deemed required, The Association denies the allegations contained therein.

65. Answering Paragraph 65 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

66. Answering Paragraph 66 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

67. Answering Paragraph 67 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

68. Answering Paragraph 68 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

69. Answering Paragraph 69 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

70. Answering Paragraph 70 of the Complaint, The Association denies the allegations contained therein.

SECOND CLAIM FOR RELIEF

(Declaratory Relief – Claim Preclusion)

71. Answering Paragraph 71 of the Complaint, The Association incorporates by reference their responses to Paragraphs 1 through 70 of the Complaint, inclusive.

72. Answering Paragraph 72 of the Complaint, The Association admits the allegations contained therein.

73. Answering Paragraph 73 of the Complaint, The Association admits the allegations contained therein.

74. Answering Paragraph 74 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

75. Answering Paragraph 75 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

76. Answering Paragraph 76 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

77. Answering Paragraph 77 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

78. Answering Paragraph 78 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

79. Answering Paragraph 79 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

80. Answering Paragraph 80 of the Complaint, The Association denies the allegations contained therein.

THIRD CLAIM FOR RELIEF

(Failure to Comply with NRS 40.600 et seq.)

81. Answering Paragraph 81 of the Complaint, The Association incorporates by reference their responses to Paragraphs 1 through 80 of the Complaint, inclusive.

82. Answering Paragraph 82 of the Complaint, The Association denies the allegations contained therein.

83. Answering Paragraph 83 of the Complaint, The Association denies the allegations contained therein.

84. Answering Paragraph 84 of the Complaint, The Association denies the allegations contained therein.

85. Answering Paragraph 85 of the Complaint, The Association denies the allegations

1 contained therein.

2 86. Answering Paragraph 86 of the Complaint, The Association states that this
3 paragraph contains conclusions of law requiring no response. To the extent that a response is
4 deemed required, The Association denies the allegations contained therein.

5 87. Answering Paragraph 87 of the Complaint, The Association states that this
6 paragraph contains conclusions of law requiring no response. To the extent that a response is
7 deemed required, The Association denies the allegations contained therein.

8 88. Answering Paragraph 88 of the Complaint, The Association states that this
9 paragraph contains conclusions of law requiring no response. To the extent that a response is
10 deemed required, The Association denies the allegations contained therein.

11 89. Answering Paragraph 89 of the Complaint, The Association denies the allegations
12 contained therein.

13 90. Answering Paragraph 90 of the Complaint, The Association denies the allegations
14 contained therein.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Suppression of Evidence/Spoliation)**

17 91. Answering Paragraph 91 of the Complaint, The Association incorporates by
18 reference their responses to Paragraphs 1 through 90 of the Complaint, inclusive.

19 92. Answering Paragraph 92 of the Complaint, The Association denies the allegations
20 contained therein.

21 93. Answering Paragraph 93 of the Complaint, The Association denies the allegations
22 contained therein.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Breach of Contract)**

25 94. Answering Paragraph 94 of the Complaint, The Association incorporates by
26 reference their responses to Paragraphs 1 through 93 of the Complaint, inclusive.

27 95. Answering Paragraph 95 of the Complaint, The Association states that this
28 paragraph contains conclusions of law requiring no response. To the extent that a response is

1 deemed required, The Association denies the allegations contained therein.

2 96. Answering Paragraph 96 of the Complaint, The Association denies the allegations
3 contained therein.

4 97. Answering Paragraph 97 of the Complaint, The Association denies the allegations
5 contained therein.

6 98. Answering Paragraph 98 of the Complaint, The Association denies the allegations
7 contained therein.

8 **SIXTH CLAIM FOR RELIEF**

9 **(Declaratory Relief – Duty to Defend)**

10 99. Answering Paragraph 99 of the Complaint, The Association incorporates by
11 reference their responses to Paragraphs 1 through 98 of the Complaint, inclusive.

12 100. Answering Paragraph 100 of the Complaint, The Association denies the allegations
13 contained therein.

14 101. Answering Paragraph 101 of the Complaint, The Association states that this
15 paragraph contains conclusions of law requiring no response. To the extent that a response is
16 deemed required, The Association denies the allegations contained therein.

17 102. Answering Paragraph 102 of the Complaint, The Association states that this
18 paragraph contains conclusions of law requiring no response. To the extent that a response is
19 deemed required, The Association denies the allegations contained therein.

20 103. Answering Paragraph 103 of the Complaint, The Association states that this
21 paragraph contains conclusions of law requiring no response. To the extent that a response is
22 deemed required, The Association denies the allegations contained therein.

23 104. Answering Paragraph 104 of the Complaint, The Association states that this
24 paragraph contains conclusions of law requiring no response. To the extent that a response is
25 deemed required, The Association denies the allegations contained therein.

26 105. Answering Paragraph 105 of the Complaint, The Association states that this
27 paragraph contains conclusions of law requiring no response. To the extent that a response is
28 deemed required, The Association denies the allegations contained therein.

106. Answering Paragraph 106 of the Complaint, The Association denies the allegations contained therein.

SEVENTH CLAIM FOR RELIEF

(Declaratory Relief – Duty to Indemnify)

107. Answering Paragraph 107 of the Complaint, The Association incorporates by reference their responses to Paragraphs 1 through 106 of the Complaint, inclusive.

108. Answering Paragraph 108 of the Complaint, The Association denies the allegations contained therein.

109. Answering Paragraph 109 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

110. Answering Paragraph 110 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

111. Answering Paragraph 111 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

112. Answering Paragraph 112 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

113. Answering Paragraph 113 of the Complaint, The Association states that this paragraph contains conclusions of law requiring no response. To the extent that a response is deemed required, The Association denies the allegations contained therein.

114. Answering Paragraph 114 of the Complaint, The Association denies the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs are barred by the equitable doctrine of unclean hands from obtaining the relief

request.

SECOND AFFIRMATIVE DEFENSE

By their conduct, Plaintiffs are estopped from asserting any action against The Association.

THIRD AFFIRMATIVE DEFENSE

The Complaint, and all of the claims for relief alleged therein, fails to state a claim against The Association upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs have not been damaged directly, indirectly, proximately or in any manner whatsoever by any conduct of The Association.

FIFTH AFFIRMATIVE DEFENSE

The Association is informed and believes, and thereupon alleges, that as to each alleged cause of action, the Plaintiff failed, refused, and neglected to take reasonable steps to mitigate their alleged damages, to the extent that any exist, thus barring or diminishing Plaintiffs recovery herein.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to allege facts or a cause of action against The Association sufficient to support a claim for attorney fees.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' alleged damages are the direct and proximate result of their own negligent or intentional conduct or malfeasance.

EIGHTH AFFIRMATIVE DEFENSE

The claims, and each of them, are barred by the failure of the Plaintiffs to plead those claims with particularity.

NINTH AFFIRMATIVE DEFENSE

Pursuant to the Nevada Rules of Civil Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer, and therefore, The Association reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

///

WHEREFORE The Association prays for judgment herein as follows:

1. That Plaintiffs take nothing by way of their Complaint;
2. For costs of suit incurred herein, including attorneys' fees; and
3. For such other and further relief as the Court deems just and proper

COUNTERCLAIM

The Association, on its own behalf and in its representative capacity on behalf of its members, alleges:

COUNTERCLAIMANT – THE ASSOCIATION

1. Panorama Towers is a Master Planned Community, located at 4525 Dean Martin Drive, Las Vegas, Nevada.
2. The Association, at all times relevant herein, is and was incorporated as a non-profit mutual benefit Nevada corporation with its principal place of business within Clark County in the State of Nevada. The Association is composed of owners of homes, improvements, appurtenances, and structures built and existing upon certain parcels of real property all as more particularly described in the Declaration of Covenants, Conditions & Restrictions (“CC&R’s”), and any amendments thereto, recorded with the Clark County Recorder (hereinafter referred to as “the Development”).
3. The Development is composed of 616 separate interest condominiums housed in two residential towers, together with various common elements and amenities appurtenant thereto, and includes, but is not limited to, Common Areas, Condominium Units, Master Association Property, Association Property, Limited Common Areas, structures, improvements, appurtenances thereto.
4. By the express terms of The Association’s governing documents and pursuant to Nevada Revised Statutes, Chapter 116 of the Common Interest Ownership Act, The Association is granted the general authority and responsibility to bring this action on behalf of all homeowners within the Development.

///

5. The Association brings this action on its own behalf and in its representative capacity on behalf of its individual members pursuant to the CC&R's, By-Laws, Articles of Incorporation of both the Master Association and the Counterclaimant, and the laws of the State of Nevada, including, but not limited to, NRS 116.3102(1)(d).

6. NRS 116.3102(1)(d), in effect and governing at the time the defects alleged herein arose, provides that an Association may “[i]nstitute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners’ on matters affecting the common-interest community.” *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 215 P.3d 697 (Nev. 2009). *Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court*, 291 P. 3d 128 (Nev. 2012).

7. The Association, in accordance with its respective governing documents, has the sole and exclusive right and duty to manage, operate, control, repair, replace and restore the Development, including the right to enter into contract to accomplish their duties and obligations, and have all the powers necessary to carry out their rights and obligations, including the right, duty, and power to contract for legal services to prosecute any action affecting the Association when such action is deemed by it necessary to enforce its powers, rights, and obligations, including the bringing of this Action. Pursuant to Nevada Revised Statutes, Chapter 116 of the Common Interest Ownership Act, The Association seeks recovery for damages to the Development which consist of, but are not limited to, damages to the common areas and/or damages to the separate interests within the Association's common interest, power and standing.

8. Counterclaimants DOES 1 through 1,000 are individual unit owners who are members of the Association. If it is subsequently determined that this action, and/or any of the specific defect claims, or claims for relief within the scope of this action, should more properly have been brought in the name of each individual homeowner or as class action, The Association will seek to leave to amend this complaint to include unit owners and/or class representatives.

COUNTERDEFENDANTS

9. Counterdefendants Panorama Towers I, LLC, a Nevada limited liability company, Panorama Towers I Mezz, LLC, a Nevada limited liability company, and Roes 1 through 50

(collectively, “the Developers”), were, at all times mentioned herein, engaged in the business of acquiring, building, developing, subdividing, converting, wholesaling, distributing, retailing, marketing, selling and/or otherwise placing mass-produced homes and condominiums within the chain of distribution for sale to individual home purchasers.

10. The Developers purchased the site of the Development, constructed the Development, formed the Association and recorded its CC&Rs, obtained subdivision approval from the City of Las Vegas to subdivide the Development into individual residential units, and marketed and sold the units to the public for profit.

11. In the course of constructing the Development and marketing and selling the residential units within the Development for profit, the Developers shared in the control and profits of the enterprise. In doing so, they acted as a single enterprise, acted in a joint venture and/or were in a de facto partnership relationship with each other.

12. Counterdefendant Laurent Hallier and Roes 51 through 100 (collectively, “the Developer Principals”), were directors, officers, members, partners and/or principals of the Developers. All acts and omissions performed by the Developers, acting as a single enterprise as described, were performed by, were performed under the direction of and/or were approved or ratified by the Developer Principals.

13. Counterdefendants Roes 101 through 150 (collectively, “the Designers”), were hired by the Developers to provide professional services related to the surveying, design and engineering of, the plans and specifications for, and the supervision of the construction of the Development.

14. Counterdefendants Roes 151 through 200 (collectively, “the Designer Principals”), were directors, officers, members, partners and/or principals of the Designers. All acts and omissions performed by the Designers were performed by, were performed under the direction of and/or were approved or ratified by the Designer Principals.

15. Counterdefendant M.J. Dean Construction, Inc., a Nevada Corporation, and Does 201 through 250 (collectively, “the General Contractors”), were hired by the Developers as general contractors to construct the Development.

1 16. Counterdefendants Roes 251 through 300 (collectively, “the GC Principals”), were
2 directors, officers, members, partners and/or principals of the General Contractors. All acts and
3 omissions performed by the General Contractors were performed by, were performed under the
4 direction of and/or were approved or ratified by the GC Principals.

5 17. Counterdefendants Sierra Glass & Mirror, Inc., F. Rogers Corporation, Dean
6 Roofing Company, Ford Contracting, Inc., Insulpro, Inc., Xtreme Xcavation, Southern Nevada
7 Paving, Inc., Flippins Trenching, Inc., Bombard Mechanical, LLC., R. Rodgers Corporation, Five
8 Star Plumbing & Heating, LLC, dba Silver Star Plumbing, and Roes 301 through 400 (collectively,
9 “the Contractors”), were hired by the General Contractors to perform work for the construction of
10 the Development.

11 18. Counterdefendants Roes 401 through 500 (collectively, “the Contractor
12 Principals”), were directors, officers, members, partners and/or principals of the Contractors. All
13 acts and omissions performed by the Contractors were performed by, were performed under the
14 direction of and/or were approved or ratified by the Contractor Principals.

15 19. Counterdefendants Roes 501 through 600 (collectively, “the Manufacturers”),
16 designed, engineered, provided specifications for, tested, assembled, manufactured, supplied,
17 wholesaled, retailed and/or provided materials and/or component parts used in the construction of
18 the Development.

19 20. Counterdefendants Roes 601 through 700 (collectively, “the Manufacturer
20 Principals”), were directors, officers, members, partners and/or principals of the Manufacturers.
21 All acts and omissions performed by the Manufacturers were performed by, were performed under
22 the direction of and/or were approved or ratified by the Manufacturer Principals.

23 21. The Developers, Designers, General Contractors, Contractors and Manufacturers
24 are sometimes collectively referred to as “the Builders.” The Developer Principals, Designer
25 Principals, GC Principals, Contractor Principals and Manufacturer Principals are sometimes
26 collectively referred to as “the Principals.”

27 22. The Principals are liable as the Builders’ alter egos for The Association’s damages
28 and losses, as alleged herein, based on the following:

1 (a) The Builders were created for purposes of shielding the Principals in
2 connection with their entity activities, including the acquisition, design, construction, financing,
3 subdivision, development, marketing and sale of residential developments such as the
4 Development.

5 (b) At all times mentioned herein, there existed a unity of interest and
6 ownership between the Principals and the respective Builders such that any individuality and
7 separateness between Principals and the Builders has ceased, and the Builders are the alter egos of
8 the Principals; the Builders were conceived and attended to by the Principals as a device to avoid
9 individual liability and for the purpose of substituting financially insolvent entities in the place of
10 the Principals.

11 (c) Adherence to the fiction of the separate existence of the Builders as distinct
12 from the Principals would permit an abuse of the corporate and/or entity privilege and promote
13 injustice in that the Builders would be allowed and were allowed to engage in an active business
14 without, among other things, adequate financing, which business invited the public generally and
15 plaintiff's members in particular to deal with the Builders to their detriment.

16 23. Counterdefendants Roes 1 through 1000, inclusive, whether individual, corporate,
17 associate, or otherwise are sued by these fictitious names and whose true names and capacities, at
18 this time, are unknown to The Association. The Association is informed and believes, and
19 thereupon alleges, that at all times relevant hereto each of the counterdefendants sued here as Roes
20 1 through 1000 was the agent, servant, and employee of his, her or its co-counterdefendants, and
21 in doing the things mentioned was acting in the scope of his, her, or its authority as such agent,
22 servant, and employee, and with the permission, consent and/or ratification of his, her or its co-
23 counterdefendants; and that each of said fictitiously named counterdefendants, whether an
24 individual, corporation, association, or otherwise, is in some way liable or responsible to The
25 Association on the facts alleged here, and proximately caused injuries and damages alleged. At
26 such time as counterdefendants' true named become known to The Association, The Association
27 will amend this complaint to insert the true names and capacities.

28 ///

GENERAL ALLEGATIONS

24. The Builders knew that the individual units within the Development would be marketed and sold to the public upon completion; that purchasers would most likely be individuals without experience or expertise in construction; that the units would be purchased without invasive, comprehensive or knowledgeable inspections for defects; and, that the purchasers would rely on the skill, judgment and expertise of the Builders, and on the belief that the Development was designed, constructed and developed in a professional and workmanlike manner, and in compliance with all plans and specifications, applicable building codes and standards of practice.

25. The Builders substantially completed the Development within the last ten years. Upon completion of the Development, the individual units were advertised and marketed for sale, and ultimately sold to the public.

26. At all times since the Development was constructed and the individual units were sold, the purchasers and owners of the units have used the units and common areas in the manner in which they were intended to be used.

27. The Builders performed and/or provided the construction, design, specifications, surveying, planning, supervision, testing, observation of construction, and other services, work and materials, as described above, in such a manner as to directly cause and create numerous and pervasive defects in the common areas, structures and components of the Development.

28. The Association became aware of many of the defects and filed suit against the Developers in September 2009 (“the Lawsuit”). The Lawsuit was settled in June 2011. The parties agreed that the settlement applied only to those claims that were then known to the Association. Accordingly, the settlement agreement provided a release for known claims only, stating, “This release specifically does not extend to claims arising out of defects not presently known to the HOA.”

29. After settling the Lawsuit, and prior to February 24, 2015, the Association became aware of additional defects (the Defects) and resulting damages, which were unknown to the Association or its attorneys or experts at the time the Lawsuit was settled, including the following:

(a) *Residential tower windows* – There are two tower structures in the

1 Development, consisting of 616 residential condominium units located above common areas and
2 retails spaces below. The window assemblies in the residential tower units were defectively
3 designed such that water entering the assemblies does not have an appropriate means of exiting
4 the assemblies. There are no sill pans, proper weepage components or other drainage provisions
5 designed to direct water from and through the window assemblies to the exterior of the building.
6 This is a design deficiency that exists in all (100%) of the residential tower window assemblies.
7 As a consequence of this deficiency, water that should have drained to the exterior of the building
8 has been entering the metal framing components of the exterior wall and floor assemblies,
9 including the curb walls that support the windows, and is causing corrosion damage to the metal
10 parts and components within these assemblies. Further, this damage to the metal components of
11 the tower structures presents an unreasonable risk of injury to a person or property resulting from
12 the degradation of these structural assemblies.

13 (b) *Residential tower exterior wall insulation* – The plans called for insulation,
14 as required by the building code, in the ledger shelf cavities and steel stud framing cavities at the
15 exterior wall locations between residential floors in the two tower structures. The purpose of this
16 insulation is to act as a fire block provision to deter the spread of fire from one tower unit to the
17 units above or below, and to prevent condensation from occurring within the exterior wall
18 assemblies. However, the insulation was not installed as required by the plans and building code.
19 This installation deficiency exists in all (100%) of the residential tower units, in which insulation
20 was omitted either from the ledger shelf cavity, from the steel stud framing cavity, or from both.
21 This deficiency presents an unreasonable risk of injury to a person or property resulting from the
22 spread of fire, and from the accumulation of additional moisture in the wall assemblies, thereby
23 exacerbating the window drainage deficiency described above.

24 (c) *Mechanical room piping* – The piping in the two lower and two upper
25 mechanical rooms in the two tower structures has sustained corrosion damage as described in the
26 attached ATMG report dated November 17, 2011.

27 (d) *Sewer problem* – The main sewer line connecting the Development to the city sewer
28 system ruptured due to installation error during construction, causing physical damage to adjacent

1 common areas. This deficiency has been repaired. In addition to causing damage, the defective
2 installation presented an unreasonable risk of injury to a person or property resulting from the
3 disbursement of unsanitary matter.

4 30. The Association's authority and standing, as described above, include the right and
5 duty to maintain, repair and seek recovery for the Defects and resulting damages.

6 31. Some of the Defects have caused physical injury and damage to other structures,
7 components and tangible property of and within the Development, including the personal property
8 of plaintiff's members, and the loss of use of all such property.

9 32. On February 24, 2016, the Association served the Builders with A Notice to
10 Contractor pursuant to NRS 40.645, which notice identified the Defects.

11 33. On September 26, 2016, the Association and the Developers participated in a pre-
12 litigation mediation regarding the Defects, as required by NRS 40.060; however, the parties were
13 unable to reach resolution, and the mandatory pre-litigation process was concluded.

14 34. As a direct result of the Builders' conduct in creating the Defects, as above-
15 described, The Association and its members have sustained the following losses and damages:

16 (a) The Association has retained professional consultants, including architects,
17 engineers and other construction professionals to investigate the Defects and resulting damages in
18 order to design appropriate repairs to remedy the same, and has thereby incurred and will continue
19 to incur professional fees, costs and expenses in amounts to be proved at the time of trial.

20 (b) The Association has incurred and will continue to incur costs for the repair,
21 reconstruction and replacement of the Defects and resulting damages in amounts to be proved at
22 the time of trial.

23 (c) Plaintiff's members have sustained a loss of the use and enjoyment of their
24 respective units and the common area because of the Defects and resulting damages, which loss is
25 continuing. Further, it is anticipated that plaintiff's members will suffer an increased loss of use
26 and enjoyment while repairs are being performed, at which time they will be exposed to dust,
27 noise, construction equipment and the other attributes of living in a construction zone; and,
28 plaintiff's members will have to vacate their respective units and obtain temporary lodging,

1 thereby incurring moving, rental and storage expenses, all in amounts to be proved at the time of
2 trial.

3 (d) Plaintiff and its members have sustained damage to and the loss of use of
4 their personal property, in amounts to be proved at the time of trial.

5 35. The foregoing allegations are incorporated by reference in each of the following
6 causes of action. Further, the allegations contained in each cause of action are incorporated by
7 reference in each other cause of action.

8 CAUSES OF ACTION

9 FIRST CAUSE OF ACTION

10 **Breach if NRS 116.4113 Express Warranties, NRS 116.4114 Implied Warranties, and** 11 **Implied Warranty of Habitability; and Breach of Express and Implied Warranties of** 12 **Fitness, Quality, and Workmanship**

12 *Against the Builders*

13 36. The Association hereby incorporates and realleges each and every paragraph
14 alleged above, as tough fully set forth herein.

15 37. The Developers were the NRS Chapter 116 Declarants for the Development.

16 38. Pursuant to NRS 116.4114, a Declarant warrants the suitability (habitability) and
17 quality of the common-interest community, including all common areas and units regardless of
18 when they were developed and/or built, or by whom. A Declarant impliedly warrants that a unit
19 and the common elements in the common-interest community are suitable for the ordinary uses of
20 real estate of its type and that any improvements made or contracted for by him, or made by any
21 person before the creation of the common-interest community, will be (a) free from defective
22 materials; and (b) constructed in accordance with applicable law, according to sound standards of
23 engineering and construction, and in a workmanlike manner.

24 39. Pursuant to NRS 116.4114(6), any conveyance of a unit transfers to the purchaser
25 all of the Declarant's implied warranties of equality.

26 40. The Builders impliedly warranted that they used reasonable skill and judgment in
27 designing and constructing the Development; that they provided services, work and materials in a
28 professional and workmanlike manner; that the Development was designed and constructed in

1 accordance with all applicable building codes, statutes and ordinances; that they used reasonable
2 skill and judgment in selecting the materials and component parts used in constructing the
3 Development; that the materials and component parts of the Development were properly designed
4 and constructed and fit for their intended purposes; that the Development was capable of being
5 operated through a normal maintenance and reserve program pursuant to the reserve schedule
6 provided at the time of purchase; and, that the Development was of a merchantable quality,
7 habitable, and fit for its intended use as a residential, common interest community.

8 41. The Association is further informed and believes, and thereon alleges, that the
9 express warranties made and utilized by The Builders have at all relevant times, been written in
10 the form of, by example, and without limitation: advertising flyers, brochures, sales literature,
11 specification sheets, promotional packages, signs, magazine and newspaper articles and
12 advertisements, and by the use of models, all designed to promote the marketing and sale of the
13 Development, the Condominium Units and their component parts, and to promote the likewise
14 belief that the Development and Condominium Units, and the component parts therein had been
15 similarly, properly and sufficiently designed and constructed. Further, The Association alleges
16 that the express warranties were also oral, including without limitation, the complimentary
17 statements made to The Association's members and/or its predecessors-in-interest, by officers,
18 members, directors, agents and/or employees of The Developers, Designers, General Contractors,
19 Contractors and Manufacturers, and each of them, in marketing and offering the project for sale.

20 42. The Association further alleges that implied warranties arose by virtue of the
21 offering for sale by Declarant, and each of them, of the Development, its parts and the
22 Condominium Units therein to The Association's members and/or its predecessors-in-interest, and
23 to members of the general public, and during the period of Declarant's control of the Association,
24 without disclosing that there were any defects, deficiencies and/or property damage associated
25 with the Subject Property or Condominium Units, thereby leading all prospective purchasers
26 and owners, including The Association's members, to believe that there were no such defects.

27 43. The Association is informed and believes, and thereon alleges, that The Builders,
28 and each of them, gave similar implied warranties to any and all regulatory bodies who had to

1 issue permits and/or provide approvals of any nature and/or inspections of any nature as to said
2 Development.

3 44. The Association is informed and believes, and thereon alleges, that The Builders,
4 and each of them, breached their express and implied warranties (statutory, written and oral) in
5 that the Development, and its component parts and the Condominium Units therein were not, and
6 are not, of marketable quality, nor fit for the purpose intended, nor constructed with the quality of
7 workmanship required by law or industry standards, in that the Development and its component
8 parts were not, and are not, safely, properly and adequately designed and constructed and do not
9 comply with applicable laws, building codes and standards.

10 45. As a proximate legal result of the breaches of said express and implied warranties
11 (statutory, written and oral) by The Builders, and each of them, and the defective and deficient
12 conditions affecting the Development, and the Condominium Units therein, The Association and
13 its members have been, and will continue to be, caused damage, as more fully described
14 above, including, but not limited to: the existence of property damage within the Development
15 caused by defects; The Association's and its members' interests in the Development have been,
16 and will be, rendered substantially reduced in value; and/or the Development has been rendered
17 dangerous to the physical well-being of the The Association's members, their guests and members
18 of the general public; all to the general detriment and damage of The Association and its members
19 as more fully alleged herein and in an amount to be established at the time of trial.

20 46. As a further proximate and legal result of the breaches of the express statutory and
21 implied warranties (statutory, written and oral) by The Builders, and each of them, and the
22 defective conditions affecting the Development, its component parts and the Condominium Units
23 therein, The Association has been, and will continue to be, caused further damage in that the
24 defects, deficiencies and property damage have resulted in conditions which breach the
25 warranties of habitability, quality, workmanship and fitness.

26 47. As a further proximate and legal result of the breaches of the express and implied
27 warranties (statutory, written and oral) by The Builders, and each of them, and the defective
28 conditions affecting the Subject Property, its component parts and the Condominium Units

1 therein, The Association has incurred, and will continue to incur, expenses, including, but not
2 limited to: architect's fees, structural engineer's fees, landscape architect's fees, civil engineer's
3 fees, electrical engineer's fees, mechanical engineer's fees, general contractor's and other
4 associated costs of investigation, testing, analysis and repair, all in an amount to be established
5 at the time of trial.

6 48. As a further proximate and legal result of the breaches of the express and implied
7 warranties (statutory, written, and oral) by The Builders, and each of them, and the defective
8 conditions affecting the Development and its component parts, and the condominium units, The
9 Association has been compelled to resort to litigation to judicially resolve their differences. The
10 Association requests an award of consequential damages including, but not limited to, attorneys'
11 fees and costs incurred in such litigation, in amounts to be established at the time of trial.

12 49. The monies recoverable for attorneys' fees, costs and expenses under NRS 40.600
13 *et seq.*, NRS 116.4117 and/or NRS 18.010 include, but are not limited to, all efforts by The
14 Association's attorneys on behalf of The Association and its member prior to the filing of this
15 Counterclaim.

16 SECOND CAUSE OF ACTION

17 Negligence and Negligence Per Se

18 *Against the Developers, Designers, General Contractors and Contractors*

19 50. The Association hereby incorporates and realleges each and every paragraph
20 alleged above, as tough fully set forth herein.

21 51. The Developers, Designers, General Contractors and Contractors so negligently
22 developed, designed, constructed and provided the services, work and materials for the Development,
23 as described above, as to directly cause, create and/or contribute to the Defects and resulting damages
24 and losses.

25 52. When planning, developing, constructing and inspecting the Development,
26 Developers, Designers, General Contractors and Contractors were, at all material times, aware they
27 were developing, installing, and constructing elements for use by members of the public at large,
28 including The Association and its members. In doing so, Developers, Designers, General

1 Contractors and Contractors owed a duty to the public at large, including The Association and its
2 members. Moreover, Developers, Designers, General Contractors and Contractors were at all times
3 subject to applicable building and construction codes and ordinances then in force as more fully
4 described above, the codes setting forth the minimum standards for installation and construction
5 of all aspects of the Development as necessary to protect the public and the The Association and
6 its members from injury caused by defective, deficient, unsafe or unhealthy dwellings and
7 improvements.

8 53. By negligently, carelessly, wrongfully and recklessly developing, constructing,
9 and installing the Development in a defective and deficient manner as described herein above,
10 Defendants breached the duty of care owed to the public and to The Association and its members,
11 and violated the building and construction codes and ordinances in force to protect the public and
12 the The Association and its members from injury caused by said defects and deficiencies.

13 54. As a proximate cause of Developers, Designers, General Contractors and
14 Contractors' conduct, The Association and its members have suffered and continue to suffer
15 damages as explained more fully above.

16 **THIRD CAUSE OF ACTION**

17 **Products Liability**

18 *Against the Manufacturers*

19 55. The Association hereby incorporates and realleges each and every paragraph
20 alleged above, as tough fully set forth herein.

21 56. The Manufacturers so negligently and defectively designed, engineered, provided
22 specifications for, tested, assembled, manufactured, supplied, wholesaled, retailed and/or provided
23 materials and/or component parts used in the construction of the Development as to directly cause,
24 create and/or contribute to the Defects and resulting damages and losses described above.

25 57. The Association is informed and believes, and thereupon alleges that some of the
26 Manufacturers, Roes 501 through 600 ("the Pipe Manufacturers") were the designers, developers,
27 manufacturers, distributor, marketer, and seller of certain pipes and their component fittings.

28 58. The Pipe Manufacturers are engaged in the business of designing, developing,

1 manufacturing, distributing, marketing, and selling plumbing supplies and pipes such as the
2 materials at issue herein.

3 59. The Pipe Manufacturers knew and/or should have known and expected that the
4 piping system would reach the ultimate user and/or consumer without substantial change and
5 would be in the condition in which it was sold.

6 60. At all times herein relevant, the Pipe Manufacturers owed a duty of reasonable care
7 to The Association in the design, development, manufacturing, distributing, marketing, selling,
8 and selection of materials used in its plumbing system.

9 61. The Pipe Manufacturers breached this duty in the following manner, including but
10 not limited to:

11 (a) failing to adequately and properly install defect-free components into the
12 plumbing system of The Association;

13 (b) failing to adequately and properly select and utilize materials which are
14 defect-free;

15 (c) failing to adequately and properly design a water supply pipe and/or
16 components which will operate and/or perform in a defect-free manner.

17 62. But for the manufacturing defect, design defect, and selection of improper materials
18 by the Pipe Manufacturers, the breach of duty by the Pipe Manufacturers, The Association would
19 not have suffered damages.

20 63. The Pipe Manufacturers knew and/or should have known the pipe at issue was a
21 repository and/or conduit of water and/or subject to water pressure such as it was foreseeable to
22 the Pipe Manufacturers that failure of the pipe and/or other components would injure the property
23 of the ultimate users.

24 64. As a proximate cause of Developers, Designers, General Contractors and
25 Contractors' conduct, The Association and its members have suffered and continue to suffer
26 damages as explained more fully above.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **Breach of Contract**

3 *Against the Developers*

4 65. The Association hereby incorporates and realleges each and every paragraph
5 alleged above, as tough fully set forth herein.

6 66. The Developers entered into written contracts (the Sales Contracts) for the sale of
7 the individual units within the Development to the public. Some of the original purchasers have
8 since sold their units, either directly or indirectly, to other owners who are now or will in the future
9 be members of the Association.

10 67. The Sales Contracts were intended for the benefit of that class of persons consisting
11 of the original owners and those who would become successor owners of the individual units
12 within the Development, as well as the Association, which was formed to govern and maintain the
13 Development, and which would be responsible for the repair of any defective conditions and
14 resulting damages arising from the design and construction of the Development. It was the intent
15 of the Declarant to confer upon such beneficiaries the right to enforce the terms and promises of
16 the Sales Contracts.

17 68. Pursuant to the Sales Contracts, and as further described above, the Developers
18 expressly and impliedly agreed, represented and warranted that the individual units within the
19 Development were constructed in a professional and workmanlike manner, were constructed in
20 accordance with all applicable standards of care in the building industry, were constructed in
21 accordance with all applicable building codes and ordinances, and were of merchantable quality,
22 habitable, and fit for their intended use as residential homes.

23 69. In addition to the representations made in the Sales Contracts, the Developers made
24 representations and warranties in their sales brochures and advertising and promotional materials
25 that the Development and the individual units therein were constructed in a professional and
26 workmanlike manner, in accordance with all applicable standards of care in the building industry,
27 and in accordance with all applicable building codes and ordinances, and that the individual units
28 were of merchantable quality, habitable, and fit for their intended use as residential homes (the

Warranties).

70. The Association and its members have performed all obligations on their part to be performed under the terms and conditions of the Sales Contracts.

71. The Developers breached the Sales Contracts, and the express and implied agreements and warranties therein, by selling units containing the Defects described above, and as a direct result of said breaches, The Association and its individual members have suffered the losses and damages described above.

72. As a proximate cause of Developers, Designers, General Contractors and Contractors' conduct, The Association and its members have suffered and continue to suffer damages as explained more fully above.

FIFTH CAUSE OF ACTION

Intentional/Negligent Nondisclosure

Against the Developers

73. The Association hereby incorporates and realleges each and every paragraph alleged above, as tough fully set forth herein.

74. During the time they owned, controlled, developed and maintained the Development, the Developers became aware of the Defects, knew that the existence of the Defects was material information affecting the value or desirability of the property, and knew that prospective buyers did not have access to this information. Yet, the Developers did not disclose this information to prospective buyers.

75. The Developers' failure to disclose this information was intentional, the nondisclosure of which was intended to induce prospective buyers to purchase units in the Development. Alternatively, the Developers negligently and unreasonably failed to disclose the Defects to the prospective buyers.

76. Those who purchased units in the Development were induced by the absence of this material information to purchase their units, and justifiably relied on the absence of this material information to their detriment.

77. By reason of the Developers' nondisclosures, as above described, The Association

1 and its individual members have suffered the losses and damages described above.

2 78. Had The Association known the undisclosed facts, The Association would have
3 investigated the condition and integrity of the Development, and The Association would not have
4 relied, as it did, upon Developers and each of their representations that the Development was
5 generally in good condition and fit for the intended use and that all installation and construction
6 had been successfully completed.

7 79. In doing the above acts, the Developers were guilty of oppression, fraud or malice,
8 and/or acted with a conscious disregard for the rights of The Association and its members, and The
9 Association is therefore entitled to a recovery of punitive damages in an amount to be determined
10 at the time of trial.

11 80. As a proximate cause of Developers, Designers, General Contractors and
12 Contractors' conduct, The Association and its members have suffered and continue to suffer
13 damages as explained more fully above.

14 **SIXTH CAUSE OF ACTION**

15 **Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113**

16 *Against the Developers*

17 81. The Association hereby incorporates and realleges each and every paragraph
18 alleged above, as though fully set forth herein.

19 82. The Association is informed and believes, and thereupon alleges, that Developers
20 pattern and practice of conduct are violations of the duty of good faith and dealing owed to The
21 Association and its members. NRS 116.1113.

22 83. The Association has been harmed in the various ways and manners described in in
23 other counts of this complaint and incorporated by reference as though fully set forth herein.

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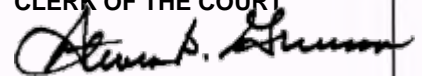
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1. For general and special damages according to proof, in excess of \$10,000.00 (ten thousand dollars);
2. For attorney's fees and costs, expert costs and expenses incurred in investigating the constructional defects in the Development, pursuing the NRS 40.600 *et seq.* pre-litigation process, and pursuing this action, both pursuant to statutory and common law, as alleged above;
3. For prejudgment and post-judgment interest on all sums awarded, according to proof at the maximum legal rate;
4. For costs of suit incurred herein;
5. For all damages pursuant to NRS § 40.655;
6. For such other and further relief as the court may deem just and equitable.

By: _____
Francis I. Lynch, Esq.
Nevada Bar No. 4515
Charles “Dee” Hopper, Esq.
Nevada Bar No. 6346
1210 S. Valley View Blvd., Suite 208
Las Vegas, Nevada 89102



FFCO

DISTRICT COURT
CLARK COUNTY, NEVADA

Case No. A-16-744146-D

Dept. No. XXII

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,

Plaintiffs,

Vs.

PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation.

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation,

Counter-Claimant,

Vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

1 **PANORAMA TOWERS**
2 **CONDOMINIUM UNIT OWNERS'**
3 **ASSOCIATION, a Nevada non-profit**
4 **corporation,**

5 **Third-Party Plaintiff,**

6 **Vs.**

7 **SIERRA GLASS & MIRROR, INC.; F.**
8 **ROGERS CORPORATION; DEAN**
9 **ROOFING COMPANY; FORD**
10 **CONSTRUCTING, INC.; INSULPRO,**
11 **INC.; XTREME EXCAVATION;**
12 **SOUTHERN NEVADA PAVING, INC.;**
13 **FLIPPINS TRENCHING, INC.;**
14 **BOMBARD MECHANICAL, LLC; R.**
15 **RODGERS CORPORATION; FIVE**
16 **STAR PLUMBING & HEATING, LLC**
17 **dba SILVER STAR PLUMBING; and**
18 **ROES 1 through 1000, inclusive,**

19 **Third-Party Defendants.¹**

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

21 These matters concerning:

- 22 1. Plaintiffs'/Counter-Defendants' Motion for Summary Judgment Pursuant to NRS
23 11.202(1) filed February 11, 2019; and
- 24 2. Defendant's/Counter-Claimant's Conditional Counter-Motion for Relief Pursuant to
25 NRS 40.695(2) filed March 1, 2019,
26 both came on for hearing on the 23rd day of April 2019 at the hour of 8:30 a.m. before Department
27 XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN
28 H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION,

¹ As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 INC. appeared by and through their attorneys, JEFFREY W. SAAB, ESQ. and DEVIN R.
2 GIFFORD, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
3 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS' ASSOCIATION appeared by and through their attorneys, MICHAEL J. GAYAN,
5 ESQ. of the law firm, KEMP JONES & COULTHARD.² Having reviewed the papers and pleadings
6 on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this
7 Court makes the following Findings of Fact and Conclusions of Law:

8
9 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

10 1. This case arises as a result of alleged constructional defects within both the common
11 areas and the 616 residential condominium units located within two tower structures of the
12 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
13 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
14 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
15 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), identifying
16 deficiencies within the residential tower windows, fire blocking, mechanical room piping and sewer.
17 Subsequently, after the parties engaged in the pre-litigation process with the NRS 40.680 mediation
18 held September 26, 2016 with no success, the Contractors filed their Complaint on September 28,
19 2016 against the Owners' Association, asserting the following claims that, for the most part, deal
20 with their belief the NRS 40.645 notice was deficient:

- 21
22
23 1. Declaratory Relief—Application of AB 125;
24 2. Declaratory Relief—Claim Preclusion;
25

26
27 ²SCOTT A. WILLIAMS, ESQ. of the law firm, WILLIAMS & GUMBINER, also appeared telephonically on
28 behalf of PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION. Via Minute Order filed
January 13, 2017, this Court granted the Motion to Associate Counsel filed January 3, 2017 given non-opposition by
Plaintiffs/Counter-Defendants. However, no formal proposed Order granting the motion was ever submitted to the Court
for signature.

3. Failure to Comply with NRS 40.600, *et seq.*;
4. Suppression of Evidence/Spoliation;
5. Breach of Contract (Settlement Agreement in Prior Litigation);
6. Declaratory Relief—Duty to Defend; and
7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;
2. Negligence and Negligence *Per Se*;
3. Products Liability (against the manufacturers);
4. Breach of (Sales) Contract;
5. Intentional/Negligent Disclosure; and
6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4) years set forth in NRS 11.220.³ With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid with respect to the windows' constructional defects only.⁴

...

³See Findings of Fact, Conclusions of Law and Order filed September 15, 2017.

⁴See Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

1 4. The Builders or Contractors now move this Court for summary judgment upon the
2 basis the Association's claims are time-barred by the six-year statute of repose set forth in NRS
3 11.202(1), as amended by Assembly Bill (AB) 125 in 2015, in that its two residential towers were
4 substantially completed on January 16, 2008 (Tower I) and March 26, 2008 (Tower II), respectively,
5 and claims were not brought until February 24, 2016 when the NRS 40.645 Notice was sent; further,
6 the Association did not file its Counter-Claim until March 1, 2017.

7
8 5. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION
9 opposes, arguing, first, the Builders do not provide this Court all facts necessary to decide the
10 motion which, therefore, requires its denial. Specifically, NRS 11.2055, the statute identifying the
11 date of substantial completion, defines such as being the latest of *three* events: (1) date the final
12 building inspection of the improvement is conducted; (2) date the notice of completion is issued for
13 the improvement; or (3) date the certificate of occupancy is issued. Here, the Association argues the
14 Builders provided only the dates the Certificates of Occupancy were issued for the two towers.⁵
15 Second, the NRS 40.645 notice was served within the year of "safe harbor" which tolled any
16 limiting statutes, and the primary action was filed within two days of NRS Chapter 40's mediation.
17 In the Owners' Association's view, its Counter-Claim filed March 1, 2017 was compulsory to the
18 initial Complaint filed by the Builders, meaning its claims relate back to September 28, 2016, and
19 thus, is timely. Further, the Association notes it learned of the potential window-related claims in
20 August 2013, less than three years before it served its notice, meaning their construction defect
21 action is not barred by the statute of limitations. The Association also counter-moves this Court for
22 relief under NRS 40.695(2) as, in its view, good cause exists for this Court to extend the tolling
23 period to avoid time-barring its constructional defect claims.
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27 ⁵As noted *infra*, the Certificates of Occupancy also identify the date of the final building inspection as being
28 March 16, 2007 (Tower I) and July 16, 2007 (Tower II). That is, the Builders identified two of the three events, and not
just one.

CONCLUSIONS OF LAW

1
2 1. Summary judgment is appropriate and “shall be rendered forthwith” when the
3 pleadings and other evidence on file demonstrates no “genuine issue as to any material fact
4 [remains] and that the moving party is entitled to a judgment as a matter of law.” *See* NRCP 56(c);
5 Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls
6 which factual disputes are material and will preclude summary judgment; other factual disputes are
7 irrelevant. *Id.*, 121 Nev. at 731. A factual dispute is genuine when the evidence is such that a
8 rational trier of fact could return a verdict for the non-moving party. *Id.*

9
10 2. While the pleadings and other proof must be construed in a light most favorable to
11 the non-moving party, that party bears the burden “to do more than simply show that there is some
12 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in
13 the moving party’s favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475, 574, 586 (1986),
14 *cited by* Wood, 121 Nev. at 732. The non-moving party “must, by affidavit or otherwise, set forth
15 specific facts demonstrating the evidence of a genuine issue for trial or have summary judgment
16 entered against him.” Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992),
17 *cited by* Wood, 121 Nev. at 732. The non-moving party “is not entitled to build a case on the
18 gossamer threads of whimsy, speculation, and conjecture.” Bulbman, 108 Nev. at 110, 825 P.2d
19 591, *quoting* Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).
20
21

22 3. Four of Builders’ causes of action seek declaratory relief under NRS Chapter 30.
23 NRS 30.040(1) provides:

24 Any person interested under a deed, written contract or other writings constituting a contract,
25 or whose rights, status or other legal relations are affected by a statute, municipal ordinance,
26 contract or franchise, may have determined any question of construction or validly arising
27 under the instrument, statute, ordinance, contract or franchise and obtain a declaration of
28 rights, status or other legal relations thereunder.

...

1 Actions for declaratory relief are governed by the same liberal pleading standards applied in other
2 civil actions, but they must raise a present justiciable issue. Cox v. Glenbrook Co., 78 Nev. 254,
3 267-268, 371 P.2d 647, 766 (1962). Here, a present justiciable issue exists as PANORAMA
4 TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION served the Builders with a notice
5 of constructional defects pursuant to NRS 40.645 on February 24, 2016, and later demonstrated its
6 intention to purchase the claims through this litigation. As noted above, the Contractors propose the
7 remaining claim for constructional defects within the windows is time-barred by virtue of the six-
8 year statute of repose enacted retroactively by the 2015 Nevada Legislature through AB 125. As set
9 forth in their First Cause of Action, the Builders seek a declaration from this Court as to the rights,
10 responsibilities and obligations of the parties as they pertain to the association's claim. As the
11 parties have raised arguments concerning the application of both statutes of repose and limitation,
12 this Court begins its analysis with a review of them.
13

14
15 4. The statutes of repose and limitation are distinguishable and distinct from each other.
16 "Statutes of repose' bar causes of action after a certain period of time, regardless of whether
17 damage or an injury has been discovered. In contrast, 'statutes of limitation' foreclose suits after a
18 fixed period time following occurrence or discovery of an injury." Alenz v. Twin Lakes Village,
19 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1993), *citing* Allstate Insurance Company v. Furgerson,
20 104 Nev. 772, 775 n.2, 766 P.2d 904, 906 n.2 (1988). Of the two, the statute of repose sets an
21 outside time limit, generally running from the date of substantial completion of the project and with
22 no regard to the date of injury, after which cause of action for personal injury or property damage
23 allegedly caused by the deficiencies in the improvements to real property may not be brought. G
24 and H Associates v. Ernest W. Hahn, Inc., 113 Nev. 265, 271, 934 P.2d 229, 233 (1977), *citing*
25 Lamb v. Wedgewood South Corp., 308 N.C. 419302 S.E.2d 868, 873 (1983). While there are
26

27 ...
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1 instances where both the statutes of repose and limitations may result to time-bar a particular claim,
2 there also are situations where one statute obstructs the cause of action, but the other does not.

3 5. NRS Chapter 11 does not set forth a specific statute of limitations dealing with the
4 discovery of constructional defects located within a residence. However, the Nevada Supreme Court
5 has held these types of claims are subject to the “catch all” statute, NRS 11.220. *See Hartford*
6 *Insurance Group v. Statewide Appliances, Inc.*, 87 Nev. 195, 198, 484 P.2d 569, 571 (1971).⁶ This
7 statute specifically provides “[a]n action for relief, not hereinbefore provided for, must be
8 commenced within 4 years after the cause of action shall have accrued.”
9

10 6. The four-year limitations period identified in NRS 11.220 begins to run at the time
11 the plaintiff learns, or in the exercise of reasonable diligence should have learned of the harm to the
12 property caused by the constructional defect. *Tahoe Village Homeowners Association v. Douglas*
13 *County*, 106 Nev. 660, 662-664, 799 P.2d 556, 558 (1990), *citing Oak Grove Investment v. Bell &*
14 *Gossett Co.*, 99 Nev. 616621-623, 669 P.2d 1075, 1078-1079 (1983); *also see G and H Associates,*
15 *113 Nev. at 272, 934 P.2d at 233, citing Nevada State Bank v. Jamison Partnership*, 106 Nev. 792,
16 800, 801 P.2d 1377, 1383 (1990) (statutes of limitations are procedural bars to a plaintiff’s action;
17 the time limits do not commence and the cause of action does not accrue until the aggrieved party
18 knew or reasonably should have known of the facts giving rise to the damage or injury); *Beazer*
19 *Homes Nevada, Inc. v. District Court*, 120 Nev. 575, 587, 97 P.3d 1132, 1139 (2004) (“For
20 constructional defect cases, the statute of limitations does not begin to run until ‘the time the
21 plaintiff learns, or in the exercise of reasonable diligence should have learned, of the harm to the
22 property.’”).
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26 ⁶In *Hartford Insurance Group*, an action was brought for damages to a home caused by an explosion of a heater
27 made for use with natural as opposed to propane gas. The State’s high court held such matter was not an “action for
28 waste or trespass to real property” subject to a three-year statute of limitation nor was it an “action upon a contract...not
founded upon an instrument in writing” even though plaintiff sued under a theory of breach of express and implied
warranties. *See* NRS 11.190. This action fell into the “catch all” section, NRS 11.220, the statute of limitations of
which is four (4) years.

1 7. Prior to February 25, 2015, when AB 125 was enacted into law, the statutes of repose
2 were contained in NRS 11.203 through 11.205, and they barred actions for deficient construction
3 after a certain number of years from the date the construction was substantially completed. *See*
4 Alenz, 108 Nev. at 1120, 843 P.2d at 836. NRS 11.203(1) provided an action based on a known
5 deficiency may not be brought “more than 10 years after the substantial completion of such an
6 improvement.” NRS 11.204(1) set forth an action based on a latent deficiency may not be
7 commenced “more than 8 years after the substantial completion of such an improvement....” NRS
8 11.205(1) stated an action based upon a patent deficiency may not be commenced “more than 6
9 years after the substantial completion of such an improvement....” Further, and notwithstanding the
10 aforementioned, if the injury occurred in the sixth, eighth or tenth year after the substantial
11 completion of such an improvement, depending upon which statute of repose was applied, an action
12 for damages for injury to property or person could be commenced within two (2) years after the date
13 of injury. *See* NRS 11.203(2), 11.204(2) *and* 11.205(2) as effective prior to February 24, 2015.

14
15
16 8. In addition, prior to the enactment of AB 125, NRS 11.202 identified an exception to
17 the application of the statute of repose. This exception was the action could be commenced against
18 the owner, occupier or any person performing or furnishing the design, planning, supervision or
19 observation of construction, or the construction of an improvement to real property *at any time* after
20 the substantial completion where the deficiency was the result of willful misconduct or fraudulent
21 misconduct. For the NRS 11.202 exception to apply, it was the plaintiff, not the defendant, who had
22 the burden to demonstrate defendant’s behavior was based upon willful misconduct. *See Acosta v.*
23 Glenfed Development Corp., 128 Cal.App.4th 1278, 1292, 28 Cal.Rptr.3d 92, 102 (2005).

24
25 9. AB 125 made sweeping revisions to statutes addressing residential construction
26 defect claims. One of those changes included revising the statutes of repose from the previous six
27 (6), eight (8) and ten (10) years to no “more than 6 years after the substantial completion of such an
28

improvement...” See NRS 11.202 (as revised in 2015). As set forth in Section 17 of AB 125, NRS 11.202 was revised to state in pertinent part as follows:

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

- (a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;
 - (b) Injury to real or personal property caused by any such deficiency; or
 - (c) Injury to or the wrongful death of a person caused by any such deficiency.
- (Emphasis added)

In addition, the enactment of AB 125 resulted in a deletion of the exception to the application of the statute of repose based upon the developer’s willful misconduct or fraudulent concealment.

10. Section 21(5) of AB 125 provides the period of limitations on actions set forth NRS 11.202 is to be applied *retroactively* to actions in which the substantial completion of the improvement to the real property occurred before the effective date of the act. However, Section 21(6) also incorporated a “safe harbor” or grace period, meaning actions that accrued before the effective date of the act are not limited if they are commenced within one (1) year of AB 125’s enactment, or no later than February 24, 2016.

11. NRS 11.2055 identifies the date the statute of repose begins to run in constructional defect cases, to wit: the date of substantial completion of improvement to real property. NRS 11.2055(1) provides:

1. Except as otherwise provided in subsection 2, for the purposes of this section and NRS 11.202, the date of substantial completion of an improvement to real property shall be deemed to be the date on which:

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

...

1 NRS 11.2055(2) states “[i]f none of the events described in subsection 1 occurs, the date of
2 substantial completion of an improvement to real property must be determined by the rules of the
3 common law.”

4 **12.** While the statute of repose’s time period was shortened, NRS 40.600 to 40.695’s
5 tolling provisions were not retroactively changed. That is, statutes of limitation or repose applicable
6 to a claim based upon a constructional defect governed by NRS 40.600 to 40.695 *still* toll deficiency
7 causes of action from the time the NRS 40.645 notice is given until the earlier of one (1) year after
8 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
9 writing. *See* NRS 40.695(1). Further, statutes of limitation and repose may be tolled under NRS
10 40.695(2) for a period longer than one (1) year after notice of the claim is given but only if, in an
11 action for a constructional defect brought by a claimant after the applicable statute of limitation or
12 repose has expired, the claimant demonstrates to the satisfaction of the court good cause exists to toll
13 the statutes of limitation and repose for a longer period.
14

15 **13.** In this case, the Owners’ Association argues the Builders have not provided sufficient
16 information to determine when the statute of repose started to accrue, and without it, this Court
17 cannot decide the motion for summary judgment. Specifically, PANORAMA TOWERS
18 CONDOMINIUM UNIT OWNERS’ ASSOCIATION proposes the Builders have identified only
19 one date addressed within NRS 11.2055(1), and to establish the date of accrual, this Court needs all
20 three as the defining date is the one which occurs last. This Court disagrees with the Association’s
21 assessment the date of substantial completion has not been established for at least a couple of
22 reasons. *First*, the Builders did not provide just one date; they identified two events addressed in
23 NRS 11.2055, i.e. the date of the final building inspection and when the Certificate of Occupancy
24 was issued as identified in Exhibits C and D of their motion. Those dates are March 16, 2007 and
25 January 16, 2008, respectively, for Tower I, and July 16, 2007 and March 26, 2008, respectively, for
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1 Tower II. *Second*, this Court does not consider the Builders' inability or failure to provide the date
2 of the third event, i.e. when the notice of completion was issued, as fatal to the motion, especially
3 given the common-law "catch-all" provision expressed in NRS 11.2055(2) that applies if none of the
4 events described in NRS 11.2055(1) occurs. This Court concludes the dates of substantial
5 completion are January 16, 2008 (Tower I) and March 16, 2008 (Tower II), respectively, as these
6 dates are the latest occurrences. Given this Court's decision, the dates of substantial completion
7 obviously accrued before the enactment of AB 125. Applying the aforementioned analysis to the
8 facts here, this Court concludes the statute of repose applicable to the Association's constructional
9 defects claim is six (6) years, but, as it accrued prior to the effective date of AB 125 or February 24,
10 2015, the action is not limited if it was commenced within one (1) year after, or by February 24,
11 2016.
12

13 **14.** In this case, the Association served its NRS 40.645 constructional defect notice on
14 February 24, 2016, or the date the one-year "safe harbor" was to expire. The service of the NRS
15 40.645 notice operated to toll the applicable statute of repose until the earlier of one (1) year after
16 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
17 writing. *See* NRS 40.695(1). The NRS 40.680 mediation took place and was concluded on
18 September 26, 2016. Applying the earlier of the two expiration dates set forth in NRS 40.695, the
19 statute of repose in this case was tolled thirty (30) days after the mediation or until October 26, 2016,
20 which is earlier than the one (1) year after the notice was served. PANORAMA TOWERS
21 CONDOMINIUM UNIT OWNERS' ASSOCIATION had up to and including October 26, 2016 to
22 institute litigation or its claims would be time-barred.
23

24 **15.** PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION filed
25 its Counter-Claim against the Builders on March 1, 2017, over four (4) months after October 26,
26 2016. As noted above, in the Builders' view, the constructional defect claims relating to the
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1 windows, therefore, are time-barred. The Association disagrees, arguing its Counter-Claim was
2 compulsory, and it relates back to the date of the Complaint's filing, September 28, 2016.

3 Alternatively, the Association counter-moves this Court for relief, and to find good cause exists to
4 toll the statute of repose for a longer period given its diligence in prosecuting the constructional
5 defect claims against the Builders. The Court analyzes both of the Association's points below.

6 **16.** NRCPC 13 defines both compulsory and permissive counter-claims. A counter-claim
7 is compulsory if it arises out of the transaction or occurrence that is the subject matter of the
8 opposing party's claim and does not require for its adjudication the presence of third parties of
9 whom the court cannot acquire jurisdiction. *See* NRCPC 13(a). The purpose of NRCPC 13(a) is to
10 make an "actor" of the defendant so circuity of action is discouraged and the speedy settlement of all
11 controversies between the parties can be accomplished in one action. *See Great W. Land & Cattle*
12 *Corp. v. District Court*, 86 Nev. 282, 285, 467 P.2d 1019, 1021 (1970). In this regard, the
13 compulsory counter-claimant is forced to plead his claim or lose it. *Id.* A counter-claim is
14 permissive if it does not arise out of the transaction or occurrence that is the subject matter of the
15 opposing party's claim. *See* NRCPC 13(b).

16 **17.** Here, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION proposes its counter-claims are compulsory as they arise out of the same
18 transaction or occurrence that is the subject matter of the Builders' claims. This Court disagrees.
19 The Builders' claims are for breach of the prior settlement agreement and declaratory relief
20 regarding the sufficiency of the NRS 40.645 notice and application of AB 125. The Association's
21 counter-claims of negligence, intentional/negligent disclosure, breach of sales contract, products
22 liability, breach of express and implied warranties under and violations of NRS Chapter 116, and
23 breach of duty of good faith and fair dealing are for monetary damages as a result of constructional
24 defects to its windows in the two towers. If this Court ruled against the Builders on their Complaint,
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1 the Association would not have lost their claims if they had not pled them as counter-claims in the
2 instant lawsuit. In this Court's view, the Association had two options: it could make a counter-claim
3 which is permissive or assert its constructional defect claims in a separate Complaint. Here, it
4 elected to make the permissive counter-claim. The counter-claim does not relate back to the filing
5 of the Complaint, September 28, 2016.

6 **18.** However, even if this Court were to decide the counter-claim was compulsory,
7 meaning the Association was forced to plead its claims in the instant case or lose them, the pleading
8 still would not relate back to the date of the Complaint' filing. As noted in Nevada State Bank v.
9 Jamison Family Partnership, 106 Nev. 792, 798, 801 P.2d 1377, 1381 (1990), statutes of limitation
10 and repose were enacted to "'promote repose by giving security and stability to human
11 affairs....They stimulate to activity and punish negligence.'" *Citing* Wood v. Carpenter, 101 U.S.
12 135, 139, 25 L.Ed.2d 807 (1879). Indeed, the key purpose of a repose statute is to eliminate
13 uncertainties under the related statute of limitations or repose and to create a final deadline for filing
14 suit that is not subject to any exceptions except perhaps those clearly specified by the state's
15 legislature. Without a statute of repose, professionals, contractors and other actors would face
16 never-ending uncertainty as to liability for their work. As stated by the Supreme Court in Texas in
17 Methodist Healthcare System of San Antonio, Ltd., LLP v. Rankin, 53 Tex.Sup.Ct.J. 455, 307
18 S.W.3d 283, 287 (2010), "'while statutes of limitations operate procedurally to bar the enforcement
19 of a right, a statute of repose takes away the right altogether, creating a substantive right to be free of
20 liability after a specified time.'" *Quoting* Galbraith Engineering Consultants, Inc. v. Pochucha, 290
21 S.W.3d 863, 866 (Tex. 2009). For the reasons articulated above, the Nevada Supreme Court held
22 the lower court did not err by finding a plaintiff, by instituting an action before the expiration of a
23 statute of limitation, does not toll the running of that statute against compulsory counter-claims filed
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1 by a defendant after the statute has expired. In short, whether the Association's counter-claims are
2 compulsory or permissive, the filing of the Builders' Complaint did not toll the statute of repose.

3 **19.** The next question is whether good cause exists for this Court to toll the statute of
4 repose for a longer period as so authorized in NRS 40.695(2). The Association proposes there is
5 good cause given their diligence in prosecuting their constructional defect claims, and, as they are
6 seeking tolling of only five (5) days after the one (1) year anniversary of the original NRS 40.645
7 notice, the Builders' ability to defend the deficiency causes of action has not been adversely
8 impacted. In making this argument, the Association seems to assume the tolling under NRS 40.695
9 ended February 24, 2017, or one (1) year after it served the NRS 40.645 notice when, in actuality,
10 the tolling ended October 26, 2016, or thirty (30) days after the NRS 40.680 mediation. *See*
11 40.695(1). The Association does not show this Court good cause exists for its failure to institute
12 litigation before October 26, 2016. Whether the Builders' ability to defend the Association's claim
13 is not adversely affected is, therefore, not relevant to the issue of good cause. Accordingly, this
14 Court declines tolling the statute of repose for a period longer than one (1) year after the NRS
15 40.645 notice was made. The Builders' Motion for Summary Judgment is granted, and the
16 Association's Conditional Counter-Motion for Relief is denied.

17 **20.** As this Court decides the six-year statute of repose bars the Association's
18 constructional defect claims, it does not analyze the statute of limitations issue presented.

19 Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,
20

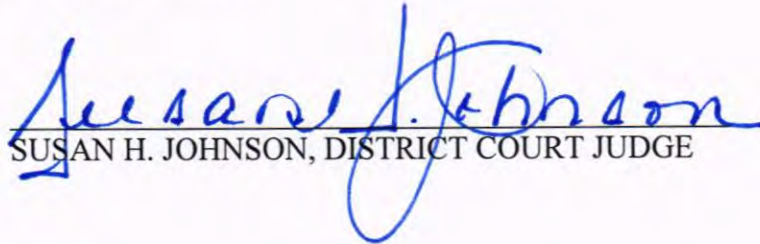
21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiffs'/Counter-
22 Defendants' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 is
23 granted; and
24

25 ...
26

27 ...
28

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant's/Counter-
2 Claimant's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019
3 is denied.

4 DATED this 23rd day of May 2019.

5
6 
7 _____
8 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
9
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CERTIFICATE OF SERVICE

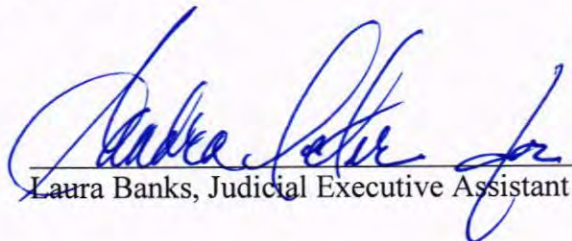
I hereby certify, on the 23rd day of May 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

FRANCIS I. LYNCH, ESQ.
CHARLES "DEE" HOPPER, ESQ.
SERGIO SALZANO, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant

File Into Existing Case

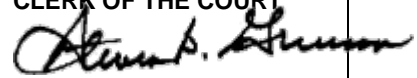
Case Number	Location	Name	Description	Case Type	Email
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s)...	Chapter 40		
1	20	<div>items per page</div> <div>1 - 1 of 1 items</div>			
<div> <div> <div>▼ Party: Panorama Towers Condominium Unit Owners Association - Defendant</div> <div> <div>Angela Embrey</div> <div>a.embrey@kempjones.com</div> </div> <div> <div>Michael J. Gayan</div> <div>m.gayan@kempjones.com</div> </div> <div> <div>Nicole McLeod</div> <div>n.mcleod@kempjones.com</div> </div> <div> <div>Patricia Ann Pierson</div> <div>p.pierson@kempjones.com</div> </div> </div> <div> <div>▶ Party: Laurent Hallier - Counter Defendant</div> <div>▶ Party: Panorama Towers I LLC - Plaintiff</div> <div>▶ Party: Panorama Towers I LLC - Counter Defendant</div> <div>▶ Party: Panorama Towers I Mezz LLC - Plaintiff</div> <div>▶ Party: Panorama Towers I Mezz LLC - Counter Defendant</div> <div>▶ Party: MJ Dean Construction Inc - Plaintiff</div> <div>▶ Party: MJ Dean Construction Inc - Counter Defendant</div> <div>▶ Party: Panorama Towers Condominium Unit Owners Association - Counter Claimant</div> </div> </div>					
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File Into Existing Case

Case Number	Location	Name	Description	Case Type	Email																																																						
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s)...	Chapter 40																																																								
1	20	<p>► Party: Southern Nevada Paving Inc - Counter Defendant</p> <p>► Party: Insulpro Inc - Counter Defendant</p> <p>▼ Other Service Contacts</p> <table border="1"> <tbody> <tr><td>"Charles ""Dee"" Hopper, Esq. "</td><td>CDHopper@lynchhopper.com</td></tr> <tr><td>"Francis I. Lynch, Esq. "</td><td>FLynch@lynchhopper.com</td></tr> <tr><td>Ben Ross .</td><td>Ben@litigationservices.com</td></tr> <tr><td>Calendar .</td><td>calendar@litigationservices.com</td></tr> <tr><td>Colin Hughes .</td><td>colin@lynchhopper.com</td></tr> <tr><td>Crystal Williams .</td><td>cwilliams@bremerwhyte.com</td></tr> <tr><td>Darlene Cartier .</td><td>dcartier@bremerwhyte.com</td></tr> <tr><td>Debbie Holloman .</td><td>dholloman@jamsadr.com</td></tr> <tr><td>Depository .</td><td>Depository@litigationservices.com</td></tr> <tr><td>Floyd Hale .</td><td>fhale@floydhale.com</td></tr> <tr><td>Jennifer Juarez .</td><td>jjuaraz@lynchhopper.com</td></tr> <tr><td>Peter C. Brown .</td><td>pbrown@bremerwhyte.com</td></tr> <tr><td>Rachel Bounds .</td><td>rbounds@bremerwhyte.com</td></tr> <tr><td>Scott Williams .</td><td>swilliams@williamsgumbiner.com</td></tr> <tr><td>Shauna Hughes .</td><td>shughes@lynchhopper.com</td></tr> <tr><td>Terri Scott .</td><td>tscott@fmglegal.com</td></tr> <tr><td>Vicki Federoff .</td><td>vicki@williamsgumbiner.com</td></tr> <tr><td>Wendy Jensen .</td><td>wjensen@williamsgumbiner.com</td></tr> <tr><td>Kimberley Chapman</td><td>kchapman@bremerwhyte.com</td></tr> <tr><td>Christie Cyr</td><td>ccyr@leachjohnson.com</td></tr> <tr><td>Devin R. Gifford</td><td>dgifford@bremerwhyte.com</td></tr> <tr><td>Terry Kelly-Lamb</td><td>tkelly-lamb@kringandchung.com</td></tr> <tr><td>Nancy Ray</td><td>nray@kringandchung.com</td></tr> <tr><td>Alondra A Reynolds</td><td>areynolds@bremerwhyte.com</td></tr> <tr><td>Jeff W. Saab</td><td>jsaab@bremerwhyte.com</td></tr> <tr><td>Robert L. Thompson</td><td>rthompson@kringandchung.com</td></tr> <tr><td>Jennifer Vela</td><td>Jvela@bremerwhyte.com</td></tr> </tbody> </table>				"Charles ""Dee"" Hopper, Esq. "	CDHopper@lynchhopper.com	"Francis I. Lynch, Esq. "	FLynch@lynchhopper.com	Ben Ross .	Ben@litigationservices.com	Calendar .	calendar@litigationservices.com	Colin Hughes .	colin@lynchhopper.com	Crystal Williams .	cwilliams@bremerwhyte.com	Darlene Cartier .	dcartier@bremerwhyte.com	Debbie Holloman .	dholloman@jamsadr.com	Depository .	Depository@litigationservices.com	Floyd Hale .	fhale@floydhale.com	Jennifer Juarez .	jjuaraz@lynchhopper.com	Peter C. Brown .	pbrown@bremerwhyte.com	Rachel Bounds .	rbounds@bremerwhyte.com	Scott Williams .	swilliams@williamsgumbiner.com	Shauna Hughes .	shughes@lynchhopper.com	Terri Scott .	tscott@fmglegal.com	Vicki Federoff .	vicki@williamsgumbiner.com	Wendy Jensen .	wjensen@williamsgumbiner.com	Kimberley Chapman	kchapman@bremerwhyte.com	Christie Cyr	ccyr@leachjohnson.com	Devin R. Gifford	dgifford@bremerwhyte.com	Terry Kelly-Lamb	tkelly-lamb@kringandchung.com	Nancy Ray	nray@kringandchung.com	Alondra A Reynolds	areynolds@bremerwhyte.com	Jeff W. Saab	jsaab@bremerwhyte.com	Robert L. Thompson	rthompson@kringandchung.com	Jennifer Vela	Jvela@bremerwhyte.com
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1 **NEO**
2 PETER C. BROWN, ESQ.
3 Nevada State Bar No. 5887
4 JEFFREY W. SAAB, ESQ.
5 Nevada State Bar No. 11261
6 BREMER WHYTE BROWN & O'MEARA LLP
7 1160 N. TOWN CENTER DRIVE
8 SUITE 250
9 LAS VEGAS, NV 89144
10 TELEPHONE: (702) 258-6665
11 FACSIMILE: (702) 258-6662
12 pbrown@bremerwhyte.com
13 jsaab@bremerwhyte.com

14 Attorneys for Plaintiffs,
15 LAURENT HALLIER; PANORAMA TOWERS I, LLC;
16 PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
17 CONSTRUCTION, INC.

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 LAURENT HALLIER, an individual;
21 PANORAMA TOWERS I, LLC, a Nevada
22 limited liability company; PANORAMA
23 TOWERS I MEZZ, LLC, a Nevada limited
24 liability company; and M.J. DEAN
25 CONSTRUCTION, INC., a Nevada Corporation,

26 Plaintiffs,

27 vs.

28 PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Defendant.

) Case No. A-16-744146-D
) Dept. XXII
)
) **NOTICE OF ENTRY OF ORDER AS TO**
) **PLAINTIFF'S COUNTER-**
) **DEFENDANTS' MOTION FOR**
) **SUMMARY JUDGMENT PURSUANT**
) **TO NRS 11.202(L) FILED FEBRUARY**
) **11, 2019 AND DEFENDANT'S**
) **COUNTER-CLAIMANT'S**
) **CONDITIONAL COUNTER-MOTION**
) **FOR RELIEF PURSUANT TO NRS**
) **40.695(2) FILED MARCH 1, 2019**
)
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)

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1 PLEASE TAKE NOTICE that an Order was entered in reference to the above-captioned
2 matter on May 23, 2019 a copy of which is attached hereto.

3 Dated: May 28, 2019

BREMER WHYTE BROWN & O'MEARA LLP

4
5 By:  _____

Peter C. Brown, Esq.

Nevada State Bar No. 5887

Jeffrey W. Sab, Esq.

Nevada State Bar No. 11261

Attorneys for Plaintiffs,

LAURENT HALLIER; PANORAMA TOWERS I,

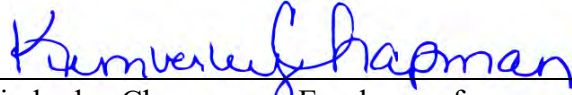
LLC; PANORAMA

TOWERS I MEZZ, LLC; and M.J.

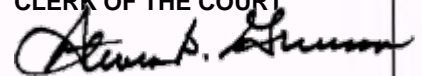
DEAN CONSTRUCTION, INC.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28th day of May 2019, a true and correct copy of the foregone
3 document was electronically delivered to Odyssey for filing and service upon all electronic service
4 list recipients.

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6 

7 Kimberley Chapman, an Employee of
8 BREMER, WHYTE, BROWN & O'MEARA, LLP
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1 FFCO

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 LAURENT HALLIER, an individual;
7 PANORAMA TOWERS I, LLC, a Nevada
8 limited liability company; PANORAMA
9 TOWERS I MEZZ, LLC, a Nevada limited
10 liability company; and M.J. DEAN
11 CONSTRUCTION, INC., a Nevada
12 corporation,

13 Plaintiffs,

14 Vs.

15 PANORAMA TOWERS
16 CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION, a Nevada non-profit
18 corporation.

19 Defendant.

20
21 PANORAMA TOWERS
22 CONDOMINIUM UNIT OWNERS'
23 ASSOCIATION, a Nevada non-profit
24 corporation,

25 Counter-Claimant,

26 Vs.

27 LAURENT HALLIER, an individual;
28 PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

1 **PANORAMA TOWERS**
2 **CONDOMINIUM UNIT OWNERS'**
3 **ASSOCIATION, a Nevada non-profit**
4 **corporation,**

5 **Third-Party Plaintiff,**

6 **Vs.**

7 **SIERRA GLASS & MIRROR, INC.; F.**
8 **ROGERS CORPORATION; DEAN**
9 **ROOFING COMPANY; FORD**
10 **CONSTRUCTING, INC.; INSULPRO,**
11 **INC.; XTREME EXCAVATION;**
12 **SOUTHERN NEVADA PAVING, INC.;**
13 **FLIPPINS TRENCHING, INC.;**
14 **BOMBARD MECHANICAL, LLC; R.**
15 **RODGERS CORPORATION; FIVE**
16 **STAR PLUMBING & HEATING, LLC**
17 **dba SILVER STAR PLUMBING; and**
18 **ROES 1 through 1000, inclusive,**

19 **Third-Party Defendants.¹**

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

21 These matters concerning:

- 22 1. Plaintiffs'/Counter-Defendants' Motion for Summary Judgment Pursuant to NRS
23 11.202(1) filed February 11, 2019; and
- 24 2. Defendant's/Counter-Claimant's Conditional Counter-Motion for Relief Pursuant to
25 NRS 40.695(2) filed March 1, 2019,
26 both came on for hearing on the 23rd day of April 2019 at the hour of 8:30 a.m. before Department
27 XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN
28 H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION,

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 INC. appeared by and through their attorneys, JEFFREY W. SAAB, ESQ. and DEVIN R.
2 GIFFORD, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
3 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS' ASSOCIATION appeared by and through their attorneys, MICHAEL J. GAYAN,
5 ESQ. of the law firm, KEMP JONES & COULTHARD.² Having reviewed the papers and pleadings
6 on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this
7 Court makes the following Findings of Fact and Conclusions of Law:

8
9 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

10 1. This case arises as a result of alleged constructional defects within both the common
11 areas and the 616 residential condominium units located within two tower structures of the
12 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
13 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
14 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
15 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), identifying
16 deficiencies within the residential tower windows, fire blocking, mechanical room piping and sewer.
17 Subsequently, after the parties engaged in the pre-litigation process with the NRS 40.680 mediation
18 held September 26, 2016 with no success, the Contractors filed their Complaint on September 28,
19 2016 against the Owners' Association, asserting the following claims that, for the most part, deal
20 with their belief the NRS 40.645 notice was deficient:

- 21
22
23 1. Declaratory Relief—Application of AB 125;
24 2. Declaratory Relief—Claim Preclusion;
25

26
27 ²SCOTT A. WILLIAMS, ESQ. of the law firm, WILLIAMS & GUMBINER, also appeared telephonically on
28 behalf of PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION. Via Minute Order filed
January 13, 2017, this Court granted the Motion to Associate Counsel filed January 3, 2017 given non-opposition by
Plaintiffs/Counter-Defendants. However, no formal proposed Order granting the motion was ever submitted to the Court
for signature.

3. Failure to Comply with NRS 40.600, *et seq.*;
4. Suppression of Evidence/Spoliation;
5. Breach of Contract (Settlement Agreement in Prior Litigation);
6. Declaratory Relief—Duty to Defend; and
7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;
2. Negligence and Negligence *Per Se*;
3. Products Liability (against the manufacturers);
4. Breach of (Sales) Contract;
5. Intentional/Negligent Disclosure; and
6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4) years set forth in NRS 11.220.³ With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid with respect to the windows' constructional defects only.⁴

...

³See Findings of Fact, Conclusions of Law and Order filed September 15, 2017.

⁴See Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

1 4. The Builders or Contractors now move this Court for summary judgment upon the
2 basis the Association's claims are time-barred by the six-year statute of repose set forth in NRS
3 11.202(1), as amended by Assembly Bill (AB) 125 in 2015, in that its two residential towers were
4 substantially completed on January 16, 2008 (Tower I) and March 26, 2008 (Tower II), respectively,
5 and claims were not brought until February 24, 2016 when the NRS 40.645 Notice was sent; further,
6 the Association did not file its Counter-Claim until March 1, 2017.

7
8 5. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION
9 opposes, arguing, first, the Builders do not provide this Court all facts necessary to decide the
10 motion which, therefore, requires its denial. Specifically, NRS 11.2055, the statute identifying the
11 date of substantial completion, defines such as being the latest of *three* events: (1) date the final
12 building inspection of the improvement is conducted; (2) date the notice of completion is issued for
13 the improvement; or (3) date the certificate of occupancy is issued. Here, the Association argues the
14 Builders provided only the dates the Certificates of Occupancy were issued for the two towers.⁵
15 Second, the NRS 40.645 notice was served within the year of "safe harbor" which tolled any
16 limiting statutes, and the primary action was filed within two days of NRS Chapter 40's mediation.
17 In the Owners' Association's view, its Counter-Claim filed March 1, 2017 was compulsory to the
18 initial Complaint filed by the Builders, meaning its claims relate back to September 28, 2016, and
19 thus, is timely. Further, the Association notes it learned of the potential window-related claims in
20 August 2013, less than three years before it served its notice, meaning their construction defect
21 action is not barred by the statute of limitations. The Association also counter-moves this Court for
22 relief under NRS 40.695(2) as, in its view, good cause exists for this Court to extend the tolling
23 period to avoid time-barring its constructional defect claims.
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26
27 ⁵As noted *infra*, the Certificates of Occupancy also identify the date of the final building inspection as being
28 March 16, 2007 (Tower I) and July 16, 2007 (Tower II). That is, the Builders identified two of the three events, and not
just one.

CONCLUSIONS OF LAW

1
2 1. Summary judgment is appropriate and “shall be rendered forthwith” when the
3 pleadings and other evidence on file demonstrates no “genuine issue as to any material fact
4 [remains] and that the moving party is entitled to a judgment as a matter of law.” *See* NRCP 56(c);
5 Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls
6 which factual disputes are material and will preclude summary judgment; other factual disputes are
7 irrelevant. *Id.*, 121 Nev. at 731. A factual dispute is genuine when the evidence is such that a
8 rational trier of fact could return a verdict for the non-moving party. *Id.*

9
10 2. While the pleadings and other proof must be construed in a light most favorable to
11 the non-moving party, that party bears the burden “to do more than simply show that there is some
12 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in
13 the moving party’s favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475, 574, 586 (1986),
14 *cited by* Wood, 121 Nev. at 732. The non-moving party “must, by affidavit or otherwise, set forth
15 specific facts demonstrating the evidence of a genuine issue for trial or have summary judgment
16 entered against him.” Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992),
17 *cited by* Wood, 121 Nev. at 732. The non-moving party “is not entitled to build a case on the
18 gossamer threads of whimsy, speculation, and conjecture.” Bulbman, 108 Nev. at 110, 825 P.2d
19 591, *quoting* Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).
20
21

22 3. Four of Builders’ causes of action seek declaratory relief under NRS Chapter 30.
23 NRS 30.040(1) provides:

24 Any person interested under a deed, written contract or other writings constituting a contract,
25 or whose rights, status or other legal relations are affected by a statute, municipal ordinance,
26 contract or franchise, may have determined any question of construction or validly arising
27 under the instrument, statute, ordinance, contract or franchise and obtain a declaration of
28 rights, status or other legal relations thereunder.

...

1 Actions for declaratory relief are governed by the same liberal pleading standards applied in other
2 civil actions, but they must raise a present justiciable issue. Cox v. Glenbrook Co., 78 Nev. 254,
3 267-268, 371 P.2d 647, 766 (1962). Here, a present justiciable issue exists as PANORAMA
4 TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION served the Builders with a notice
5 of constructional defects pursuant to NRS 40.645 on February 24, 2016, and later demonstrated its
6 intention to purchase the claims through this litigation. As noted above, the Contractors propose the
7 remaining claim for constructional defects within the windows is time-barred by virtue of the six-
8 year statute of repose enacted retroactively by the 2015 Nevada Legislature through AB 125. As set
9 forth in their First Cause of Action, the Builders seek a declaration from this Court as to the rights,
10 responsibilities and obligations of the parties as they pertain to the association's claim. As the
11 parties have raised arguments concerning the application of both statutes of repose and limitation,
12 this Court begins its analysis with a review of them.
13

14
15 4. The statutes of repose and limitation are distinguishable and distinct from each other.
16 "Statutes of repose' bar causes of action after a certain period of time, regardless of whether
17 damage or an injury has been discovered. In contrast, 'statutes of limitation' foreclose suits after a
18 fixed period time following occurrence or discovery of an injury." Alenz v. Twin Lakes Village,
19 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1993), *citing* Allstate Insurance Company v. Furgerson,
20 104 Nev. 772, 775 n.2, 766 P.2d 904, 906 n.2 (1988). Of the two, the statute of repose sets an
21 outside time limit, generally running from the date of substantial completion of the project and with
22 no regard to the date of injury, after which cause of action for personal injury or property damage
23 allegedly caused by the deficiencies in the improvements to real property may not be brought. G
24 and H Associates v. Ernest W. Hahn, Inc., 113 Nev. 265, 271, 934 P.2d 229, 233 (1977), *citing*
25 Lamb v. Wedgewood South Corp., 308 N.C. 419302 S.E.2d 868, 873 (1983). While there are
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1 instances where both the statutes of repose and limitations may result to time-bar a particular claim,
2 there also are situations where one statute obstructs the cause of action, but the other does not.

3 5. NRS Chapter 11 does not set forth a specific statute of limitations dealing with the
4 discovery of constructional defects located within a residence. However, the Nevada Supreme Court
5 has held these types of claims are subject to the “catch all” statute, NRS 11.220. *See Hartford*
6 *Insurance Group v. Statewide Appliances, Inc.*, 87 Nev. 195, 198, 484 P.2d 569, 571 (1971).⁶ This
7 statute specifically provides “[a]n action for relief, not hereinbefore provided for, must be
8 commenced within 4 years after the cause of action shall have accrued.”
9

10 6. The four-year limitations period identified in NRS 11.220 begins to run at the time
11 the plaintiff learns, or in the exercise of reasonable diligence should have learned of the harm to the
12 property caused by the constructional defect. *Tahoe Village Homeowners Association v. Douglas*
13 *County*, 106 Nev. 660, 662-664, 799 P.2d 556, 558 (1990), *citing Oak Grove Investment v. Bell &*
14 *Gossett Co.*, 99 Nev. 616621-623, 669 P.2d 1075, 1078-1079 (1983); *also see G and H Associates,*
15 *113 Nev. at 272, 934 P.2d at 233, citing Nevada State Bank v. Jamison Partnership*, 106 Nev. 792,
16 800, 801 P.2d 1377, 1383 (1990) (statutes of limitations are procedural bars to a plaintiff’s action;
17 the time limits do not commence and the cause of action does not accrue until the aggrieved party
18 knew or reasonably should have known of the facts giving rise to the damage or injury); *Beazer*
19 *Homes Nevada, Inc. v. District Court*, 120 Nev. 575, 587, 97 P.3d 1132, 1139 (2004) (“For
20 constructional defect cases, the statute of limitations does not begin to run until ‘the time the
21 plaintiff learns, or in the exercise of reasonable diligence should have learned, of the harm to the
22 property.’”).
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25
26 ⁶In *Hartford Insurance Group*, an action was brought for damages to a home caused by an explosion of a heater
27 made for use with natural as opposed to propane gas. The State’s high court held such matter was not an “action for
28 waste or trespass to real property” subject to a three-year statute of limitation nor was it an “action upon a contract...not
founded upon an instrument in writing” even though plaintiff sued under a theory of breach of express and implied
warranties. *See* NRS 11.190. This action fell into the “catch all” section, NRS 11.220, the statute of limitations of
which is four (4) years.

1 7. Prior to February 25, 2015, when AB 125 was enacted into law, the statutes of repose
2 were contained in NRS 11.203 through 11.205, and they barred actions for deficient construction
3 after a certain number of years from the date the construction was substantially completed. *See*
4 Alenz, 108 Nev. at 1120, 843 P.2d at 836. NRS 11.203(1) provided an action based on a known
5 deficiency may not be brought “more than 10 years after the substantial completion of such an
6 improvement.” NRS 11.204(1) set forth an action based on a latent deficiency may not be
7 commenced “more than 8 years after the substantial completion of such an improvement....” NRS
8 11.205(1) stated an action based upon a patent deficiency may not be commenced “more than 6
9 years after the substantial completion of such an improvement....” Further, and notwithstanding the
10 aforementioned, if the injury occurred in the sixth, eighth or tenth year after the substantial
11 completion of such an improvement, depending upon which statute of repose was applied, an action
12 for damages for injury to property or person could be commenced within two (2) years after the date
13 of injury. *See* NRS 11.203(2), 11.204(2) *and* 11.205(2) as effective prior to February 24, 2015.

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16 8. In addition, prior to the enactment of AB 125, NRS 11.202 identified an exception to
17 the application of the statute of repose. This exception was the action could be commenced against
18 the owner, occupier or any person performing or furnishing the design, planning, supervision or
19 observation of construction, or the construction of an improvement to real property *at any time* after
20 the substantial completion where the deficiency was the result of willful misconduct or fraudulent
21 misconduct. For the NRS 11.202 exception to apply, it was the plaintiff, not the defendant, who had
22 the burden to demonstrate defendant’s behavior was based upon willful misconduct. *See Acosta v.*
23 Glenfed Development Corp., 128 Cal.App.4th 1278, 1292, 28 Cal.Rptr.3d 92, 102 (2005).

24
25 9. AB 125 made sweeping revisions to statutes addressing residential construction
26 defect claims. One of those changes included revising the statutes of repose from the previous six
27 (6), eight (8) and ten (10) years to no “more than 6 years after the substantial completion of such an
28

improvement...” See NRS 11.202 (as revised in 2015). As set forth in Section 17 of AB 125, NRS 11.202 was revised to state in pertinent part as follows:

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

- (a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;
 - (b) Injury to real or personal property caused by any such deficiency; or
 - (c) Injury to or the wrongful death of a person caused by any such deficiency.
- (Emphasis added)

In addition, the enactment of AB 125 resulted in a deletion of the exception to the application of the statute of repose based upon the developer’s willful misconduct or fraudulent concealment.

10. Section 21(5) of AB 125 provides the period of limitations on actions set forth NRS 11.202 is to be applied *retroactively* to actions in which the substantial completion of the improvement to the real property occurred before the effective date of the act. However, Section 21(6) also incorporated a “safe harbor” or grace period, meaning actions that accrued before the effective date of the act are not limited if they are commenced within one (1) year of AB 125’s enactment, or no later than February 24, 2016.

11. NRS 11.2055 identifies the date the statute of repose begins to run in constructional defect cases, to wit: the date of substantial completion of improvement to real property. NRS 11.2055(1) provides:

1. Except as otherwise provided in subsection 2, for the purposes of this section and NRS 11.202, the date of substantial completion of an improvement to real property shall be deemed to be the date on which:

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

...

1 NRS 11.2055(2) states “[i]f none of the events described in subsection 1 occurs, the date of
2 substantial completion of an improvement to real property must be determined by the rules of the
3 common law.”

4 **12.** While the statute of repose’s time period was shortened, NRS 40.600 to 40.695’s
5 tolling provisions were not retroactively changed. That is, statutes of limitation or repose applicable
6 to a claim based upon a constructional defect governed by NRS 40.600 to 40.695 *still* toll deficiency
7 causes of action from the time the NRS 40.645 notice is given until the earlier of one (1) year after
8 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
9 writing. *See* NRS 40.695(1). Further, statutes of limitation and repose may be tolled under NRS
10 40.695(2) for a period longer than one (1) year after notice of the claim is given but only if, in an
11 action for a constructional defect brought by a claimant after the applicable statute of limitation or
12 repose has expired, the claimant demonstrates to the satisfaction of the court good cause exists to toll
13 the statutes of limitation and repose for a longer period.
14

15 **13.** In this case, the Owners’ Association argues the Builders have not provided sufficient
16 information to determine when the statute of repose started to accrue, and without it, this Court
17 cannot decide the motion for summary judgment. Specifically, PANORAMA TOWERS
18 CONDOMINIUM UNIT OWNERS’ ASSOCIATION proposes the Builders have identified only
19 one date addressed within NRS 11.2055(1), and to establish the date of accrual, this Court needs all
20 three as the defining date is the one which occurs last. This Court disagrees with the Association’s
21 assessment the date of substantial completion has not been established for at least a couple of
22 reasons. *First*, the Builders did not provide just one date; they identified two events addressed in
23 NRS 11.2055, i.e. the date of the final building inspection and when the Certificate of Occupancy
24 was issued as identified in Exhibits C and D of their motion. Those dates are March 16, 2007 and
25 January 16, 2008, respectively, for Tower I, and July 16, 2007 and March 26, 2008, respectively, for
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1 Tower II. *Second*, this Court does not consider the Builders' inability or failure to provide the date
2 of the third event, i.e. when the notice of completion was issued, as fatal to the motion, especially
3 given the common-law "catch-all" provision expressed in NRS 11.2055(2) that applies if none of the
4 events described in NRS 11.2055(1) occurs. This Court concludes the dates of substantial
5 completion are January 16, 2008 (Tower I) and March 16, 2008 (Tower II), respectively, as these
6 dates are the latest occurrences. Given this Court's decision, the dates of substantial completion
7 obviously accrued before the enactment of AB 125. Applying the aforementioned analysis to the
8 facts here, this Court concludes the statute of repose applicable to the Association's constructional
9 defects claim is six (6) years, but, as it accrued prior to the effective date of AB 125 or February 24,
10 2015, the action is not limited if it was commenced within one (1) year after, or by February 24,
11 2016.
12

13 **14.** In this case, the Association served its NRS 40.645 constructional defect notice on
14 February 24, 2016, or the date the one-year "safe harbor" was to expire. The service of the NRS
15 40.645 notice operated to toll the applicable statute of repose until the earlier of one (1) year after
16 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
17 writing. *See* NRS 40.695(1). The NRS 40.680 mediation took place and was concluded on
18 September 26, 2016. Applying the earlier of the two expiration dates set forth in NRS 40.695, the
19 statute of repose in this case was tolled thirty (30) days after the mediation or until October 26, 2016,
20 which is earlier than the one (1) year after the notice was served. PANORAMA TOWERS
21 CONDOMINIUM UNIT OWNERS' ASSOCIATION had up to and including October 26, 2016 to
22 institute litigation or its claims would be time-barred.
23

24 **15.** PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION filed
25 its Counter-Claim against the Builders on March 1, 2017, over four (4) months after October 26,
26 2016. As noted above, in the Builders' view, the constructional defect claims relating to the
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1 windows, therefore, are time-barred. The Association disagrees, arguing its Counter-Claim was
2 compulsory, and it relates back to the date of the Complaint's filing, September 28, 2016.

3 Alternatively, the Association counter-moves this Court for relief, and to find good cause exists to
4 toll the statute of repose for a longer period given its diligence in prosecuting the constructional
5 defect claims against the Builders. The Court analyzes both of the Association's points below.

6 **16.** NRCp 13 defines both compulsory and permissive counter-claims. A counter-claim
7 is compulsory if it arises out of the transaction or occurrence that is the subject matter of the
8 opposing party's claim and does not require for its adjudication the presence of third parties of
9 whom the court cannot acquire jurisdiction. *See* NRCp 13(a). The purpose of NRCp 13(a) is to
10 make an "actor" of the defendant so circuity of action is discouraged and the speedy settlement of all
11 controversies between the parties can be accomplished in one action. *See Great W. Land & Cattle*
12 *Corp. v. District Court*, 86 Nev. 282, 285, 467 P.2d 1019, 1021 (1970). In this regard, the
13 compulsory counter-claimant is forced to plead his claim or lose it. *Id.* A counter-claim is
14 permissive if it does not arise out of the transaction or occurrence that is the subject matter of the
15 opposing party's claim. *See* NRCp 13(b).

16 **17.** Here, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION proposes its counter-claims are compulsory as they arise out of the same
18 transaction or occurrence that is the subject matter of the Builders' claims. This Court disagrees.
19 The Builders' claims are for breach of the prior settlement agreement and declaratory relief
20 regarding the sufficiency of the NRS 40.645 notice and application of AB 125. The Association's
21 counter-claims of negligence, intentional/negligent disclosure, breach of sales contract, products
22 liability, breach of express and implied warranties under and violations of NRS Chapter 116, and
23 breach of duty of good faith and fair dealing are for monetary damages as a result of constructional
24 defects to its windows in the two towers. If this Court ruled against the Builders on their Complaint,
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1 the Association would not have lost their claims if they had not pled them as counter-claims in the
2 instant lawsuit. In this Court's view, the Association had two options: it could make a counter-claim
3 which is permissive or assert its constructional defect claims in a separate Complaint. Here, it
4 elected to make the permissive counter-claim. The counter-claim does not relate back to the filing
5 of the Complaint, September 28, 2016.

6 **18.** However, even if this Court were to decide the counter-claim was compulsory,
7 meaning the Association was forced to plead its claims in the instant case or lose them, the pleading
8 still would not relate back to the date of the Complaint' filing. As noted in Nevada State Bank v.
9 Jamison Family Partnership, 106 Nev. 792, 798, 801 P.2d 1377, 1381 (1990), statutes of limitation
10 and repose were enacted to "'promote repose by giving security and stability to human
11 affairs....They stimulate to activity and punish negligence.'" Citing Wood v. Carpenter, 101 U.S.
12 135, 139, 25 L.Ed.2d 807 (1879). Indeed, the key purpose of a repose statute is to eliminate
13 uncertainties under the related statute of limitations or repose and to create a final deadline for filing
14 suit that is not subject to any exceptions except perhaps those clearly specified by the state's
15 legislature. Without a statute of repose, professionals, contractors and other actors would face
16 never-ending uncertainty as to liability for their work. As stated by the Supreme Court in Texas in
17 Methodist Healthcare System of San Antonio, Ltd., LLP v. Rankin, 53 Tex.Sup.Ct.J. 455, 307
18 S.W.3d 283, 287 (2010), "'while statutes of limitations operate procedurally to bar the enforcement
19 of a right, a statute of repose takes away the right altogether, creating a substantive right to be free of
20 liability after a specified time.'" Quoting Galbraith Engineering Consultants, Inc. v. Pochucha, 290
21 S.W.3d 863, 866 (Tex. 2009). For the reasons articulated above, the Nevada Supreme Court held
22 the lower court did not err by finding a plaintiff, by instituting an action before the expiration of a
23 statute of limitation, does not toll the running of that statute against compulsory counter-claims filed
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1 by a defendant after the statute has expired. In short, whether the Association's counter-claims are
2 compulsory or permissive, the filing of the Builders' Complaint did not toll the statute of repose.

3 **19.** The next question is whether good cause exists for this Court to toll the statute of
4 repose for a longer period as so authorized in NRS 40.695(2). The Association proposes there is
5 good cause given their diligence in prosecuting their constructional defect claims, and, as they are
6 seeking tolling of only five (5) days after the one (1) year anniversary of the original NRS 40.645
7 notice, the Builders' ability to defend the deficiency causes of action has not been adversely
8 impacted. In making this argument, the Association seems to assume the tolling under NRS 40.695
9 ended February 24, 2017, or one (1) year after it served the NRS 40.645 notice when, in actuality,
10 the tolling ended October 26, 2016, or thirty (30) days after the NRS 40.680 mediation. *See*
11 40.695(1). The Association does not show this Court good cause exists for its failure to institute
12 litigation before October 26, 2016. Whether the Builders' ability to defend the Association's claim
13 is not adversely affected is, therefore, not relevant to the issue of good cause. Accordingly, this
14 Court declines tolling the statute of repose for a period longer than one (1) year after the NRS
15 40.645 notice was made. The Builders' Motion for Summary Judgment is granted, and the
16 Association's Conditional Counter-Motion for Relief is denied.

17 **20.** As this Court decides the six-year statute of repose bars the Association's
18 constructional defect claims, it does not analyze the statute of limitations issue presented.

19 Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,
20

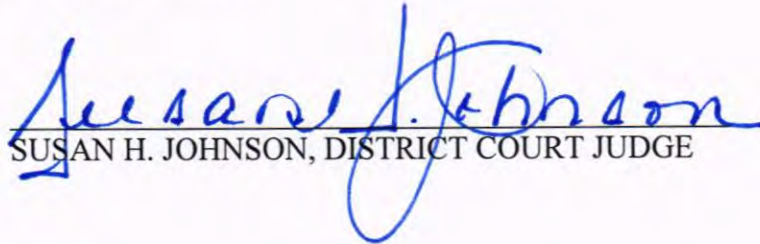
21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiffs'/Counter-
22 Defendants' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 is
23 granted; and
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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant's/Counter-
2 Claimant's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019
3 is denied.

4 DATED this 23rd day of May 2019.

5
6 
7 _____
8 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
9

CERTIFICATE OF SERVICE

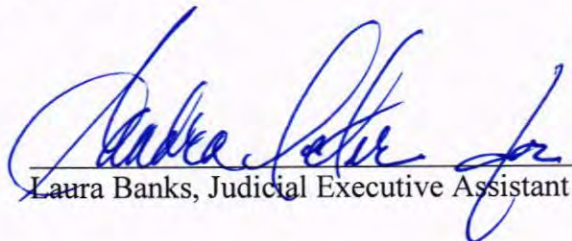
I hereby certify, on the 23rd day of May 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

FRANCIS I. LYNCH, ESQ.
CHARLES "DEE" HOPPER, ESQ.
SERGIO SALZANO, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant

File Into Existing Case

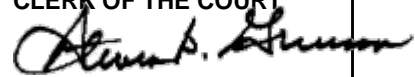
Case Number	Location	Name	Description	Case Type	Email
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s...	Chapter 40		
1	20	items per page			
1 - 1 of 1 items					
<div> <div>▼</div> <div>Party: Panorama Towers Condominium Unit Owners Association - Defendant</div> </div>					
<div> <div>Angela Embrey</div> <div>a.embrey@kempjones.com</div> </div>					
<div> <div>Michael J. Gayan</div> <div>m.gayan@kempjones.com</div> </div>					
<div> <div>Nicole McLeod</div> <div>n.mcleod@kempjones.com</div> </div>					
<div> <div>Patricia Ann Pierson</div> <div>p.pierson@kempjones.com</div> </div>					
<div> <div>▶</div> <div>Party: Laurent Hallier - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I LLC - Plaintiff</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I LLC - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I Mezz LLC - Plaintiff</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I Mezz LLC - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: MJ Dean Construction Inc - Plaintiff</div> </div>					
<div> <div>▶</div> <div>Party: MJ Dean Construction Inc - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers Condominium Unit Owners Association - Counter Claimant</div> </div>					
<div> <div>1</div> <div>2</div> <div>3</div> <div>10</div> <div>items per page</div> </div>					

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File Into Existing Case

Case Number	Location	Name	Description	Case Type	Email																																																						
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s)...	Chapter 40																																																								
1	20	<p>► Party: Southern Nevada Paving Inc - Counter Defendant</p> <p>► Party: Insulpro Inc - Counter Defendant</p> <p>▼ Other Service Contacts</p> <table border="1"> <tbody> <tr><td>"Charles ""Dee"" Hopper, Esq. "</td><td>CDHopper@lynchhopper.com</td></tr> <tr><td>"Francis I. Lynch, Esq. "</td><td>FLynch@lynchhopper.com</td></tr> <tr><td>Ben Ross .</td><td>Ben@litigationservices.com</td></tr> <tr><td>Calendar .</td><td>calendar@litigationservices.com</td></tr> <tr><td>Colin Hughes .</td><td>colin@lynchhopper.com</td></tr> <tr><td>Crystal Williams .</td><td>cwilliams@bremerwhyte.com</td></tr> <tr><td>Darlene Cartier .</td><td>dcartier@bremerwhyte.com</td></tr> <tr><td>Debbie Holloman .</td><td>dholloman@jamsadr.com</td></tr> <tr><td>Depository .</td><td>Depository@litigationservices.com</td></tr> <tr><td>Floyd Hale .</td><td>fhale@floydhale.com</td></tr> <tr><td>Jennifer Juarez .</td><td>jjuares@lynchhopper.com</td></tr> <tr><td>Peter C. Brown .</td><td>pbrown@bremerwhyte.com</td></tr> <tr><td>Rachel Bounds .</td><td>rbounds@bremerwhyte.com</td></tr> <tr><td>Scott Williams .</td><td>swilliams@williamsgumbiner.com</td></tr> <tr><td>Shauna Hughes .</td><td>shughes@lynchhopper.com</td></tr> <tr><td>Terri Scott .</td><td>tscott@fmglegal.com</td></tr> <tr><td>Vicki Federoff .</td><td>vicki@williamsgumbiner.com</td></tr> <tr><td>Wendy Jensen .</td><td>wjensen@williamsgumbiner.com</td></tr> <tr><td>Kimberley Chapman</td><td>kchapman@bremerwhyte.com</td></tr> <tr><td>Christie Cyr</td><td>ccyr@leachjohnson.com</td></tr> <tr><td>Devin R. Gifford</td><td>dgifford@bremerwhyte.com</td></tr> <tr><td>Terry Kelly-Lamb</td><td>tkelly-lamb@kringandchung.com</td></tr> <tr><td>Nancy Ray</td><td>nray@kringandchung.com</td></tr> <tr><td>Alondra A Reynolds</td><td>areynolds@bremerwhyte.com</td></tr> <tr><td>Jeff W. Saab</td><td>jsaab@bremerwhyte.com</td></tr> <tr><td>Robert L. Thompson</td><td>rthompson@kringandchung.com</td></tr> <tr><td>Jennifer Vela</td><td>Jvela@bremerwhyte.com</td></tr> </tbody> </table>				"Charles ""Dee"" Hopper, Esq. "	CDHopper@lynchhopper.com	"Francis I. Lynch, Esq. "	FLynch@lynchhopper.com	Ben Ross .	Ben@litigationservices.com	Calendar .	calendar@litigationservices.com	Colin Hughes .	colin@lynchhopper.com	Crystal Williams .	cwilliams@bremerwhyte.com	Darlene Cartier .	dcartier@bremerwhyte.com	Debbie Holloman .	dholloman@jamsadr.com	Depository .	Depository@litigationservices.com	Floyd Hale .	fhale@floydhale.com	Jennifer Juarez .	jjuares@lynchhopper.com	Peter C. Brown .	pbrown@bremerwhyte.com	Rachel Bounds .	rbounds@bremerwhyte.com	Scott Williams .	swilliams@williamsgumbiner.com	Shauna Hughes .	shughes@lynchhopper.com	Terri Scott .	tscott@fmglegal.com	Vicki Federoff .	vicki@williamsgumbiner.com	Wendy Jensen .	wjensen@williamsgumbiner.com	Kimberley Chapman	kchapman@bremerwhyte.com	Christie Cyr	ccyr@leachjohnson.com	Devin R. Gifford	dgifford@bremerwhyte.com	Terry Kelly-Lamb	tkelly-lamb@kringandchung.com	Nancy Ray	nray@kringandchung.com	Alondra A Reynolds	areynolds@bremerwhyte.com	Jeff W. Saab	jsaab@bremerwhyte.com	Robert L. Thompson	rthompson@kringandchung.com	Jennifer Vela	Jvela@bremerwhyte.com
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PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
JEFFREY W. SAAB, ESQ.
Nevada State Bar No. 11261
DEVIN R. GIFFORD, ESQ.
Nevada State Bar No. 14055
CYRUS S. WHITTAKER, ESQ.
Nevada State Bar No. 14965
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
jsaab@bremerwhyte.com
dgifford@bremerwhyte.com
cwhittaker@bremerwhyte.com

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada Corporation,

Plaintiffs,

vs.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Defendant.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Counter-Claimant,

vs.

) Case No. A-16-744146-D

) Dept. XXII

) **ORDER DENYING DEFENDANT'S**
) **MOTION FOR RECONSIDERATION**
) **OF THE COURT'S MAY 23, 2019**
) **FINDINGS OF FACT, CONCLUSIONS**
) **OF LAW, AND ORDER GRANTING**
) **PLAINTIFFS' MOTION FOR**
) **SUMMARY JUDGMENT PURSUANT**
) **TO NRS 11.202(1) OR, IN THE**
) **ALTERNATIVE, MOTION TO STAY**
) **THE COURT'S ORDER**



1 LAURENT HALLIER, an individual;)
PANORAMA TOWERS I, LLC, a Nevada)
2 limited liability company; PANORAMA)
TOWERS I MEZZ, LLC, a Nevada limited)
3 liability company; and M.J. DEAN)
CONSTRUCTION, INC., a Nevada Corporation;)
4 SIERRA GLASS & MIRROR, INC.; F.)
ROGERS CORPORATION; DEAN ROOFING)
5 COMPANY; FORD CONTRACTING, INC.;)
INSULPRO, INC.; XTREME EXCAVATION;)
6 SOUTHERN NEVADA PAVING, INC.;)
FLIPPINS TRENCHING, INC.; BOMBARD)
7 MECHANICAL, LLC; R. RODGERS)
CORPORATION; FIVE STAR PLUMBING &)
8 HEATING, LLC, dba SILVER STAR)
PLUMBING; and ROES 1 through , inclusive,)
9 Counter-Defendants.)
10

11 **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE**
12 **COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
13 **GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO**
14 **NRS 11.202(1) OR, IN THE ALTERNATIVE, MOTION TO STAY THE COURT'S ORDER**

15 On June 3, 2019, Defendant Panorama Towers Unit Owners Association filed its Motion for
16 Reconsideration of the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order
17 Granting Plaintiffs' Motion for Summary Judgment pursuant to NRS 11.202(1) or, in the alternative,
18 Motion to Stay the Court's Order. The parties appeared before the Court on July 16, 2019. The
19 Court having reviewed the papers and pleadings currently on file herein, having heard the arguments
20 of counsel relating to the facts and law, and with good cause appearing and there being no just cause
21 for delay, the Court concludes as follows:

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Panorama
2 Towers Unit Owners Association's Motion for Reconsideration of the Court's May 23, 2019
3 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment
4 pursuant to NRS 11.202(1) or, in the alternative, Motion to Stay the Court Order is DENIED.

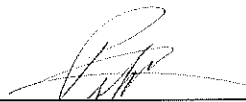
5 DATED this 22nd day of July 2019.

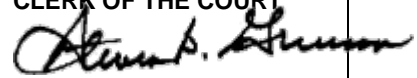
6 
DISTRICT COURT JUDGE

7
8 Submitted by:

A-16-744146-D
MR

9 BREMER WHYTE BROWN & O'MEARA, LLP

10
11 By: 
12 Peter C. Brown, Esq.
13 Nevada State Bar No. 5887
14 Jeffrey W. Saab, Esq.
15 Nevada State Bar No. 11261
16 Devin R. Gifford, Esq.
17 Nevada State Bar No. 14055
18 Cyrus S. Whittaker, Esq.
19 Nevada State Bar. No. 14965
20 Attorneys for Plaintiffs/Counter-Defendants
21 LAURENT HALLIER, PANORAMA TOWERS I, LLC,
22 PANORAMA TOWERS I MEZZ, LLC, and
23 M.J. DEAN CONSTRUCTION, INC.
24
25
26
27
28



1 **NOE**
PETER C. BROWN, ESQ.
2 Nevada State Bar No. 5887
JEFFREY W. SAAB, ESQ.
3 Nevada State Bar No. 11261
DEVIN R. GIFFORD, ESQ.
4 Nevada State Bar No. 14055
BREMER WHYTE BROWN & O'MEARA LLP
5 1160 N. TOWN CENTER DRIVE
SUITE 250
6 LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
7 FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
8 jsaab@bremerwhyte.com
dgifford@bremerwhyte.com
9

Attorneys for Plaintiffs,
10 LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
11 CONSTRUCTION, INC.

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14
15 LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
16 limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
17 liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada Corporation,

18 Plaintiffs,

19 vs.

20 PANORAMA TOWERS CONDOMINIUM
21 UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

22 Defendant.
23

24 PANORAMA TOWERS CONDOMINIUM
25 UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

26 Counter-Claimant,

27 vs.

28 LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada

) Case No. A-16-744146-D

) Dept. XXII

) **NOTICE OF ENTRY OF ORDER**
) **DENYING DEFENDANT'S MOTION**
) **FOR RECONSIDERATION OF THE**
) **COURT'S MAY 23, 2019 FINDINGS OF**
) **FACT, CONCLUSIONS OF LAW, AND**
) **ORDER GRANTING PLAINTIFFS'**
) **MOTION FOR SUMMARY JUDGMENT**
) **PURSUANT TO NRS 11.202(1) OR, IN**
) **THE ALTERNATIVE, MOTION TO**
) **STAY THE COURT'S ORDER**

1 limited liability company; PANORAMA)
TOWERS I MEZZ, LLC, a Nevada limited)
2 liability company; and M.J. DEAN)
CONSTRUCTION, INC., a Nevada Corporation;)
3 SIERRA GLASS & MIRROR, INC.; F.)
ROGERS CORPORATION; DEAN ROOFING)
4 COMPANY; FORD CONTRACTING, INC.;)
INSULPRO, INC.; XTREME EXCAVATION;)
5 SOUTHERN NEVADA PAVING, INC.;)
FLIPPINS TRENCHING, INC.; BOMBARD)
6 MECHANICAL, LLC; R. RODGERS)
CORPORATION; FIVE STAR PLUMBING &)
7 HEATING, LLC, dba SILVER STAR)
PLUMBING; and ROES 1 through , inclusive,)
8 Counter-Defendants.)
9

10 PLEASE TAKE NOTICE that an Order Denying Defendant's Motion for Reconsideration of
11 the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs'
12 Motion for Summary Judgment Pursuant to NRS 11.202(1) or, in the Alternative, Motion to Stay the
13 Court's Order was entered on the 24th day of July 2019. A true copy is attached hereto and made
14 part hereof.

15 Dated: July 24, 2019.

BREMER WHYTE BROWN & O'MEARA, LLP

16
17 By: 

Peter C. Brown, Esq.
Nevada State Bar No. 5887
Jeffrey W. Saab, Esq.
Nevada State Bar No. 11261
Devin R. Gifford, Esq.
Nevada State Bar No. 14055
Attorneys for Plaintiffs/Counter-Defendants
LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA
TOWERS I MEZZ, LLC, and
M.J. DEAN CONSTRUCTION, INC.

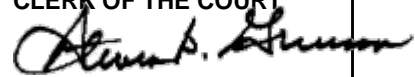
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July 2019, a true and correct copy of the foregone document was electronically delivered to Odyssey for filing and service upon all electronic service list recipients.



Alondra Reynolds, an employee of
BREMER, WHYTE, BROWN & O’MEARA, LLP



PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
JEFFREY W. SAAB, ESQ.
Nevada State Bar No. 11261
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Nevada State Bar No. 14965
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1160 N. TOWN CENTER DRIVE
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LAS VEGAS, NV 89144
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FACSIMILE: (702) 258-6662
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dgifford@bremerwhyte.com
cwhittaker@bremerwhyte.com

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada Corporation,

Plaintiffs,

vs.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Defendant.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Counter-Claimant,

vs.

) Case No. A-16-744146-D

) Dept. XXII

) **ORDER DENYING DEFENDANT'S**
) **MOTION FOR RECONSIDERATION**
) **OF THE COURT'S MAY 23, 2019**
) **FINDINGS OF FACT, CONCLUSIONS**
) **OF LAW, AND ORDER GRANTING**
) **PLAINTIFFS' MOTION FOR**
) **SUMMARY JUDGMENT PURSUANT**
) **TO NRS 11.202(1) OR, IN THE**
) **ALTERNATIVE, MOTION TO STAY**
) **THE COURT'S ORDER**



1 LAURENT HALLIER, an individual;)
PANORAMA TOWERS I, LLC, a Nevada)
2 limited liability company; PANORAMA)
TOWERS I MEZZ, LLC, a Nevada limited)
3 liability company; and M.J. DEAN)
CONSTRUCTION, INC., a Nevada Corporation;)
4 SIERRA GLASS & MIRROR, INC.; F.)
ROGERS CORPORATION; DEAN ROOFING)
5 COMPANY; FORD CONTRACTING, INC.;)
INSULPRO, INC.; XTREME EXCAVATION;)
6 SOUTHERN NEVADA PAVING, INC.;)
FLIPPINS TRENCHING, INC.; BOMBARD)
7 MECHANICAL, LLC; R. RODGERS)
CORPORATION; FIVE STAR PLUMBING &)
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11 **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF THE**
12 **COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
13 **GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO**
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15 On June 3, 2019, Defendant Panorama Towers Unit Owners Association filed its Motion for
16 Reconsideration of the Court's May 23, 2019 Findings of Fact, Conclusions of Law, and Order
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19 Court having reviewed the papers and pleadings currently on file herein, having heard the arguments
20 of counsel relating to the facts and law, and with good cause appearing and there being no just cause
21 for delay, the Court concludes as follows:

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1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Panorama
2 Towers Unit Owners Association's Motion for Reconsideration of the Court's May 23, 2019
3 Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Summary Judgment
4 pursuant to NRS 11.202(1) or, in the alternative, Motion to Stay the Court Order is DENIED.

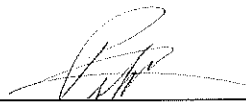
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6 
DISTRICT COURT JUDGE

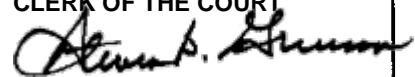
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8 Submitted by:

A-16-744146-D
MR

9 BREMER WHYTE BROWN & O'MEARA, LLP

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11 By: 

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19 Nevada State Bar. No. 14965
20 Attorneys for Plaintiffs/Counter-Defendants
21 LAURENT HALLIER, PANORAMA TOWERS I, LLC,
22 PANORAMA TOWERS I MEZZ, LLC, and
23 M.J. DEAN CONSTRUCTION, INC.
24
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28



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **LAURENT HALLIER, an individual;**
7 **PANORAMA TOWERS I, LLC, a Nevada**
8 **limited liability company; PANORAMA**
9 **TOWERS I MEZZ, LLC, a Nevada limited**
10 **liability company; and M.J. DEAN**
11 **CONSTRUCTION, INC., a Nevada**
12 **corporation,**

13 **Plaintiffs,**

14 **Vs.**

15 **PANORAMA TOWERS**
16 **CONDOMINIUM UNIT OWNERS'**
17 **ASSOCIATION, a Nevada non-profit**
18 **corporation.**

19 **Defendant.**

20 **PANORAMA TOWERS**
21 **CONDOMINIUM UNIT OWNERS'**
22 **ASSOCIATION, a Nevada non-profit**
23 **corporation,**

24 **Counter-Claimant,**

25 **Vs.**

26 **LAURENT HALLIER, an individual;**
27 **PANORAMA TOWERS I, LLC, a Nevada**
28 **limited liability company; PANORAMA**
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

ORDER RE: DEFENDANT'S
MOTION FOR
RECONSIDERATION AND/OR
TO ALTER OR AMEND THE
COURT'S MAY 23, 2019
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
PURSUANT TO NRS 11.202(1)
FILED JUNE 13, 2019

1 PANORAMA TOWERS
2 CONDOMINIUM UNIT OWNERS'
3 ASSOCIATION, a Nevada non-profit
4 corporation,

5
6 Third-Party Plaintiff,

7 Vs.

8 SIERRA GLASS & MIRROR, INC.; F.
9 ROGERS CORPORATION; DEAN
10 ROOFING COMPANY; FORD
11 CONSTRUCTING, INC.; INSULPRO,
12 INC.; XTREME EXCAVATION;
13 SOUTHERN NEVADA PAVING, INC.;
14 FLIPPINS TRENCHING, INC.;
15 BOMBARD MECHANICAL, LLC; R.
16 RODGERS CORPORATION; FIVE
17 STAR PLUMBING & HEATING, LLC
18 dba SILVER STAR PLUMBING; and
19 ROES 1 through 1000, inclusive,

20 Third-Party Defendants.¹

21
22 **ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER**
23 **OR AMEND THE COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF**
24 **LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**
25 **PURSUANT TO NRS 11.202(1) FILED JUNE 13, 2019**

26 This matter concerning Defendant's Motion for Reconsideration of and/or to Alter or Amend
27 the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs'
28 Motion for Summary Judgment Pursuant to NRS 11.202(1) filed June 13, 2019 was heard on the
16th day of July 2019 at the hour of 8:30 a.m. before Department XXII of the Eighth Judicial District
Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding;
Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC,
PANORAMA TOWERS I MESS, LLC and M.J. DEAN CONSTRUCTION, INC. appeared by and

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 through its attorneys, DANIEL F. POLSENBERG, ESQ. of the law firm, LEWIS ROCA
2 ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ. and DEVIN R. GIFFORD, ESQ.,
3 ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and Defendant/Counter-
4 Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
5 ASSOCIATION appeared by and through its attorneys, MICHAEL J. GAYAN, ESQ. and
6 WILLIAM L. COULTHARD, ESQ. of the law firm, KEMP JONES & COULTHARD, and
7 FRANCIS I. LYNCH, ESQ. of the law firm, LYNCH HOPPER. Having reviewed the papers and
8 pleadings on file herein, heard oral arguments of the lawyers and taken this matter under
9 advisement, this Court makes the following Findings of Fact and Conclusions of Law:

11 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

12 1. This case arises as a result of alleged constructional defects within both the common
13 areas and the 616 residential condominium units located within two tower structures of the
14 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
15 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
16 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
17 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), identifying
18 deficiencies within the residential tower windows, fire blocking, mechanical room piping and sewer.
19 Subsequently, after the parties engaged in the pre-litigation process ending with an unsuccessful
20 NRS 40.680 mediation held September 26, 2016, the Contractors filed their Complaint on
21 September 28, 2016 against the Owners' Association, asserting, for the most part, its NRS 40.645
22 notice was deficient. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT
23 OWNERS' ASSOCIATION filed its Answer and Counter-Claim,

24 2. As set forth within its September 15, 2017 Findings of Fact, Conclusions of Law and
25 Order, this Court dismissed the Association's claims for constructional defect located within its
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1 mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4)
2 years set forth in NRS 11.220. With respect to challenges to the sufficiency and validity of the NRS
3 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS’ ASSOCIATION to amend it with more specificity. As expressed within its
5 November 30, 2018 Findings of Fact, Conclusions of Law and Order, this Court ultimately
6 determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid
7 only with respect to the windows’ constructional defects.
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9 3. On April 23, 2019, this Court heard two motions filed by the parties, to wit: (1) the
10 Builders’ Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 and
11 (2) the Association’s Conditional Counter-Motion for Relief Pursuant to NRS 4.0695(2) filed March
12 1, 2019. After hearing the parties’ arguments, this Court took the matter under advisement, and on
13 May 23, 2019, issued its third Findings of Fact, Conclusions of Law and Order in this case which
14 granted the Builders’ motion, and denied the Association’s Conditional Counter-Motion. As
15 pertinent here, this Court concluded the Owners’ Association’s remaining constructional defect
16 claims lodged against the Builders were time-barred by the six-year statute of repose set forth in
17 NRS 11.202(1).
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19 4. On June 3, 2019, the Association filed its Motion for Reconsideration of the Court’s
20 May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs’ Motion for
21 Summary Judgment or alternatively, a Motion to Stay the Court’s Order.² Ten days later, on June
22 13, 2019 the Association filed a second Motion for Reconsideration and/or to Alter or Amend the
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25 ²The Association moved this Court to stay the Order upon the basis the Nevada Legislature had passed
26 Assembly Bill (referred to as “AB” herein) 421 on June 1, 2019, which “immediately and retroactively extends the
27 statute of repose to 10 years.” See Motion for Reconsideration of the Court’s May 23, 2019 Findings of Fact,
28 Conclusions of Law and Order Granting Plaintiffs’ Motion for Summary Judgment or alternatively, a Motion to Stay the
Court’s Order filed June 3, 2019, p. 4. The Association urged this Court to stay the Order until such time as AB 241 was
enacted or rejected by the Governor. As set forth *infra*, the Governor signed the bill on June 3, 2019 which was to take
effect October 1, 2019.

1 Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion
2 for Summary Judgment. The second Motion for Reconsideration differed from the first in that it
3 alerted the Court, on June 1, 2019, the Nevada Legislature passed AB 421, and such was signed by
4 the Governor on June 3, 2019. AB 421 amends NRS 11.202 by extending the statute of repose
5 period from six (6) to ten (10) years and it is to be applied retroactively to actions in which the
6 substantial completion of the improvement to real property occurred before October 1, 2019, the
7 date in which the amendment takes effect.
8

9 5. The Builders opposed the two motions on several grounds. First, they noted this
10 Court entered a final order on May 23, 2019, the Notice of Entry of Order was filed May 28, 2019,
11 and thus, by the time the Motion for Reconsideration and/or Stay was filed June 3, 2019, there was
12 no pending matter to stay. Second, while AB 421 was enacted and will apply retroactively, it does
13 not become effective until October 1, 2019, meaning as of now, there is no change in the law. That
14 is, the current period for the statute of repose is six (6) years as enacted February 24, 2015, and not
15 ten (10). Third, as the Association's claims have already been adjudicated, AB 421 cannot be
16 interpreted to revive those causes of action.
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18 CONCLUSIONS OF LAW

19 1. Rule 60 of the Nevada Rules of Civil Procedure (NRCP) accords the district courts
20 authority to relieve a party from a final judgment, order or proceeding where some error or injustice
21 is shown. Specifically NRCP 60(b) states as follows:
22

23 (b) *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud,*
24 *etc.* On motion and upon such terms as are just, the court may relieve a party or a party's
25 legal representative from a final judgment, order, or proceeding for the following reasons:
26 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence
27 which by due diligence could not have been discovered in time to move for a new trial under
28 Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic),
misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or (5)
the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is

1 based has been reversed or otherwise vacated, or it is no longer equitable that an injunction
2 should have prospective application. ...

3 2. Further, a district court, by virtue of its inherent authority, may grant a motion for
4 rehearing if the judge concludes re-argument is warranted. See Gibbs v. Giles, 96 Nev. 243, 244,
5 607 P.2d 118, 119 (1980), *citing* former District Court Rule (DCR) 20(4). Indeed, unless and until
6 an order is appealed, the district court retains jurisdiction to reconsider the matter. *Id.* at 244.

7 3. The Owners' Association has moved this Court to reconsider its decision expressed
8 within its Findings of Fact, Conclusions of Law and Order filed May 23, 2019. The basis for the
9 Association's position stems from the Nevada Legislature's passage of AB 421 on June 1, 2019 as
10 signed by the state's Governor on June 3, 2019. As noted above, AB 421, *inter alia*, extends the
11 statute of repose from six (6) to ten (10) years, and such is to be applied retroactively from its
12 effective date of October 1, 2019. AB 421, Section 7, states in part:

14 NRS 11.202 is hereby amended to read as follows:

15 11.202 1. No action may be commenced against the owner, occupier or any person
16 performing or furnishing the design, planning, supervision or observation of construction, or
17 the construction of an improvement to real property more than **10** years after the substantial
completion of such an improvement. ... (Emphasis in original)

18 AB 421, Section 11, Subsection 4 also provides "[t]he period of limitations on actions set forth in
19 NRS 11.202, as amended by section 7 of this act, apply *retroactively* to actions in which the
20 substantial completion of the improvement to real property occurred before October 1, 2019."
21 (Emphasis added).

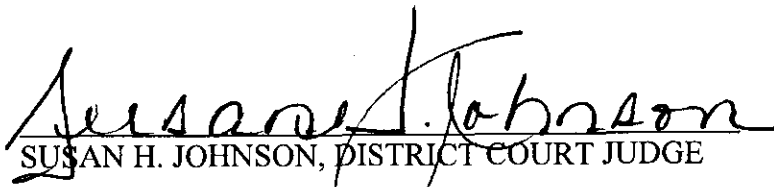
22 4. While there is no question the Nevada Legislature has amended NRS 11.202(1) to
23 extend the statute of repose period from six (6) to ten (10) years, and it is to be applied retroactively,
24 this Court is mindful the new enactment is not effective yet. NRS 218D.330(1) specifically provides
25 "each law and joint resolution passed by the Legislature becomes effective on October 1 following
26 its passage, unless the law or joint resolution specifically prescribes a different effective date." In
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1 this case, while it specifically passed a law that is to be applied retroactively, the Nevada Legislature
2 did not prescribe an effective date earlier or different than October 1, 2019. By it not prescribing an
3 earlier date, the Legislature indicated its intention NRS 11.202, as amended February 24, 2015, and
4 setting forth a six (6) years' statute of repose would remain in effect until October 1, 2019. In short,
5 the newly-enacted law becomes operational October 1, 2019 and its retroactive effect will take place
6 at that time.

7
8 5. Simply put, there is no basis upon which this Court can relieve the Owners'
9 Association from the grant of the Builders' Motion for Summary Judgment as set forth within the
10 Findings of Fact, Conclusions of Law and Order filed May 23, 2019. *See* NRCP 60(b). Re-
11 argument is not warranted. Accordingly,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant's Motion for
13 Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact,
14 Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS
15 11.202(1) filed June 13, 2019 is denied.

16
17 DATED this 9th day of August 2019.

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20 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 9th day of August 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER OR AMEND THE COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRS 11.202(1) FILED JUNE 13, 2019 to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

FRANCIS I. LYNCH, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada Corporation,

VS.

Defendant.

VS.

1

1 LAURENT HALLIER, an individual;)
2 PANORAMA TOWERS I, LLC, a Nevada)
3 limited liability company; PANORAMA)
4 TOWERS I MEZZ, LLC, a Nevada limited)
5 liability company; and M.J. DEAN)
6 CONSTRUCTION, INC., a Nevada Corporation;)
7 SIERRA GLASS & MIRROR, INC.; F.)
8 ROGERS CORPORATION; DEAN ROOFING)
9 COMPANY; FORD CONTRACTING, INC.;)
10 INSULPRO, INC.; XTREME EXCAVATION;)
11 SOUTHERN NEVADA PAVING, INC.;)
12 FLIPPINS TRENCHING, INC.; BOMBARD)
13 MECHANICAL, LLC; R. RODGERS)
14 CORPORATION; FIVE STAR PLUMBING &)
15 HEATING, LLC, dba SILVER STAR)
16 PLUMBING; and ROES 1 through , inclusive,)
17 Counter-Defendants.)
18)
19)
20)
21)
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24)
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27)
28)

11
12 PLEASE TAKE NOTICE that an Order Denying Defendant's Motion for Reconsideration
13 and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order
14 Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS 11.202(1) Filed June 13, 2019
15 was entered on the 9th day of August, 2019. A true copy is attached hereto and made part hereof.
16

17 Dated: August 9, 2019

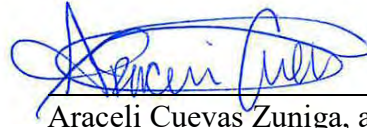
BREMER WHYTE BROWN & O'MEARA LLP

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20 By: 

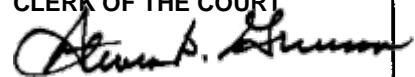
21 Peter C. Brown, Esq.
22 Nevada State Bar No. 5887
23 Jeffrey W. Saab, Esq.
24 Nevada State Bar No. 11261
25 Devin R. Gifford, Esq.
26 Nevada State Bar No. 14055
27 Attorneys for Plaintiffs/Counter-Defendants
28 LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA
TOWERS I MEZZ, LLC, and M.J. DEAN
CONSTRUCTION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August 2019, a true and correct copy of the foregoing document was electronically served through Odyssey upon all parties on the master e-file and serve list.



Araceli Cuevas Zuniga, and employee of
Bremer Whyte Brown & O'Meara



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **LAURENT HALLIER, an individual;**
7 **PANORAMA TOWERS I, LLC, a Nevada**
8 **limited liability company; PANORAMA**
9 **TOWERS I MEZZ, LLC, a Nevada limited**
10 **liability company; and M.J. DEAN**
11 **CONSTRUCTION, INC., a Nevada**
12 **corporation,**

13 **Plaintiffs,**

14 **Vs.**

15 **PANORAMA TOWERS**
16 **CONDOMINIUM UNIT OWNERS'**
17 **ASSOCIATION, a Nevada non-profit**
18 **corporation.**

19 **Defendant.**

20 **PANORAMA TOWERS**
21 **CONDOMINIUM UNIT OWNERS'**
22 **ASSOCIATION, a Nevada non-profit**
23 **corporation,**

24 **Counter-Claimant,**

25 **Vs.**

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27 **PANORAMA TOWERS I, LLC, a Nevada**
28 **limited liability company; PANORAMA**
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

ORDER RE: DEFENDANT'S
MOTION FOR
RECONSIDERATION AND/OR
TO ALTER OR AMEND THE
COURT'S MAY 23, 2019
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
PURSUANT TO NRS 11.202(1)
FILED JUNE 13, 2019

1 PANORAMA TOWERS
2 CONDOMINIUM UNIT OWNERS'
3 ASSOCIATION, a Nevada non-profit
4 corporation,

5
6 Third-Party Plaintiff,

7 Vs.

8 SIERRA GLASS & MIRROR, INC.; F.
9 ROGERS CORPORATION; DEAN
10 ROOFING COMPANY; FORD
11 CONSTRUCTING, INC.; INSULPRO,
12 INC.; XTREME EXCAVATION;
13 SOUTHERN NEVADA PAVING, INC.;
14 FLIPPINS TRENCHING, INC.;
15 BOMBARD MECHANICAL, LLC; R.
16 RODGERS CORPORATION; FIVE
17 STAR PLUMBING & HEATING, LLC
18 dba SILVER STAR PLUMBING; and
19 ROES 1 through 1000, inclusive,

20 Third-Party Defendants.¹

21
22 **ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER
23 OR AMEND THE COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF
24 LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
25 PURSUANT TO NRS 11.202(1) FILED JUNE 13, 2019**

26 This matter concerning Defendant's Motion for Reconsideration of and/or to Alter or Amend
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enacted or rejected by the Governor. As set forth *infra*, the Governor signed the bill on June 3, 2019 which was to take
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18 CONCLUSIONS OF LAW

19 1. Rule 60 of the Nevada Rules of Civil Procedure (NRCP) accords the district courts
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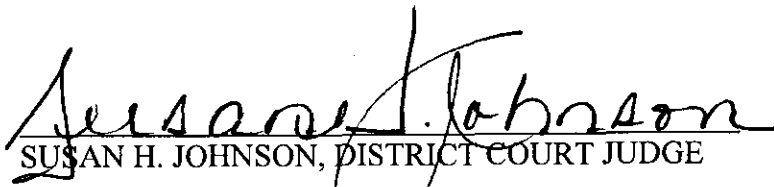
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1 this case, while it specifically passed a law that is to be applied retroactively, the Nevada Legislature
2 did not prescribe an effective date earlier or different than October 1, 2019. By it not prescribing an
3 earlier date, the Legislature indicated its intention NRS 11.202, as amended February 24, 2015, and
4 setting forth a six (6) years' statute of repose would remain in effect until October 1, 2019. In short,
5 the newly-enacted law becomes operational October 1, 2019 and its retroactive effect will take place
6 at that time.

7
8 5. Simply put, there is no basis upon which this Court can relieve the Owners'
9 Association from the grant of the Builders' Motion for Summary Judgment as set forth within the
10 Findings of Fact, Conclusions of Law and Order filed May 23, 2019. *See* NRCP 60(b). Re-
11 argument is not warranted. Accordingly,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant's Motion for
13 Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact,
14 Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS
15 11.202(1) filed June 13, 2019 is denied.

16
17 DATED this 9th day of August 2019.

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20 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 9th day of August 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER OR AMEND THE COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRS 11.202(1) FILED JUNE 13, 2019 to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

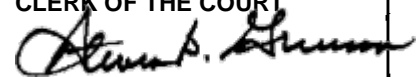
FRANCIS I. LYNCH, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant



1 OGM

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 LAURENT HALLIER, an individual;
7 PANORAMA TOWERS I, LLC, a Nevada
8 limited liability company; PANORAMA
9 TOWERS I MEZZ, LLC, a Nevada limited
10 liability company; and M.J. DEAN
11 CONSTRUCTION, INC., a Nevada
12 corporation,

13 Plaintiffs,

14 Vs.

15 PANORAMA TOWERS
16 CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION, a Nevada non-profit
18 corporation.

19 Defendant.

20
21 PANORAMA TOWERS
22 CONDOMINIUM UNIT OWNERS'
23 ASSOCIATION, a Nevada non-profit
24 corporation,

25 Counter-Claimant,

26 Vs.

27 LAURENT HALLIER, an individual;
28 PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

ORDER RE: MOTION TO
CERTIFY JUDGMENT AS
FINAL UNDER NRCP 54(b)

1 **PANORAMA TOWERS**
2 **CONDOMINIUM UNIT OWNERS'**
3 **ASSOCIATION, a Nevada non-profit**
4 **corporation,**

5 **Third-Party Plaintiff,**

6 **Vs.**

7 **SIERRA GLASS & MIRROR, INC.; F.**
8 **ROGERS CORPORATION; DEAN**
9 **ROOFING COMPANY; FORD**
10 **CONSTRUCTING, INC.; INSULPRO,**
11 **INC.; XTREME EXCAVATION;**
12 **SOUTHERN NEVADA PAVING, INC.;**
13 **FLIPPINS TRENCHING, INC.;**
14 **BOMBARD MECHANICAL, LLC; R.**
15 **RODGERS CORPORATION; FIVE**
16 **STAR PLUMBING & HEATING, LLC**
17 **dba SILVER STAR PLUMBING; and**
18 **ROES 1 through 1000, inclusive,**

19 **Third-Party Defendants.¹**

20 **ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b)**

21 This matter concerning the Motion to Certify Judgment as Final Under NRCP 54(b) filed by
22 Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC,
23 PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. on July 22, 2019
24 was heard, on Order Shortening Time, on the 6th day of August 2019 at the hour of 8:30 a.m. before
25 Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with
26 JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER,
27 PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN
28 CONSTRUCTION, INC. appeared by and through its attorneys, DANIEL F. POLSENBERG, ESQ.
of the law firm, LEWIS ROCA ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ. and

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 CYRUS S. WHITTAKER, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
2 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
3 UNIT OWNERS' ASSOCIATION appeared by and through its attorneys, MICHAEL J. GAYAN,
4 ESQ. and WILLIAM L. COULTHARD, ESQ. of the law firm, KEMP JONES & COULTHARD.
5 Having reviewed the papers and pleadings on file, heard oral arguments of the lawyers and taken
6 this matter under advisement, this Court makes the following Findings of Fact and Conclusions of
7 Law:
8

9 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

10 1. This case arises as a result of alleged constructional defects within both the common
11 areas and the 616 residential condominium units located within two tower structures of the
12 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
13 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
14 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
15 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), alleging
16 deficiencies within its residential tower windows, fire blocking, mechanical room piping and sewer.
17 Subsequently, after the parties engaged in the pre-litigation process ending with an unsuccessful
18 NRS 40.680 mediation held September 26, 2016, the Contractors filed their Complaint on
19 September 28, 2016 against the Owners' Association, asserting the following claims that, for the
20 most part, deal with their belief the NRS 40.645 notice was deficient:
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- 23 1. Declaratory Relief—Application of AB 125;
- 24 2. Declaratory Relief—Claim Preclusion;
- 25 3. Failure to Comply with NRS 40.600, *et seq.*;
- 26 4. Suppression of Evidence/Spoliation;
- 27 5. Breach of Contract (Settlement Agreement in Prior Litigation);
- 28

6. Declaratory Relief—Duty to Defend; and

7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;

2. Negligence and Negligence *Per Se*;

3. Products Liability (against the manufacturers);

4. Breach of (Sales) Contract;

5. Intentional/Negligent Disclosure; and

6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4) years set forth in NRS 11.220.² With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid only with respect to the windows' constructional defects.³

4. On April 23, 2019, this Court heard two motions filed by the parties, to wit: (1) the Contractors' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 and (2) the Association's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019. After hearing the parties' arguments, this Court took the matter under advisement, and on

²See Findings of Fact, Conclusions of Law and Order filed September 15, 2017.

³See Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

1 May 23, 2019, issued its third Findings of Fact, Conclusions of Law and Order which granted the
2 Builders' motion, and denied the Association's Conditional Counter-Motion. As pertinent here, this
3 Court concluded the Owners' Association's remaining constructional defect claims lodged against
4 the Builders were time-barred by the six-year statute of repose set forth in NRS 11.202(1).

5 4. On June 3, 2019, the Association filed its Motion for Reconsideration and/or Stay of
6 the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs'
7 Motion for Summary Judgment or alternatively, a Motion to Stay the Court's Order.⁴ Ten days
8 later, on June 13, 2019, the Association filed a second Motion for Reconsideration and/or to Alter or
9 Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting
10 Plaintiffs' Motion for Summary Judgment. These two motions essentially were the same except the
11 second alerted the Court the Nevada Legislature passed AB 421 on June 1, 2019, and such was
12 signed by the Governor and formally enacted on June 3, 2019. As pertinent here, AB 421 amends
13 NRS 11.202 by extending the statute of repose period from six (6) to ten (10) years and it is to be
14 applied retroactively to actions in which the substantial completion of the improvement to real
15 property occurred before October 1, 2019, the date in which the amendment takes effect.

16 The Builders opposed the two motions on several grounds. First, they noted this Court
17 entered a final order on May 23, 2019, the Notice of Entry of Order was filed May 28, 2019, and
18 thus, by the time the Motion for Reconsideration and/or Stay was filed June 3, 2019, there was no
19 pending matter to stay. Second, while AB 421 was enacted and will apply retroactively, it does not
20 become effective until October 1, 2019, meaning, currently, there is no change in the law. That is,
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25 ⁴The Association moved this Court to stay the Order upon the basis the Nevada Legislature had passed
26 Assembly Bill (referred to as "AB" herein) 421 on June 1, 2019, which "immediately and retroactively extends the
27 statute of repose to 10 years." See Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact,
28 Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment or alternatively, a Motion to Stay the
Court's Order filed June 3, 2019, p. 4. The Association urged this Court to stay the Order until such time as AB 241 was
enacted or rejected by the Governor. As set forth *infra*, the Governor signed the bill on June 3, 2019 which was to take
effect October 1, 2019.

1 as the law stands, the period for the statute of repose is six (6) years as enacted February 24, 2015,
2 and not ten (10). Third, as the Association's claims have already been adjudicated, AB 421 cannot
3 be interpreted to revive those causes of action.

4 This Court denied the Association's first Motion for Reconsideration and/or Stay filed June
5 3, 2019 at the July 16, 2019 hearing; it took the June 13, 2019 motion under advisement, and
6 ultimately, it was denied via Order filed August 9, 2019. In summary, this Court concluded the
7 newly-amended NRS 11.202 becomes effective October 1, 2019, whereby the current state of the
8 law is such the statute of repose is six (6) years, and not ten (10). If the Nevada Legislature had
9 intended AB 421's retroactive effect to be applied now, it would have said so just as it had in
10 enacting AB 125 in February 2015.
11

12 5. The Contractors have moved this Court to certify the May 23, 2019 Findings of Fact,
13 Conclusions of Law and Order as final under Rule 54(b) of the Nevada Rules of Civil Procedure
14 (NRCP). They argue the Order is final in that it granted summary judgment with respect to the
15 Association's claims in their entirety, and there is no just reason for delaying the entry of final
16 judgment. The Owners' Association opposes upon the bases (1) the May 23, 2019 Order is "silent
17 as to which of the Association's legal claims were resolved in this action,"⁵ and "[t] repeated
18 references to 'construction defect claims' are too vague and insufficient to make the [] Order final
19 and appealable;"⁶ (2) the Order "could not have resolved the Association's contract-based claims;"⁷
20 and (3) the Builders will not face hardship or injustice by waiting for the issue to be appealed after
21 all parties' claims are resolved.
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26 ⁵See Defendant's (1) Opposition to Plaintiffs'/Counter-Defendants' Motion to Certify Judgment as Final Under
27 Rule 54(b) and (2) Response to Plaintiffs'/Counter-Defendants' Opposition to Defendant's/Counter-Claimant's July 16,
28 2019 Oral Motion to Postpone the Court's Ruling on the Motion for Reconsideration of and/or to Alter or Amend the
Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

⁶*Id.*, p. 12.

⁷*Id.*, p. 14.

CONCLUSIONS OF LAW

1
2 1. NRCF 54 was recently amended to reflect virtually the identical wording of Rule 54
3 of the Federal Rules of Civil Procedure (FRCP). NRCF 54(b) provides:

4 (b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents
5 more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party
6 claim—or when multiple parties are involved, the court may direct entry of a final judgment
7 as to one or more, but fewer than all, claims or parties only if the court expressly determines
8 that there is no just reason for delay. Otherwise, any order or other decision, however
9 designated, that adjudicates fewer than all claims or the rights and liabilities of fewer than all
the parties does not end the action as to any of the claims or parties and may be revised at
any time before the entry of a judgment adjudicating all the claims and all the parties' rights
and liabilities.

10 Clearly, NRCF 54(b) permits district courts to authorize immediate appeal of dispositive rulings on
11 separate claims in a civil action raising multiple claims. This rule “was adopted...specifically to
12 avoid the possible injustice of delay[ing] judgment o[n] a *distinctly separate* claim [pending]
13 adjudication of the entire case....The Rule thus aimed to augment, not diminish, appeal
14 opportunity.” See Jewel v. National Security Agency, 810 F.3d 622, 628 (9th Cir. 2015), *quoting*
15 Gelboim v. Bank of America Corp., ____ U.S. ____ 135 S.Ct. 897, 902-903, 190 L.Ed.2d 789 (2015)
16 (interpreting FRCP 54).

17
18 2. Over sixty (60) years ago, the United States Supreme Court outlined steps to be
19 followed in making determinations under FRCP 54(b), of which NRCF 54(b) is now the same. See
20 Sears, Roebuck & Company v. Mackey, 351 U.S. 427, 76 S.Ct. 895, 100 L.Ed. 1297 (1956), *cited by*
21 Curtiss-Wright Corporation v. General Electric Company, 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64
22 L.Ed.2d 1 (1980). The district court first must determine it is dealing with a “final judgment.” It
23 must be a “judgment” in the sense it is a decision upon a cognizable claim for relief, and it must be
24 “final” or an “an ultimate disposition of an individual claim entered in the course of a multiple
25 claims action.” *Id.*, *quoting* Sears, Roebuck & Company, 351 U.S. at 436, 76 S.Ct. at 900.
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27 ...
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1 3. Once it finds “finality,” the district court must determine whether there is any just
2 reason for delay. Not all final judgments on individual claims should be immediately appealable
3 even if they are separable from the remaining unresolved claims. It is left to the sound judicial
4 discretion of the district court to determine the appropriate time when each final decision in a
5 multiple claims action is ready for appeal. Curtiss-Wright Corporation, 446 U.S. at 8, 100 S.Ct. at
6 1464-1465, *citing* Sears, Roebuck & Company, 351 U.S. at 437, 76 S.Ct. at 899, 900. Thus, in
7 deciding whether there is no just reason to delay the appeal of the May 23, 2019 Findings of Fact,
8 Conclusions of Law and Order, which granted the Builders’ February 11, 2019 Motion for Summary
9 Judgment, this Court must take into account the judicial administrative interests as well as the
10 equities involved. Consideration of the former is necessary to assure application of NRCP 54(b) will
11 not result in the appellate courts deciding the same issues more than once on separate appeals.
12

13 4. Here, the Owners’ Association argues against NRCP 54(b) certification upon the
14 bases the May 23, 2019 Order is not final as it is “silent as to which of the Association’s legal claims
15 were resolved in this action”⁸ and further, the Order “could not have resolved the Association’s
16 contract-based claims.”⁹ This Court disagrees with both of the Association’s positions. The May
17 23, 2019 16-page Order specifically details this Court’s reasoning and conclusion the Owners’
18 Association’s constructional defect claims are time-barred by the six-year statute of repose.
19 Notably, this Court specifically set forth on page 13 of the Order “[t]he Association’s counter-claims
20 of negligence, intentional/negligent disclosure, breach of sales contract, products liability, breach of
21 express and implied warranties under and violations of NRS Chapter 116, and breach of duty of
22 good faith and fair dealing are for monetary damages as a result of constructional defects to its
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26 ⁸See Defendant’s (1) Opposition to Plaintiffs’/Counter-Defendants’ Motion to Certify Judgment as Final Under
27 Rule 54(b) and (2) Response to Plaintiffs’/Counter-Defendants’ Opposition to Defendant’s/Counter-Claimant’s July 16,
28 2019 Oral Motion to Postpone the Court’s Ruling on the Motion for Reconsideration of and/or to Alter or Amend the
Court’s May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

⁹*Id.*, p. 14.

1 windows in the two towers.” In short, the May 23, 2019 Order was not silent as to which of the
2 Association’s counter-claims were resolved; the Order specifically enumerated and decided all the
3 claims.

4 Further, while the Association argues the Order “could not have resolved the Association’s
5 contract-based claims.”¹⁰ a review of the Association’s Fourth Cause of Action entitled “Breach of
6 Contract” within the Counter-Claim indicates it is an action seeking monetary damages as a result of
7 constructional defects. It states, *inter alia*, the Developers entered into written contracts¹¹
8 representing the individual units were constructed in a professional and workmanlike manner and in
9 accordance with all applicable standards of care in the building industry. The Developers breached
10 the Sales Contracts “by selling units containing the Defects described above, *and as a direct result*
11 *of said breaches, The (sic) Association and its individual members have suffered the losses and*
12 *damages described above.*”¹² (Emphasis added) Clearly, the “Breach of Contract” action, seeking
13 monetary damages as a result of constructional defects, was addressed and analyzed within this
14 Court’s May 23, 2019 Order as time-barred by virtue of the six-year statute of repose. This Court
15 concludes its May 23, 2019 Findings of Fact, Conclusions of Law and Order is final as it was an
16 ultimate disposition of all the Association’s causes of action set forth within the Counter-Claim.
17
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19 5. The next issue that must be determined is whether there is any just reason for delay.
20 In this regard, this Court considers whether the May 23, 2019 Findings of Fact, Conclusions of Law
21 and Order dealt with matters distinctly separable from the remaining unresolved claims. This Court,
22 therefore, turns to the claims for relief set forth in the Builders’ Complaint to determine which of
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26 ¹⁰*Id.*, p. 14.

27 ¹¹Notably, the Fourth Cause of Action does not state with whom the Developers entered into the Sales
28 Contracts. Presumably, the contracts were between the Developers and the members of the Association, and not with the
Association itself. The homeowners are not Counter-Claimants in this case.

¹²See Defendant Panorama Tower Condominium Unit Owners’ Association’s Answer to Complaint and
Counterclaim filed March 1, 2017, p. 32, Paragraph 71.

1 them remain unresolved, and if they are separate from the Association's causes of action contained
2 in the Counter-Claim.

3 The First Claim for Relief sought declaratory relief regarding the application of Assembly
4 Bill (AB) 125 enacted and effective as of February 24, 2015. In its various Findings of Fact,
5 Conclusions of Law and Orders issued in this case, this Court determined AB 125 reflects the state
6 of the law between February 24, 2015 to September 30, 2019' and was applied in this Court's
7 analyses whereby this cause of action is resolved. The Second Claim for Relief seeks a declaration
8 from this Court the Association's claims are precluded, as in this Builders' view, the rights and
9 obligations of the parties in this matter were resolved by way of Settlement Agreement reached in a
10 prior litigation. This Second Claim for Relief is distinctly different from the causes adjudged in the
11 May 23, 2019 Order, and thus, it is not yet resolved. The Third Claim for Relief accuses the
12 Association of failure to comply with the pre-litigation process set forth in NRS 40.600 through
13 40.695. This Court dealt with the issues presented in the Third Claim for Relief within its
14 September 15, 2017 and November 30, 2018 Findings of Fact, Conclusions of Law and Orders;
15 ultimately, it found the Association failed to provide an adequate NRS 40.645 notice with respect to
16 the constructional defects allegedly found in the Towers' sewer system¹³ and fire walls. It
17 determined the notice was adequate concerning the constructional defects found in the Towers'
18 windows. The Third Claim for Relief is resolved.

19 The Fourth Claim for Relief is entitled "suppression of evidence/spoliation," and essentially
20 the Contractors seek sanctions against the Association for its alleged failure to retain the parts and
21 mechanisms removed or replaced during the sewer repair, and prior to sending the Builders the NRS
22 40.645 notice. Assuming there were no other suppression of evidence or spoliation issues with
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28 ¹³The sewer system had been repaired prior to the Association sending the NRS 40.645 notice meaning the
Builders were not accorded their right to repair under NRS Chapter 40.

1 respect to constructional defects in the windows, fire walls or mechanical room, the Fourth Claim
2 for Relief also is resolved as this Court concluded, in its November 30, 2018 Order, the NRS 40.645
3 notice was insufficient with respect to the sewer deficiencies and the Builders were not notified of
4 the constructional defects prior to repair. If there are remaining suppression of evidence or
5 spoliation issues, such deal with whether this Court should issue sanctions upon the Association for
6 its failure to preserve. In this Court's view, such matters are moot given its prior conclusions claims
7 relating to the mechanical room are barred by the four-year statute of limitations, the NRS 40.645
8 notice was insufficient with respect to constructional defects allegedly within the fire walls, and
9 lastly, the window deficiencies are time-barred by the six-year statute of repose. In other words,
10 whether there remain spoliation issues, this Court concludes the Fourth Claim for Relief is moot.
11

12 The Fifth Claim for Relief for breach of the Settlement Agreement made in resolving party
13 differences in the prior litigation remains undecided for the same reason this Court concluded the
14 "claim preclusion" issues identified in the Second Claim for Relief were not determined. Likewise,
15 the Sixth and Seventh Claims for Relief, seeking declaratory relief given the Association's duty to
16 defend and indemnify under the Settlement Agreement, have not been decided. In short, the
17 remaining causes are the Second, Fifth, Sixth and Seventh Claims for Relief set forth in the
18 Contractors' Complaint and they are distinctly separate from the Associations' constructional defect
19 claims decided in the Findings of Fact, Conclusions of Law and Orders filed September 15, 2017,
20 November 30, 2018 and May 23, 2019.
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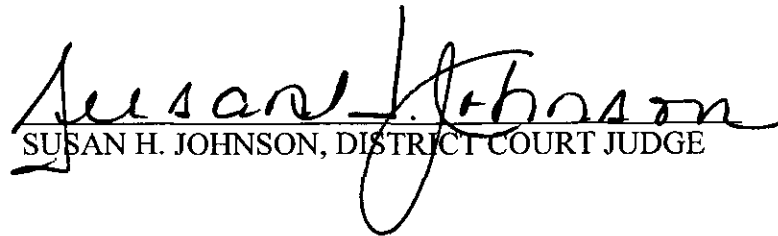
22
23 6. In summary, the May 23, 2019 Findings of Fact, Conclusions of Law and Order
24 resulted in a culmination of a final adjudication, wholly resolving the causes set forth within the
25 Association's Counter-Claim. The claims remaining are those are made by the Builders and deal
26 specifically with the adherence of the parties' concessions set forth within the prior litigation's
27 Settlement Agreement. These causes are distinctly different from the constructional defect claims
28

1 alleged in the Counter-Claim. In this Court's view, entry of a separate judgment now would not
2 require any appellate court to decide the same issues more than once on separate appeals.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the Motion to Certify
5 Judgment as Final Under NRCP 54(b) filed by Plaintiffs/Counter-Defendants LAURENT
6 HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J.
7 DEAN CONSTRUCTION, INC. on July 22, 2019 is granted.
8

9 DATED this 12th day of August 2019.

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12 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 12th day of August 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b) to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
JOEL D. HENRIOD, ESQ.
ABRAHAM G. SMITH, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

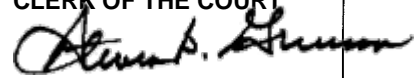
FRANCIS I. LYNCH, ESQ.
CHARLES "DEE" HOPPER, ESQ.
SERGIO SALZANO, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant



1 **NEOJ**
PETER C. BROWN (SBN 5887)
2 JEFFREY W. SAAB (SBN 11,261)
DEVIN R. GIFFORD (SBN 14,055)
3 CYRUS S. WHITTAKER (SBN 14,965)
BREMER WHYTE BROWN & O'MEARA LLP
4 1160 N. Town Center Drive, Suite 250
Las Vegas, Nevada 89144
5 Tel: (702) 258-6665
Fax: (702) 258-6662
6 PBrown@BremerWhyte.com
JSaab@BremerWhyte.com
7 DGifford@BremerWhyte.com
CWhittaker@BremerWhyte.com

8 DANIEL F. POLSENBERG (SBN 2376)
9 JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
10 LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
11 Las Vegas, Nevada 89169-5996
(702) 949-8200
12 DPolsenberg@LRRC.com
JHenriod@LRRC.com
13 ASmith@LRRC.com

14 *Attorneys for Plaintiffs Laurent Hallier;*
Panorama Towers I, LLC; Panorama Towers
15 *I Mezz, LLC; and M.J. Dean Construction, Inc.*

16 DISTRICT COURT
CLARK COUNTY, NEVADA

17 LAURENT HALLIER, an individual;
18 PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
19 TOWERS I MEZZ, LLC, a Nevada
limited liability company; and M.J.
20 DEAN CONSTRUCTION, INC., a Nevada
Corporation,

21 Plaintiffs,

22 vs.

23 PANORAMA TOWERS CONDOMINIUM
24 UNIT OWNERS' ASSOCIATION, a
Nevada non-profit corporation,

25 Defendant.

26
27 And related counterclaims.
28

Case No. A-16-744146-D

Dept. No. 22

**NOTICE OF ENTRY OF ORDER RE:
MOTION TO CERTIFY JUDGMENT AS
FINAL UNDER NRCP 54(b)**

1 Please take notice that an "Order re: Motion to Certify Judgment as Final
2 under NRCP 54(b)" was entered on August 12, 2019. A true and correct copy is
3 attached hereto and made part hereof.

4 Dated this 13th day of August, 2019.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6 By: /s/Abraham G. Smith

7 DANIEL F. POLSENBERG (SBN 2376)
8 JOEL D. HENRIOD (SBN 8492)
9 ABRAHAM G. SMITH (SBN 13,250)
10 3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

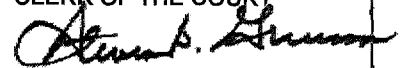
11 BREMER WHYTE BROWN & O'MEARA
LLP
12 PETER C. BROWN (SBN 5887)
13 JEFFREY W. SAAB (SBN 11,261)
14 DEVIN R. GIFFORD (SBN 14,055)
15 CYRUS S. WHITTAKER (SBN 14,965)
1160 N. Town Center Drive,
Suite 250
Las Vegas. Nevada 89144

Attorneys for Plaintiffs

- 1
- 2
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DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,

Plaintiffs,

Vs.

PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation.

Defendant.

PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation,

Counter-Claimant,

Vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

ORDER RE: MOTION TO
CERTIFY JUDGMENT AS
FINAL UNDER NRCP 54(b)

1 PANORAMA TOWERS
2 CONDOMINIUM UNIT OWNERS'
3 ASSOCIATION, a Nevada non-profit
4 corporation,

5
6 Third-Party Plaintiff,

7 Vs.

8 SIERRA GLASS & MIRROR, INC.; F.
9 ROGERS CORPORATION; DEAN
10 ROOFING COMPANY; FORD
11 CONSTRUCTING, INC.; INSULPRO,
12 INC.; XTREME EXCAVATION;
13 SOUTHERN NEVADA PAVING, INC.;
14 FLIPPINS TRENCHING, INC.;
15 BOMBARD MECHANICAL, LLC; R.
16 RODGERS CORPORATION; FIVE
17 STAR PLUMBING & HEATING, LLC
18 dba SILVER STAR PLUMBING; and
19 ROES 1 through 1000, inclusive,

20 Third-Party Defendants.¹

21 **ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b)**

22 This matter concerning the Motion to Certify Judgment as Final Under NRCP 54(b) filed by
23 Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC,
24 PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. on July 22, 2019
25 was heard, on Order Shortening Time, on the 6th day of August 2019 at the hour of 8:30 a.m. before
26 Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with
27 JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER,
28 PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN
CONSTRUCTION, INC. appeared by and through its attorneys, DANIEL F. POLSENBERG, ESQ.
of the law firm, LEWIS ROCA ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ. and

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 CYRUS S. WHITTAKER, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
2 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
3 UNIT OWNERS' ASSOCIATION appeared by and through its attorneys, MICHAEL J. GAYAN,
4 ESQ. and WILLIAM L. COULTHARD, ESQ. of the law firm, KEMP JONES & COULTHARD.
5 Having reviewed the papers and pleadings on file, heard oral arguments of the lawyers and taken
6 this matter under advisement, this Court makes the following Findings of Fact and Conclusions of
7 Law:
8

9 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

10 1. This case arises as a result of alleged constructional defects within both the common
11 areas and the 616 residential condominium units located within two tower structures of the
12 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
13 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
14 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
15 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), alleging
16 deficiencies within its residential tower windows, fire blocking, mechanical room piping and sewer.
17 Subsequently, after the parties engaged in the pre-litigation process ending with an unsuccessful
18 NRS 40.680 mediation held September 26, 2016, the Contractors filed their Complaint on
19 September 28, 2016 against the Owners' Association, asserting the following claims that, for the
20 most part, deal with their belief the NRS 40.645 notice was deficient:
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- 23 1. Declaratory Relief—Application of AB 125;
- 24 2. Declaratory Relief—Claim Preclusion;
- 25 3. Failure to Comply with NRS 40.600, *et seq.*;
- 26 4. Suppression of Evidence/Spoliation;
- 27 5. Breach of Contract (Settlement Agreement in Prior Litigation);
- 28

6. Declaratory Relief—Duty to Defend; and

7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;

2. Negligence and Negligence *Per Se*;

3. Products Liability (against the manufacturers);

4. Breach of (Sales) Contract;

5. Intentional/Negligent Disclosure; and

6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the "catch-all" statute of limitations of four (4) years set forth in NRS 11.220.² With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid only with respect to the windows' constructional defects.³

4. On April 23, 2019, this Court heard two motions filed by the parties, to wit: (1) the Contractors' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 and (2) the Association's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019. After hearing the parties' arguments, this Court took the matter under advisement, and on

²See Findings of Fact, Conclusions of Law and Order filed September 15, 2017.

³See Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

1 May 23, 2019, issued its third Findings of Fact, Conclusions of Law and Order which granted the
2 Builders' motion, and denied the Association's Conditional Counter-Motion. As pertinent here, this
3 Court concluded the Owners' Association's remaining constructional defect claims lodged against
4 the Builders were time-barred by the six-year statute of repose set forth in NRS 11.202(1).

5 4. On June 3, 2019, the Association filed its Motion for Reconsideration and/or Stay of
6 the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs'
7 Motion for Summary Judgment or alternatively, a Motion to Stay the Court's Order.⁴ Ten days
8 later, on June 13, 2019, the Association filed a second Motion for Reconsideration and/or to Alter or
9 Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting
10 Plaintiffs' Motion for Summary Judgment. These two motions essentially were the same except the
11 second alerted the Court the Nevada Legislature passed AB 421 on June 1, 2019, and such was
12 signed by the Governor and formally enacted on June 3, 2019. As pertinent here, AB 421 amends
13 NRS 11.202 by extending the statute of repose period from six (6) to ten (10) years and it is to be
14 applied retroactively to actions in which the substantial completion of the improvement to real
15 property occurred before October 1, 2019, the date in which the amendment takes effect.

16 The Builders opposed the two motions on several grounds. First, they noted this Court
17 entered a final order on May 23, 2019, the Notice of Entry of Order was filed May 28, 2019, and
18 thus, by the time the Motion for Reconsideration and/or Stay was filed June 3, 2019, there was no
19 pending matter to stay. Second, while AB 421 was enacted and will apply retroactively, it does not
20 become effective until October 1, 2019, meaning, currently, there is no change in the law. That is,
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25 ⁴The Association moved this Court to stay the Order upon the basis the Nevada Legislature had passed
26 Assembly Bill (referred to as "AB" herein) 421 on June 1, 2019, which "immediately and retroactively extends the
27 statute of repose to 10 years." See Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact,
28 Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment or alternatively, a Motion to Stay the
Court's Order filed June 3, 2019, p. 4. The Association urged this Court to stay the Order until such time as AB 241 was
enacted or rejected by the Governor. As set forth *infra*, the Governor signed the bill on June 3, 2019 which was to take
effect October 1, 2019.

1 as the law stands, the period for the statute of repose is six (6) years as enacted February 24, 2015,
2 and not ten (10). Third, as the Association's claims have already been adjudicated, AB 421 cannot
3 be interpreted to revive those causes of action.

4 This Court denied the Association's first Motion for Reconsideration and/or Stay filed June
5 3, 2019 at the July 16, 2019 hearing; it took the June 13, 2019 motion under advisement, and
6 ultimately, it was denied via Order filed August 9, 2019. In summary, this Court concluded the
7 newly-amended NRS 11.202 becomes effective October 1, 2019, whereby the current state of the
8 law is such the statute of repose is six (6) years, and not ten (10). If the Nevada Legislature had
9 intended AB 421's retroactive effect to be applied now, it would have said so just as it had in
10 enacting AB 125 in February 2015.

11
12 5. The Contractors have moved this Court to certify the May 23, 2019 Findings of Fact,
13 Conclusions of Law and Order as final under Rule 54(b) of the Nevada Rules of Civil Procedure
14 (NRCP). They argue the Order is final in that it granted summary judgment with respect to the
15 Association's claims in their entirety, and there is no just reason for delaying the entry of final
16 judgment. The Owners' Association opposes upon the bases (1) the May 23, 2019 Order is "silent
17 as to which of the Association's legal claims were resolved in this action,"⁵ and "[t] repeated
18 references to 'construction defect claims' are too vague and insufficient to make the [] Order final
19 and appealable;"⁶ (2) the Order "could not have resolved the Association's contract-based claims;"⁷
20 and (3) the Builders will not face hardship or injustice by waiting for the issue to be appealed after
21 all parties' claims are resolved.
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26 ⁵See Defendant's (1) Opposition to Plaintiffs'/Counter-Defendants' Motion to Certify Judgment as Final Under
27 Rule 54(b) and (2) Response to Plaintiffs'/Counter-Defendants' Opposition to Defendant's/Counter-Claimant's July 16,
28 Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

⁶*Id.*, p. 12.

⁷*Id.*, p. 14.

CONCLUSIONS OF LAW

1
2 1. NRCP 54 was recently amended to reflect virtually the identical wording of Rule 54
3 of the Federal Rules of Civil Procedure (FRCP). NRCP 54(b) provides:

4 (b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents
5 more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party
6 claim—or when multiple parties are involved, the court may direct entry of a final judgment
7 as to one or more, but fewer than all, claims or parties only if the court expressly determines
8 that there is no just reason for delay. Otherwise, any order or other decision, however
9 designated, that adjudicates fewer than all claims or the rights and liabilities of fewer than all
the parties does not end the action as to any of the claims or parties and may be revised at
any time before the entry of a judgment adjudicating all the claims and all the parties' rights
and liabilities.

10 Clearly, NRCP 54(b) permits district courts to authorize immediate appeal of dispositive rulings on
11 separate claims in a civil action raising multiple claims. This rule “was adopted...specifically to
12 avoid the possible injustice of delay[ing] judgment o[n] a *distinctly separate* claim [pending]
13 adjudication of the entire case....The Rule thus aimed to augment, not diminish, appeal
14 opportunity.” See Jewel v. National Security Agency, 810 F.3d 622, 628 (9th Cir. 2015), *quoting*
15 Gelboim v. Bank of America Corp., ____ U.S. ____ 135 S.Ct. 897, 902-903, 190 L.Ed.2d 789 (2015)
16 (interpreting FRCP 54).
17

18 2. Over sixty (60) years ago, the United States Supreme Court outlined steps to be
19 followed in making determinations under FRCP 54(b), of which NRCP 54(b) is now the same. See
20 Sears, Roebuck & Company v. Mackey, 351 U.S. 427, 76 S.Ct. 895, 100 L.Ed. 1297 (1956), *cited by*
21 Curtiss-Wright Corporation v. General Electric Company, 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64
22 L.Ed.2d 1 (1980). The district court first must determine it is dealing with a “final judgment.” It
23 must be a “judgment” in the sense it is a decision upon a cognizable claim for relief, and it must be
24 “final” or an “an ultimate disposition of an individual claim entered in the course of a multiple
25 claims action.” *Id.*, *quoting* Sears, Roebuck & Company, 351 U.S. at 436, 76 S.Ct. at 900.
26
27 ...
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1 3. Once it finds “finality,” the district court must determine whether there is any just
2 reason for delay. Not all final judgments on individual claims should be immediately appealable
3 even if they are separable from the remaining unresolved claims. It is left to the sound judicial
4 discretion of the district court to determine the appropriate time when each final decision in a
5 multiple claims action is ready for appeal. Curtiss-Wright Corporation, 446 U.S. at 8, 100 S.Ct. at
6 1464-1465, *citing* Sears, Roebuck & Company, 351 U.S. at 437, 76 S.Ct. at 899, 900. Thus, in
7 deciding whether there is no just reason to delay the appeal of the May 23, 2019 Findings of Fact,
8 Conclusions of Law and Order, which granted the Builders’ February 11, 2019 Motion for Summary
9 Judgment, this Court must take into account the judicial administrative interests as well as the
10 equities involved. Consideration of the former is necessary to assure application of NRCP 54(b) will
11 not result in the appellate courts deciding the same issues more than once on separate appeals.
12

13 4. Here, the Owners’ Association argues against NRCP 54(b) certification upon the
14 bases the May 23, 2019 Order is not final as it is “silent as to which of the Association’s legal claims
15 were resolved in this action”⁸ and further, the Order “could not have resolved the Association’s
16 contract-based claims.”⁹ This Court disagrees with both of the Association’s positions. The May
17 23, 2019 16-page Order specifically details this Court’s reasoning and conclusion the Owners’
18 Association’s constructional defect claims are time-barred by the six-year statute of repose.
19 Notably, this Court specifically set forth on page 13 of the Order “[t]he Association’s counter-claims
20 of negligence, intentional/negligent disclosure, breach of sales contract, products liability, breach of
21 express and implied warranties under and violations of NRS Chapter 116, and breach of duty of
22 good faith and fair dealing are for monetary damages as a result of constructional defects to its
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26 ⁸See Defendant’s (1) Opposition to Plaintiffs’/Counter-Defendants’ Motion to Certify Judgment as Final Under
27 Rule 54(b) and (2) Response to Plaintiffs’/Counter-Defendants’ Opposition to Defendant’s/Counter-Claimant’s July 16,
28 Court’s May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

⁹*Id.*, p. 14.

1 windows in the two towers.” In short, the May 23, 2019 Order was not silent as to which of the
2 Association’s counter-claims were resolved; the Order specifically enumerated and decided all the
3 claims.

4 Further, while the Association argues the Order “could not have resolved the Association’s
5 contract-based claims.”¹⁰ a review of the Association’s Fourth Cause of Action entitled “Breach of
6 Contract” within the Counter-Claim indicates it is an action seeking monetary damages as a result of
7 constructional defects. It states, *inter alia*, the Developers entered into written contracts¹¹
8 representing the individual units were constructed in a professional and workmanlike manner and in
9 accordance with all applicable standards of care in the building industry. The Developers breached
10 the Sales Contracts “by selling units containing the Defects described above, *and as a direct result*
11 *of said breaches, The (sic) Association and its individual members have suffered the losses and*
12 *damages described above.*”¹² (Emphasis added) Clearly, the “Breach of Contract” action, seeking
13 monetary damages as a result of constructional defects, was addressed and analyzed within this
14 Court’s May 23, 2019 Order as time-barred by virtue of the six-year statute of repose. This Court
15 concludes its May 23, 2019 Findings of Fact, Conclusions of Law and Order is final as it was an
16 ultimate disposition of all the Association’s causes of action set forth within the Counter-Claim.
17

18
19 5. The next issue that must be determined is whether there is any just reason for delay.
20 In this regard, this Court considers whether the May 23, 2019 Findings of Fact, Conclusions of Law
21 and Order dealt with matters distinctly separable from the remaining unresolved claims. This Court,
22 therefore, turns to the claims for relief set forth in the Builders’ Complaint to determine which of
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26 ¹⁰*Id.*, p. 14.

27 ¹¹Notably, the Fourth Cause of Action does not state with whom the Developers entered into the Sales
28 Contracts. Presumably, the contracts were between the Developers and the members of the Association, and not with the
Association itself. The homeowners are not Counter-Claimants in this case.

¹²See Defendant Panorama Tower Condominium Unit Owners’ Association’s Answer to Complaint and
Counterclaim filed March 1, 2017, p. 32, Paragraph 71.

1 them remain unresolved, and if they are separate from the Association's causes of action contained
2 in the Counter-Claim.

3 The First Claim for Relief sought declaratory relief regarding the application of Assembly
4 Bill (AB) 125 enacted and effective as of February 24, 2015. In its various Findings of Fact,
5 Conclusions of Law and Orders issued in this case, this Court determined AB 125 reflects the state
6 of the law between February 24, 2015 to September 30, 2019' and was applied in this Court's
7 analyses whereby this cause of action is resolved. The Second Claim for Relief seeks a declaration
8 from this Court the Association's claims are precluded, as in this Builders' view, the rights and
9 obligations of the parties in this matter were resolved by way of Settlement Agreement reached in a
10 prior litigation. This Second Claim for Relief is distinctly different from the causes adjudged in the
11 May 23, 2019 Order, and thus, it is not yet resolved. The Third Claim for Relief accuses the
12 Association of failure to comply with the pre-litigation process set forth in NRS 40.600 through
13 40.695. This Court dealt with the issues presented in the Third Claim for Relief within its
14 September 15, 2017 and November 30, 2018 Findings of Fact, Conclusions of Law and Orders;
15 ultimately, it found the Association failed to provide an adequate NRS 40.645 notice with respect to
16 the constructional defects allegedly found in the Towers' sewer system¹³ and fire walls. It
17 determined the notice was adequate concerning the constructional defects found in the Towers'
18 windows. The Third Claim for Relief is resolved.
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22 The Fourth Claim for Relief is entitled "suppression of evidence/spoliation," and essentially
23 the Contractors seek sanctions against the Association for its alleged failure to retain the parts and
24 mechanisms removed or replaced during the sewer repair, and prior to sending the Builders the NRS
25 40.645 notice. Assuming there were no other suppression of evidence or spoliation issues with
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27
28 ¹³The sewer system had been repaired prior to the Association sending the NRS 40.645 notice meaning the
Builders were not accorded their right to repair under NRS Chapter 40.

1 respect to constructional defects in the windows, fire walls or mechanical room, the Fourth Claim
2 for Relief also is resolved as this Court concluded, in its November 30, 2018 Order, the NRS 40.645
3 notice was insufficient with respect to the sewer deficiencies and the Builders were not notified of
4 the constructional defects prior to repair. If there are remaining suppression of evidence or
5 spoliation issues, such deal with whether this Court should issue sanctions upon the Association for
6 its failure to preserve. In this Court's view, such matters are moot given its prior conclusions claims
7 relating to the mechanical room are barred by the four-year statute of limitations, the NRS 40.645
8 notice was insufficient with respect to constructional defects allegedly within the fire walls, and
9 lastly, the window deficiencies are time-barred by the six-year statute of repose. In other words,
10 whether there remain spoliation issues, this Court concludes the Fourth Claim for Relief is moot.
11

12 The Fifth Claim for Relief for breach of the Settlement Agreement made in resolving party
13 differences in the prior litigation remains undecided for the same reason this Court concluded the
14 "claim preclusion" issues identified in the Second Claim for Relief were not determined. Likewise,
15 the Sixth and Seventh Claims for Relief, seeking declaratory relief given the Association's duty to
16 defend and indemnify under the Settlement Agreement, have not been decided. In short, the
17 remaining causes are the Second, Fifth, Sixth and Seventh Claims for Relief set forth in the
18 Contractors' Complaint and they are distinctly separate from the Associations' constructional defect
19 claims decided in the Findings of Fact, Conclusions of Law and Orders filed September 15, 2017,
20 November 30, 2018 and May 23, 2019.
21

22 6. In summary, the May 23, 2019 Findings of Fact, Conclusions of Law and Order
23 resulted in a culmination of a final adjudication, wholly resolving the causes set forth within the
24 Association's Counter-Claim. The claims remaining are those are made by the Builders and deal
25 specifically with the adherence of the parties' concessions set forth within the prior litigation's
26 Settlement Agreement. These causes are distinctly different from the constructional defect claims
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1 alleged in the Counter-Claim. In this Court's view, entry of a separate judgment now would not
2 require any appellate court to decide the same issues more than once on separate appeals.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the Motion to Certify
5 Judgment as Final Under NRCP 54(b) filed by Plaintiffs/Counter-Defendants LAURENT
6 HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J.
7 DEAN CONSTRUCTION, INC. on July 22, 2019 is granted.
8

9 DATED this 12th day of August 2019.

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12 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 12th day of August 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b) to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
JOEL D. HENRIOD, ESQ.
ABRAHAM G. SMITH, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

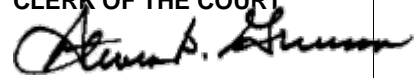
FRANCIS I. LYNCH, ESQ.
CHARLES "DEE" HOPPER, ESQ.
SERGIO SALZANO, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant



FRANCIS I. LYNCH, ESQ. (#4145)
LYNCH & ASSOCIATES LAW GROUP
1445 American Pacific Drive, Suite 110 #293
Henderson, Nevada 89074
T: (702) 868-1115
F: (702) 868-1114

SCOTT WILLIAMS (California Bar #78588)
WILLIAMS & GUMBINER, LLP
1010 B Street, Suite 200
San Rafael, California 94901
T: (415) 755-1880
F: (415) 419-5469
Admitted Pro Hac Vice

WILLIAM L. COULTHARD, ESQ. (#3927)
MICHAEL J. GAYAN, ESQ. (#11125)
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
T: (702) 385-6000
F: (702) 385-6001

*Counsel for Defendant Panorama Towers
Condominium Unit Owners' Association*

DISTRICT COURT

CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,

Plaintiffs,

vs.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Defendant.

Case No.: A-16-744146-D

Dept. No.: XXII

[HEARING REQUESTED]

**DEFENDANT'S MOTION TO ALTER
OR AMEND THE COURT'S FINDINGS
OF FACT, CONCLUSIONS OF LAW,
AND ORDER ENTERED ON MAY 23,
2019**

1 PANORAMA TOWERS CONDOMINIUM
2 UNIT OWNERS' ASSOCIATION, a Nevada
3 non-profit corporation, and Does 1 through
4 1000,

Counterclaimants,

5 vs.

6 LAURENT HALLIER, an individual;
7 PANORAMA TOWERS I, LLC, a Nevada
8 limited liability company; PANORAMA
9 TOWERS I MEZZ, LLC, a Nevada limited
10 liability company; M.J. DEAN
11 CONSTRUCTION, INC., a Nevada
12 Corporation; SIERRA GLASS & MIRROR,
13 INC.; F. ROGERS CORPORATION; DEAN
14 ROOFING COMPANY; FORD
15 CONTRACTING, INC.; INSULPRO, INC.;
XTREME XCAVATION; SOUTHERN
NEVADA PAVING, INC.; FLIPPINS
TRENCHING, INC.; BOMBARD
MECHANICAL, LLC; R. RODGERS
CORPORATION; FIVE STAR PLUMBING
& HEATING, LLC, dba Silver Star
Plumbing; and ROES 1 through 1000,
inclusive,

Counterdefendants.

17
18 Defendant Panorama Towers Condominium Unit Owners' Association ("Association"), by
19 and through its counsel of record, hereby respectfully submits this Motion to Alter or Amend the
20 Court's Findings of Fact, Conclusions of Law, and Order Entered on May 23, 2019 (the "Order"),
21 which granted Plaintiffs Laurent Hallier, Panorama Towers I LLC, Panorama Towers I Mezz,
22 LLC, and M.J. Dean Construction, Inc.'s (collectively, the "Builders") Motion for Summary
23 Judgment Pursuant to NRS 11.202(1).

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1 This Motion is made and based upon the following Points and Authorities, any exhibits
2 attached thereto, the pleadings and papers on file herein, the oral argument of counsel, and such
3 other or further information as this Honorable Court may request.

4 DATED this 9th day of September, 2019.

5 Respectfully submitted,
6 KEMP, JONES & COULTHARD, LLP

7 /s/ Michael J. Gayan

8 WILLIAM L. COULTHARD, ESQ. (#3927)
9 MICHAEL J. GAYAN, ESQ., (#11135)
10 3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

11 FRANCIS I. LYNCH, ESQ. (#4145)
12 LYNCH & ASSOCIATES LAW GROUP
13 1445 American Pacific Drive, Suite 110 #293
14 Henderson, Nevada 89074
T: (702) 868-1115
F: (702) 868-1114

15 SCOTT WILLIAMS (*admitted pro hac vice*)
16 WILLIAMS & GUMBINER, LLP
17 1010 B Street, Suite 200
San Rafael, California 94901
18 T: (415) 755-1880
F: (415) 419-5469

19 *Counsel for Defendant/Counter-claimant*
20 *Panorama Towers Condominium Unit*
21 *Owners' Association*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This Court has already held that, as of October 1, 2019, AB 421 retroactively extends the
5 statute of repose for the Association's construction defect claims to 10 years. This Court has also
6 held that the Association's two towers have dates of substantial completion of January 16, 2008
7 (Tower I) and March 16, 2008 (Tower II).¹ Because the Association filed its Counterclaim on
8 March 1, 2017, AB 421's retroactive application will require the opposite result of the Order by
9 the time this Court hears the instant Motion. Rule 59(e) exists for this precise situation—to permit
10 courts to alter or amend orders impacted by a substantive change in the controlling law and/or to
11 prevent a manifest injustice of law. Relief under Rule 59(e) was not available until the Court
12 certified its Order as final pursuant to Rule 54(b) on August 13, 2019.

13 Because the controlling law has changed and no longer supports dismissal of the
14 Association's claims, the Association respectfully requests an order altering or amending the Order
15 and holding the Association's claims were timely filed and may proceed on the merits.

16 **II.**

17 **STATEMENT OF FACTS**

18 On February 24, 2015, AB125 became the law. AB125 established, among other things, a
19 shorter, six-year statute of repose period. *See* NEV. REV. STAT. § 11.202(1). The shortened repose
20 period applied retroactively. *See* AB125 § 21(5); Order at 10:12-18. In conjunction with the
21 shortened repose period, AB125 created a constitutionally required one-year grace period in which
22 claimants were allowed to file claims without being time-barred.

23 On February 24, 2016, the Association served a Chapter 40 Notice on the Builders for
24 various constructional defects in the two Panorama Towers. On September 26, 2016, the parties
25 engaged in a pre-litigation mediation pursuant to NRS 40.680. On September 28, 2016, the

26 _____
27 ¹ The Association respectfully disagrees with a number of the Court's prior rulings, and none of
28 the recitations of those rulings in this Motion change the Association's position on those previously
briefed issues.

1 Builders filed the Complaint against the Association. On March 1, 2017, after briefing and hearing
2 related to the Association's motion to dismiss, the Association timely filed its Answer and
3 Counterclaim against the Builders.

4 On March 20, 2017, the Builders filed their first motion for summary judgment to challenge
5 the Association's Chapter 40 Notice under NRS 40.645. On June 20, 2017, the Court heard that
6 motion. On September 23, 2017, the Court granted the Builders' motion and stayed the case to
7 allow the Association to amend its Chapter 40 Notice.

8 On April 5, 2018, the Association served the Builders with its Amended Chapter 40 Notice.

9 On June 3, 2018, the Builders filed their second motion for summary judgment, this time
10 challenging the Association's Amended Chapter 40 Notice under NRS 40.645. On October 2,
11 2018, the Court heard that motion. On November 30, 2018, the Court partially granted the
12 Builders' second motion and allowed the Association's window-based claims to proceed.

13 On October 22, 2018, the Builders filed their third motion for summary judgment
14 challenging the Association's standing to prosecute the claims. On December 17, 2018, the
15 Builders filed a motion for reconsideration of the Court's order determining the Association's
16 Amended Chapter 40 Notice to be sufficient for the window-based claims. On February 12, 2019,
17 the Court heard and denied the Builders' third motion for summary judgment and motion for
18 reconsideration. *See* Orders entered on March 11, 2019.

19 On February 11, 2019, the Builders filed their fourth motion for summary judgment, this
20 time challenging the timeliness of the Association's construction defect counterclaims under NRS
21 11.202(1). On March 1, 2019, the Association filed its opposition to the motion and a
22 countermotion. On April 23, 2019, the Court heard the Builders' motion and the Association's
23 countermotion. On May 23, 2019, the Court entered its Order granting the Builders' motion and
24 denying the Association's countermotion ("Order"). *See Exhibit 1* (Order). The Order contains
25 the following determination: "[T]he dates of substantial completion are January 16, 2018 (Tower
26 I) and March 16, 2018 (Tower II)" *Id* at 12:4-7.

27 On June 3, 2019, Governor Sisolak signed AB 421 into law. *See* Ex. 1 (AB421 NELIS).
28 AB 421 provides, among other things, for an extension of the statute of repose period from six (6)

1 years to 10 years. *See Exhibit 2* (AB 421) at § 7 (as enrolled). Of importance, the new 10-year
2 statute of repose “*applies retroactively to actions* in which the substantial completion of the
3 improvement to the real property occurred before October 1, 2019.” *Id.* at § 11 (emphasis added).

4 On June 3, 2019, the Association filed a motion for reconsideration of the Order based on
5 what it viewed as errors of fact and law. That motion referenced the 2019 Legislature’s passage of
6 AB 421 and its anticipated enactment into law. On June 13, 2019, the Association filed a separate
7 motion for reconsideration based on AB 421’s enactment. On July 16, 2019, the Court heard both
8 of the Association’s motions and denied the former while taking the latter under advisement.² On
9 August 9, 2019, the Court entered its order denying the Association’s motion for reconsideration
10 specifically related to AB 421 (“Reconsideration Order”). *See Exhibit 3* (Reconsideration Order).
11 In the Reconsideration Order, the Court determined:

- 12 • “AB 421 amends NRS 11.202 by extending the statute of repose period from six (6) to
13 ten (10) years and it is to be applied retroactively to actions in which the substantial
14 completion of the improvement to real property occurred before October 1, 2019, the
15 date in which the amendment takes effect.” *Id.* at 5:4-8; *see id.* at 6:11-25.
- 16 • “In short, the newly-enacted law [AB 421] becomes operational October 1, 2019 and
17 its retroactive effect will take place at that time.” *Id.* at 7:4-6.³

18 On July 22, 2019, the Builders filed their motion requesting to certify the Order as a final
19 judgment pursuant to Rule 54(b). On August 1, 2019, the Association filed its opposition to the
20 motion. On August 6, 2019, the Court heard the Builders’ motion. On August 12, 2019, the Court
21 entered its order granting the Builders’ motion and certifying the Order as final judgment under
22 NRCP 54(b) (“Rule 54(b) Order”). *See Exhibit 4* (Rule 54(b) Order). The Rule 54(b) Order
23 contains the following determinations:

- 24 • “As pertinent here, AB 421 amends NRS 11.202 by extending the statute of repose

25
26 ² The Court also heard the Association’s motion to retax the Builders’ costs and granted it on the
grounds that the Builders prematurely filed the memorandum of costs.

27 ³ Although the Builders argued the Order was a final judgment, *see id.* at 5:9-12, the
28 Reconsideration Order contains no determination accepting that position.

1 period from six (6) to ten (10) years and it is to be applied retroactively to actions in
2 which the substantial completion of the improvement to real property occurred before
3 October 1, 2019, the date in which the amendment takes effect.” *Id* at 5:14-17.

- 4 • “In summary, the Court concluded the newly-enacted NRS 11.202 becomes effective
5 October 1, 2019” *Id* at 6:7-8.
- 6 • “In summary, the May 23, 2019 Findings of Fact, Conclusions of Law and Order
7 resulted in a culmination of a final adjudication, wholly resolving the causes set forth
8 within the Association’s Counter-Claim.” *Id* at 11:23-25.
- 9 • “**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the Motion to Certify
10 Judgment as Final Under NRCP 54(b) filed by Plaintiffs/Counter-Defendants
11 LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I
12 MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. on July 22, 2019 is granted.”
13 *Id* at 12:4-8 (emphasis in original).

14 On August 13, 2019, the Builders filed a notice of entry of the Rule 54(b) Order.

15 III.

16 LEGAL STANDARD

17 Rule 59(e) authorizes the Association to seek an order altering or amending the Order
18 within 28 days of the notice of entry of the final judgment. *See* NEV. R. CIV. P. 59(e). “Among the
19 ‘basic grounds’ for a Rule 59(e) motion are ‘correct[ing] manifest errors of law or fact,’ ‘newly
20 discovered or previously unavailable evidence,’ the need ‘to prevent manifest injustice,’ or *a*
21 ‘**change in controlling law.**’” *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245
22 P.3d 1190, 1193 (2010) (quoting *Coury v. Robison*, 115 Nev. 84, 91 n.4, 976 P.2d 518, 522 n.4
23 (1999)) (emphasis added).

24 Here, the Order did not become a final, appealable judgment until notice of entry of the
25 Rule 54(b) Order on August 13, 2019. The Association timely brings this Motion pursuant to Rule
26 59(e) based on the retroactive application of the longer statute of repose period prescribed by AB
27 421. This substantive change in the controlling law, which will be in effect when the Court
28 considers this Motion, merits altering or amending the Order and the subsequent Rule 54(b) Order

1 that made the Order a final judgment. Under the new 10-year repose period, the Association timely
2 filed its construction defect counterclaims against the Builders based on the Court's prior
3 determination of the dates of substantial completion. More specifically, the Court held the dates of
4 substantial completion were in early 2008, and the Association filed its Counterclaim on March 1,
5 2017—well within the new, retroactively applicable 10-year repose period. And as the Court has
6 already recognized, the new repose period applies to all structures with a substantial completion
7 date that “occurred before October 1, 2019.” Ex. 3 (Reconsideration Order) at 5:4-8. Therefore,
8 the Order's effect of time-barring the Association's claims is no longer supported by Nevada law
9 and, in order to avoid a manifest injustice of law, must be reversed to allow the Association to
10 proceed with its claims on the merits.

11 IV.

12 ARGUMENT

13 A. The 10-Year Statute of Repose Set Forth in AB 421 Applies to the Association's 14 Counterclaims.

15 1. *AB 421's repose period applies to structures with a substantial completion date 16 before October 1, 2019.*

17 Rule 59(e) allows the Court to alter or amend the Order due to a subsequent change in the
18 controlling law. The only expressly stated condition to the retroactive application of the 10-year
19 statute of repose period is that “the substantial completion of the improvement to the real property
20 occurred before October 1, 2019.” *See* Ex. 2 (AB 421) at §11(4); *see* Ex. 3 (Reconsideration Order)
21 at 5:4-8, 6:11-25; Ex. 4 (Rule 54(b) Order) at 5:14-17. This Court previously determined the towers
22 have substantial completion dates prior to October 1, 2019. *See* Ex. 1 (Order) at 12:4-7. Therefore,
23 AB 421's 10-year statute of repose retroactively applies to the Association's claims involving the
24 two towers.

25 2. *Nevada law permits the retroactive application of statutes.*

26 The Nevada Supreme Court held that courts can apply statutes retrospectively if the statute
27 clearly expresses a legislative intent to do so. *See Allstate Ins. Co. v. Furgerson*, 104 Nev. 772,
28 776, 766 P.2d 904, 907 (1988) (citing *Travelers Hotel v. City of Reno*, 103 Nev. 343, 346, 741

1 P.2d 1353, 1355 (1987). Unlike the 1983 version of NRS 11.204 discussed in *Allstate* which is
2 void of legislative directive or intent as to the retroactive application of the statute, AB 421
3 expressly states that “the period of limitations on actions set forth in NRS 11.202, as amended by
4 section 7 of this act, **apply retroactively . . .**” Ex. 2 (AB 421) at §11(4) (emphasis added). Nevada
5 law does not prohibit the retroactive lengthening of a repose period, only the shortening of such a
6 period.⁴ Based on the foregoing express language, courts must apply the 10-year statute of repose
7 retrospectively.

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20 ⁴ No Nevada case prohibits the retroactive application of an extended statute of repose to revive
21 otherwise time barred claims. Federal and state courts around the country find no such prohibition.
22 See *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 428 (2015) (collecting cases
23 from 18 states that follow “federal approach embodied in [*Campbell v. Holt*, 115 U.S. 620 (1885)
24 and *Chase Securities Corp. v. Donaldson*, 325 U.S. 304 (1945)] and allow the retroactive
25 expansion of the statute of limitations to revive otherwise time-lapsed claims—seemingly without
26 limitation.”). As the *Doe* court recognized, 14 states, including California and Arizona, specifically
27 “hold that the retroactive expansion of the statute of limitations to revive time barred claims **is not**
28 **a violation of a defendant’s substantive due process rights because there is no vested right to a**
statute of limitations defense as a matter of state constitutional law.” *Id.* (collecting cases)
(emphasis added). See *20th Century Ins. Co.*, 90 Cal.App.4th at 1263–64 (holding the “running of
a statute of limitations **does not grant a defendant a vested right of repose**” and “even if the
running of the limitations period created a vested right in defendant, such a right yields to important
state interests, without any violation of due process.” (emphasis added)).

V.

CONCLUSION

Because the controlling Nevada law that resulted in the Order has changed and requires a different result, the HOA respectfully requests an order reversing the Order and the subsequent Rule 54(b) Order pursuant to NRCP 59(e) to allow the Association to prosecute its construction defect Counterclaims on the merits.

DATED this 9th day of September, 2019.

Respectfully submitted,

KEMP, JONES & COULTHARD, LLP

/s/ Michael J. Gayan

WILLIAM L. COULTHARD, ESQ. (#3927)
MICHAEL J. GAYAN, ESQ., (#11135)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

FRANCIS I. LYNCH, ESQ. (#4145)
LYNCH & ASSOCIATES LAW GROUP
1445 American Pacific Drive, Suite 110 #293
Henderson, Nevada 89074
T: (702) 868-1115
F: (702) 868-1114
SCOTT WILLIAMS (*admitted pro hac vice*)
WILLIAMS & GUMBINER, LLP
1010 B Street, Suite 200
San Rafael, California 94901
T: (415) 755-1880
F: (415) 419-5469

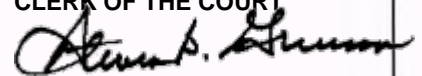
*Counsel for Defendant/Counter-claimant
Panorama Towers Condominium Unit
Owners' Association*

Certificate of Service

I hereby certify that on the 9th day of September, 2019, the foregoing **DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF LAW** was served on the following by Electronic Service to all parties on the Court's service list.

/s/ Angela Embrey
An employee of Kemp, Jones & Coulthard, LLP

Exhibit 1



FFCO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Case No. A-16-744146-D

Dept. No. XXII

**LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,**

Plaintiffs,

Vs.

**PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation.**

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

**PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation,**

Counter-Claimant,

Vs.

**LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,**

Counter-Defendants.

1 **PANORAMA TOWERS**
2 **CONDOMINIUM UNIT OWNERS'**
3 **ASSOCIATION, a Nevada non-profit**
4 **corporation,**

5 **Third-Party Plaintiff,**

6 **Vs.**

7 **SIERRA GLASS & MIRROR, INC.; F.**
8 **ROGERS CORPORATION; DEAN**
9 **ROOFING COMPANY; FORD**
10 **CONSTRUCTING, INC.; INSULPRO,**
11 **INC.; XTREME EXCAVATION;**
12 **SOUTHERN NEVADA PAVING, INC.;**
13 **FLIPPINS TRENCHING, INC.;**
14 **BOMBARD MECHANICAL, LLC; R.**
15 **RODGERS CORPORATION; FIVE**
16 **STAR PLUMBING & HEATING, LLC**
17 **dba SILVER STAR PLUMBING; and**
18 **ROES 1 through 1000, inclusive,**

19 **Third-Party Defendants.¹**

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

21 These matters concerning:

- 22 1. Plaintiffs'/Counter-Defendants' Motion for Summary Judgment Pursuant to NRS
23 11.202(1) filed February 11, 2019; and
- 24 2. Defendant's/Counter-Claimant's Conditional Counter-Motion for Relief Pursuant to
25 NRS 40.695(2) filed March 1, 2019,
26 both came on for hearing on the 23rd day of April 2019 at the hour of 8:30 a.m. before Department
27 XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN
28 H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION,

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 INC. appeared by and through their attorneys, JEFFREY W. SAAB, ESQ. and DEVIN R.
2 GIFFORD, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
3 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS' ASSOCIATION appeared by and through their attorneys, MICHAEL J. GAYAN,
5 ESQ. of the law firm, KEMP JONES & COULTHARD.² Having reviewed the papers and pleadings
6 on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this
7 Court makes the following Findings of Fact and Conclusions of Law:
8

9 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

10 1. This case arises as a result of alleged constructional defects within both the common
11 areas and the 616 residential condominium units located within two tower structures of the
12 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
13 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
14 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
15 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), identifying
16 deficiencies within the residential tower windows, fire blocking, mechanical room piping and sewer.
17 Subsequently, after the parties engaged in the pre-litigation process with the NRS 40.680 mediation
18 held September 26, 2016 with no success, the Contractors filed their Complaint on September 28,
19 2016 against the Owners' Association, asserting the following claims that, for the most part, deal
20 with their belief the NRS 40.645 notice was deficient:
21

- 22
- 23 1. Declaratory Relief—Application of AB 125;
 - 24 2. Declaratory Relief—Claim Preclusion;
- 25

26 ²SCOTT A. WILLIAMS, ESQ. of the law firm, WILLIAMS & GUMBINER, also appeared telephonically on
27 behalf of PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION. Via Minute Order filed
28 January 13, 2017, this Court granted the Motion to Associate Counsel filed January 3, 2017 given non-opposition by
Plaintiffs/Counter-Defendants. However, no formal proposed Order granting the motion was ever submitted to the Court
for signature.

3. Failure to Comply with NRS 40.600, *et seq.*;
4. Suppression of Evidence/Spoliation;
5. Breach of Contract (Settlement Agreement in Prior Litigation);
6. Declaratory Relief—Duty to Defend; and
7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;
2. Negligence and Negligence *Per Se*;
3. Products Liability (against the manufacturers);
4. Breach of (Sales) Contract;
5. Intentional/Negligent Disclosure; and
6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4) years set forth in NRS 11.220.³ With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid with respect to the windows' constructional defects only.⁴

...

³See Findings of Fact, Conclusions of Law and Order filed September 15, 2017.

⁴See Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

1 4. The Builders or Contractors now move this Court for summary judgment upon the
2 basis the Association's claims are time-barred by the six-year statute of repose set forth in NRS
3 11.202(1), as amended by Assembly Bill (AB) 125 in 2015, in that its two residential towers were
4 substantially completed on January 16, 2008 (Tower I) and March 26, 2008 (Tower II), respectively,
5 and claims were not brought until February 24, 2016 when the NRS 40.645 Notice was sent; further,
6 the Association did not file its Counter-Claim until March 1, 2017.

7
8 5. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION
9 opposes, arguing, first, the Builders do not provide this Court all facts necessary to decide the
10 motion which, therefore, requires its denial. Specifically, NRS 11.2055, the statute identifying the
11 date of substantial completion, defines such as being the latest of *three* events: (1) date the final
12 building inspection of the improvement is conducted; (2) date the notice of completion is issued for
13 the improvement; or (3) date the certificate of occupancy is issued. Here, the Association argues the
14 Builders provided only the dates the Certificates of Occupancy were issued for the two towers.⁵
15 Second, the NRS 40.645 notice was served within the year of "safe harbor" which tolled any
16 limiting statutes, and the primary action was filed within two days of NRS Chapter 40's mediation.
17 In the Owners' Association's view, its Counter-Claim filed March 1, 2017 was compulsory to the
18 initial Complaint filed by the Builders, meaning its claims relate back to September 28, 2016, and
19 thus, is timely. Further, the Association notes it learned of the potential window-related claims in
20 August 2013, less than three years before it served its notice, meaning their construction defect
21 action is not barred by the statute of limitations. The Association also counter-moves this Court for
22 relief under NRS 40.695(2) as, in its view, good cause exists for this Court to extend the tolling
23 period to avoid time-barring its constructional defect claims.
24
25

26
27 ⁵As noted *infra*, the Certificates of Occupancy also identify the date of the final building inspection as being
28 March 16, 2007 (Tower I) and July 16, 2007 (Tower II). That is, the Builders identified two of the three events, and not
just one.

CONCLUSIONS OF LAW

1
2 1. Summary judgment is appropriate and “shall be rendered forthwith” when the
3 pleadings and other evidence on file demonstrates no “genuine issue as to any material fact
4 [remains] and that the moving party is entitled to a judgment as a matter of law.” *See* NRCP 56(c);
5 Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005). The substantive law controls
6 which factual disputes are material and will preclude summary judgment; other factual disputes are
7 irrelevant. *Id.*, 121 Nev. at 731. A factual dispute is genuine when the evidence is such that a
8 rational trier of fact could return a verdict for the non-moving party. *Id.*

9
10 2. While the pleadings and other proof must be construed in a light most favorable to
11 the non-moving party, that party bears the burden “to do more than simply show that there is some
12 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in
13 the moving party’s favor. Matsushita Electric Industrial Co. v. Zenith Radio, 475, 574, 586 (1986),
14 *cited by* Wood, 121 Nev. at 732. The non-moving party “must, by affidavit or otherwise, set forth
15 specific facts demonstrating the evidence of a genuine issue for trial or have summary judgment
16 entered against him.” Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992),
17 *cited by* Wood, 121 Nev. at 732. The non-moving party “is not entitled to build a case on the
18 gossamer threads of whimsy, speculation, and conjecture.” Bulbman, 108 Nev. at 110, 825 P.2d
19 591, *quoting* Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983).

20
21 3. Four of Builders’ causes of action seek declaratory relief under NRS Chapter 30.
22
23 NRS 30.040(1) provides:

24 Any person interested under a deed, written contract or other writings constituting a contract,
25 or whose rights, status or other legal relations are affected by a statute, municipal ordinance,
26 contract or franchise, may have determined any question of construction or validly arising
27 under the instrument, statute, ordinance, contract or franchise and obtain a declaration of
28 rights, status or other legal relations thereunder.

...

1 Actions for declaratory relief are governed by the same liberal pleading standards applied in other
2 civil actions, but they must raise a present justiciable issue. Cox v. Glenbrook Co., 78 Nev. 254,
3 267-268, 371 P.2d 647, 766 (1962). Here, a present justiciable issue exists as PANORAMA
4 TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION served the Builders with a notice
5 of constructional defects pursuant to NRS 40.645 on February 24, 2016, and later demonstrated its
6 intention to purchase the claims through this litigation. As noted above, the Contractors propose the
7 remaining claim for constructional defects within the windows is time-barred by virtue of the six-
8 year statute of repose enacted retroactively by the 2015 Nevada Legislature through AB 125. As set
9 forth in their First Cause of Action, the Builders seek a declaration from this Court as to the rights,
10 responsibilities and obligations of the parties as they pertain to the association's claim. As the
11 parties have raised arguments concerning the application of both statutes of repose and limitation,
12 this Court begins its analysis with a review of them.
13

14
15 4. The statutes of repose and limitation are distinguishable and distinct from each other.
16 "Statutes of repose' bar causes of action after a certain period of time, regardless of whether
17 damage or an injury has been discovered. In contrast, 'statutes of limitation' foreclose suits after a
18 fixed period time following occurrence or discovery of an injury." Alenz v. Twin Lakes Village,
19 108 Nev. 1117, 1120, 843 P.2d 834, 836 (1993), *citing* Allstate Insurance Company v. Furgerson,
20 104 Nev. 772, 775 n.2, 766 P.2d 904, 906 n.2 (1988). Of the two, the statute of repose sets an
21 outside time limit, generally running from the date of substantial completion of the project and with
22 no regard to the date of injury, after which cause of action for personal injury or property damage
23 allegedly caused by the deficiencies in the improvements to real property may not be brought. G
24 and H Associates v. Ernest W. Hahn, Inc., 113 Nev. 265, 271, 934 P.2d 229, 233 (1977), *citing*
25 Lamb v. Wedgewood South Corp., 308 N.C. 419302 S.E.2d 868, 873 (1983). While there are
26

27 ...
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1 instances where both the statutes of repose and limitations may result to time-bar a particular claim,
2 there also are situations where one statute obstructs the cause of action, but the other does not.

3 5. NRS Chapter 11 does not set forth a specific statute of limitations dealing with the
4 discovery of constructional defects located within a residence. However, the Nevada Supreme Court
5 has held these types of claims are subject to the “catch all” statute, NRS 11.220. *See Hartford*
6 *Insurance Group v. Statewide Appliances, Inc.*, 87 Nev. 195, 198, 484 P.2d 569, 571 (1971).⁶ This
7 statute specifically provides “[a]n action for relief, not hereinbefore provided for, must be
8 commenced within 4 years after the cause of action shall have accrued.”
9

10 6. The four-year limitations period identified in NRS 11.220 begins to run at the time
11 the plaintiff learns, or in the exercise of reasonable diligence should have learned of the harm to the
12 property caused by the constructional defect. *Tahoe Village Homeowners Association v. Douglas*
13 *County*, 106 Nev. 660, 662-664, 799 P.2d 556, 558 (1990), *citing Oak Grove Investment v. Bell &*
14 *Gossett Co.*, 99 Nev. 616621-623, 669 P.2d 1075, 1078-1079 (1983); *also see G and H Associates,*
15 *113 Nev. at 272, 934 P.2d at 233, citing Nevada State Bank v. Jamison Partnership*, 106 Nev. 792,
16 800, 801 P.2d 1377, 1383 (1990) (statutes of limitations are procedural bars to a plaintiff’s action;
17 the time limits do not commence and the cause of action does not accrue until the aggrieved party
18 knew or reasonably should have known of the facts giving rise to the damage or injury); *Beazer*
19 *Homes Nevada, Inc. v. District Court*, 120 Nev. 575, 587, 97 P.3d 1132, 1139 (2004) (“For
20 constructional defect cases, the statute of limitations does not begin to run until ‘the time the
21 plaintiff learns, or in the exercise of reasonable diligence should have learned, of the harm to the
22 property.’”).
23
24

25
26 ⁶In *Hartford Insurance Group*, an action was brought for damages to a home caused by an explosion of a heater
27 made for use with natural as opposed to propane gas. The State’s high court held such matter was not an “action for
28 waste or trespass to real property” subject to a three-year statute of limitation nor was it an “action upon a contract...not
founded upon an instrument in writing” even though plaintiff sued under a theory of breach of express and implied
warranties. *See* NRS 11.190. This action fell into the “catch all” section, NRS 11.220, the statute of limitations of
which is four (4) years.

1 7. Prior to February 25, 2015, when AB 125 was enacted into law, the statutes of repose
2 were contained in NRS 11.203 through 11.205, and they barred actions for deficient construction
3 after a certain number of years from the date the construction was substantially completed. *See*
4 Alenz, 108 Nev. at 1120, 843 P.2d at 836. NRS 11.203(1) provided an action based on a known
5 deficiency may not be brought “more than 10 years after the substantial completion of such an
6 improvement.” NRS 11.204(1) set forth an action based on a latent deficiency may not be
7 commenced “more than 8 years after the substantial completion of such an improvement....” NRS
8 11.205(1) stated an action based upon a patent deficiency may not be commenced “more than 6
9 years after the substantial completion of such an improvement....” Further, and notwithstanding the
10 aforementioned, if the injury occurred in the sixth, eighth or tenth year after the substantial
11 completion of such an improvement, depending upon which statute of repose was applied, an action
12 for damages for injury to property or person could be commenced within two (2) years after the date
13 of injury. *See* NRS 11.203(2), 11.204(2) *and* 11.205(2) as effective prior to February 24, 2015.

14
15
16 8. In addition, prior to the enactment of AB 125, NRS 11.202 identified an exception to
17 the application of the statute of repose. This exception was the action could be commenced against
18 the owner, occupier or any person performing or furnishing the design, planning, supervision or
19 observation of construction, or the construction of an improvement to real property *at any time* after
20 the substantial completion where the deficiency was the result of willful misconduct or fraudulent
21 misconduct. For the NRS 11.202 exception to apply, it was the plaintiff, not the defendant, who had
22 the burden to demonstrate defendant’s behavior was based upon willful misconduct. *See Acosta v.*
23 Glenfed Development Corp., 128 Cal.App.4th 1278, 1292, 28 Cal.Rptr.3d 92, 102 (2005).

24
25 9. AB 125 made sweeping revisions to statutes addressing residential construction
26 defect claims. One of those changes included revising the statutes of repose from the previous six
27 (6), eight (8) and ten (10) years to no “more than 6 years after the substantial completion of such an
28

improvement...” See NRS 11.202 (as revised in 2015). As set forth in Section 17 of AB 125, NRS 11.202 was revised to state in pertinent part as follows:

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

- (a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;
 - (b) Injury to real or personal property caused by any such deficiency; or
 - (c) Injury to or the wrongful death of a person caused by any such deficiency.
- (Emphasis added)

In addition, the enactment of AB 125 resulted in a deletion of the exception to the application of the statute of repose based upon the developer’s willful misconduct or fraudulent concealment.

10. Section 21(5) of AB 125 provides the period of limitations on actions set forth NRS 11.202 is to be applied *retroactively* to actions in which the substantial completion of the improvement to the real property occurred before the effective date of the act. However, Section 21(6) also incorporated a “safe harbor” or grace period, meaning actions that accrued before the effective date of the act are not limited if they are commenced within one (1) year of AB 125’s enactment, or no later than February 24, 2016.

11. NRS 11.2055 identifies the date the statute of repose begins to run in constructional defect cases, to wit: the date of substantial completion of improvement to real property. NRS 11.2055(1) provides:

1. Except as otherwise provided in subsection 2, for the purposes of this section and NRS 11.202, the date of substantial completion of an improvement to real property shall be deemed to be the date on which:

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

...

1 NRS 11.2055(2) states “[i]f none of the events described in subsection 1 occurs, the date of
2 substantial completion of an improvement to real property must be determined by the rules of the
3 common law.”

4 **12.** While the statute of repose’s time period was shortened, NRS 40.600 to 40.695’s
5 tolling provisions were not retroactively changed. That is, statutes of limitation or repose applicable
6 to a claim based upon a constructional defect governed by NRS 40.600 to 40.695 *still* toll deficiency
7 causes of action from the time the NRS 40.645 notice is given until the earlier of one (1) year after
8 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
9 writing. *See* NRS 40.695(1). Further, statutes of limitation and repose may be tolled under NRS
10 40.695(2) for a period longer than one (1) year after notice of the claim is given but only if, in an
11 action for a constructional defect brought by a claimant after the applicable statute of limitation or
12 repose has expired, the claimant demonstrates to the satisfaction of the court good cause exists to toll
13 the statutes of limitation and repose for a longer period.
14

15 **13.** In this case, the Owners’ Association argues the Builders have not provided sufficient
16 information to determine when the statute of repose started to accrue, and without it, this Court
17 cannot decide the motion for summary judgment. Specifically, PANORAMA TOWERS
18 CONDOMINIUM UNIT OWNERS’ ASSOCIATION proposes the Builders have identified only
19 one date addressed within NRS 11.2055(1), and to establish the date of accrual, this Court needs all
20 three as the defining date is the one which occurs last. This Court disagrees with the Association’s
21 assessment the date of substantial completion has not been established for at least a couple of
22 reasons. *First*, the Builders did not provide just one date; they identified two events addressed in
23 NRS 11.2055, i.e. the date of the final building inspection and when the Certificate of Occupancy
24 was issued as identified in Exhibits C and D of their motion. Those dates are March 16, 2007 and
25 January 16, 2008, respectively, for Tower I, and July 16, 2007 and March 26, 2008, respectively, for
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1 Tower II. *Second*, this Court does not consider the Builders' inability or failure to provide the date
2 of the third event, i.e. when the notice of completion was issued, as fatal to the motion, especially
3 given the common-law "catch-all" provision expressed in NRS 11.2055(2) that applies if none of the
4 events described in NRS 11.2055(1) occurs. This Court concludes the dates of substantial
5 completion are January 16, 2008 (Tower I) and March 16, 2008 (Tower II), respectively, as these
6 dates are the latest occurrences. Given this Court's decision, the dates of substantial completion
7 obviously accrued before the enactment of AB 125. Applying the aforementioned analysis to the
8 facts here, this Court concludes the statute of repose applicable to the Association's constructional
9 defects claim is six (6) years, but, as it accrued prior to the effective date of AB 125 or February 24,
10 2015, the action is not limited if it was commenced within one (1) year after, or by February 24,
11 2016.
12

13 **14.** In this case, the Association served its NRS 40.645 constructional defect notice on
14 February 24, 2016, or the date the one-year "safe harbor" was to expire. The service of the NRS
15 40.645 notice operated to toll the applicable statute of repose until the earlier of one (1) year after
16 notice of the claim or thirty (30) days after the NRS 40.680 mediation is concluded or waived in
17 writing. *See* NRS 40.695(1). The NRS 40.680 mediation took place and was concluded on
18 September 26, 2016. Applying the earlier of the two expiration dates set forth in NRS 40.695, the
19 statute of repose in this case was tolled thirty (30) days after the mediation or until October 26, 2016,
20 which is earlier than the one (1) year after the notice was served. PANORAMA TOWERS
21 CONDOMINIUM UNIT OWNERS' ASSOCIATION had up to and including October 26, 2016 to
22 institute litigation or its claims would be time-barred.
23

24 **15.** PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION filed
25 its Counter-Claim against the Builders on March 1, 2017, over four (4) months after October 26,
26 2016. As noted above, in the Builders' view, the constructional defect claims relating to the
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1 windows, therefore, are time-barred. The Association disagrees, arguing its Counter-Claim was
2 compulsory, and it relates back to the date of the Complaint's filing, September 28, 2016.

3 Alternatively, the Association counter-moves this Court for relief, and to find good cause exists to
4 toll the statute of repose for a longer period given its diligence in prosecuting the constructional
5 defect claims against the Builders. The Court analyzes both of the Association's points below.

6 **16.** NRCP 13 defines both compulsory and permissive counter-claims. A counter-claim
7 is compulsory if it arises out of the transaction or occurrence that is the subject matter of the
8 opposing party's claim and does not require for its adjudication the presence of third parties of
9 whom the court cannot acquire jurisdiction. *See* NRCP 13(a). The purpose of NRCP 13(a) is to
10 make an "actor" of the defendant so circuity of action is discouraged and the speedy settlement of all
11 controversies between the parties can be accomplished in one action. *See Great W. Land & Cattle*
12 *Corp. v. District Court*, 86 Nev. 282, 285, 467 P.2d 1019, 1021 (1970). In this regard, the
13 compulsory counter-claimant is forced to plead his claim or lose it. *Id.* A counter-claim is
14 permissive if it does not arise out of the transaction or occurrence that is the subject matter of the
15 opposing party's claim. *See* NRCP 13(b).

16 **17.** Here, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
17 ASSOCIATION proposes its counter-claims are compulsory as they arise out of the same
18 transaction or occurrence that is the subject matter of the Builders' claims. This Court disagrees.
19 The Builders' claims are for breach of the prior settlement agreement and declaratory relief
20 regarding the sufficiency of the NRS 40.645 notice and application of AB 125. The Association's
21 counter-claims of negligence, intentional/negligent disclosure, breach of sales contract, products
22 liability, breach of express and implied warranties under and violations of NRS Chapter 116, and
23 breach of duty of good faith and fair dealing are for monetary damages as a result of constructional
24 defects to its windows in the two towers. If this Court ruled against the Builders on their Complaint,
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1 the Association would not have lost their claims if they had not pled them as counter-claims in the
2 instant lawsuit. In this Court's view, the Association had two options: it could make a counter-claim
3 which is permissive or assert its constructional defect claims in a separate Complaint. Here, it
4 elected to make the permissive counter-claim. The counter-claim does not relate back to the filing
5 of the Complaint, September 28, 2016.

6 **18.** However, even if this Court were to decide the counter-claim was compulsory,
7 meaning the Association was forced to plead its claims in the instant case or lose them, the pleading
8 still would not relate back to the date of the Complaint' filing. As noted in Nevada State Bank v.
9 Jamison Family Partnership, 106 Nev. 792, 798, 801 P.2d 1377, 1381 (1990), statutes of limitation
10 and repose were enacted to "'promote repose by giving security and stability to human
11 affairs....They stimulate to activity and punish negligence.'" *Citing* Wood v. Carpenter, 101 U.S.
12 135, 139, 25 L.Ed.2d 807 (1879). Indeed, the key purpose of a repose statute is to eliminate
13 uncertainties under the related statute of limitations or repose and to create a final deadline for filing
14 suit that is not subject to any exceptions except perhaps those clearly specified by the state's
15 legislature. Without a statute of repose, professionals, contractors and other actors would face
16 never-ending uncertainty as to liability for their work. As stated by the Supreme Court in Texas in
17 Methodist Healthcare System of San Antonio, Ltd., LLP v. Rankin, 53 Tex.Sup.Ct.J. 455, 307
18 S.W.3d 283, 287 (2010), "'while statutes of limitations operate procedurally to bar the enforcement
19 of a right, a statute of repose takes away the right altogether, creating a substantive right to be free of
20 liability after a specified time.'" *Quoting* Galbraith Engineering Consultants, Inc. v. Pochucha, 290
21 S.W.3d 863, 866 (Tex. 2009). For the reasons articulated above, the Nevada Supreme Court held
22 the lower court did not err by finding a plaintiff, by instituting an action before the expiration of a
23 statute of limitation, does not toll the running of that statute against compulsory counter-claims filed
24 ...
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1 by a defendant after the statute has expired. In short, whether the Association's counter-claims are
2 compulsory or permissive, the filing of the Builders' Complaint did not toll the statute of repose.

3 **19.** The next question is whether good cause exists for this Court to toll the statute of
4 repose for a longer period as so authorized in NRS 40.695(2). The Association proposes there is
5 good cause given their diligence in prosecuting their constructional defect claims, and, as they are
6 seeking tolling of only five (5) days after the one (1) year anniversary of the original NRS 40.645
7 notice, the Builders' ability to defend the deficiency causes of action has not been adversely
8 impacted. In making this argument, the Association seems to assume the tolling under NRS 40.695
9 ended February 24, 2017, or one (1) year after it served the NRS 40.645 notice when, in actuality,
10 the tolling ended October 26, 2016, or thirty (30) days after the NRS 40.680 mediation. *See*
11 40.695(1). The Association does not show this Court good cause exists for its failure to institute
12 litigation before October 26, 2016. Whether the Builders' ability to defend the Association's claim
13 is not adversely affected is, therefore, not relevant to the issue of good cause. Accordingly, this
14 Court declines tolling the statute of repose for a period longer than one (1) year after the NRS
15 40.645 notice was made. The Builders' Motion for Summary Judgment is granted, and the
16 Association's Conditional Counter-Motion for Relief is denied.

17 **20.** As this Court decides the six-year statute of repose bars the Association's
18 constructional defect claims, it does not analyze the statute of limitations issue presented.

19 Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,
20

21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiffs'/Counter-
22 Defendants' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 is
23 granted; and
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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Defendant's/Counter-
2 Claimant's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019
3 is denied.

4 DATED this 23rd day of May 2019.

5
6 
7 _____
8 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
9

CERTIFICATE OF SERVICE

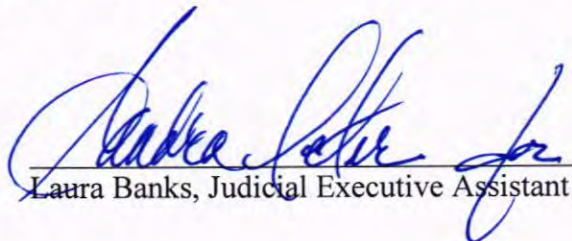
I hereby certify, on the 23rd day of May 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

FRANCIS I. LYNCH, ESQ.
CHARLES "DEE" HOPPER, ESQ.
SERGIO SALZANO, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant

File Into Existing Case

Case Number	Location	Name	Description	Case Type	Email
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s)...	Chapter 40		
1	20	items per page			
1 - 1 of 1 items					
<div> <div>▼</div> <div>Party: Panorama Towers Condominium Unit Owners Association - Defendant</div> </div>					
<div> <div>Angela Embrey</div> <div>a.embrey@kempjones.com</div> </div>					
<div> <div>Michael J. Gayan</div> <div>m.gayan@kempjones.com</div> </div>					
<div> <div>Nicole McLeod</div> <div>n.mcleod@kempjones.com</div> </div>					
<div> <div>Patricia Ann Pierson</div> <div>p.pierson@kempjones.com</div> </div>					
<div> <div>▶</div> <div>Party: Laurent Hallier - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I LLC - Plaintiff</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I LLC - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I Mezz LLC - Plaintiff</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers I Mezz LLC - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: MJ Dean Construction Inc - Plaintiff</div> </div>					
<div> <div>▶</div> <div>Party: MJ Dean Construction Inc - Counter Defendant</div> </div>					
<div> <div>▶</div> <div>Party: Panorama Towers Condominium Unit Owners Association - Counter Claimant</div> </div>					
<div> <div>1</div> <div>2</div> <div>3</div> <div>10</div> <div>items per page</div> </div>					

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File Into Existing Case

Case Number	Location	Name	Description	Case Type	Email
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s)...	Chapter 40		
1	20	Party: Southern Nevada Paving Inc - Counter Defendant			
		Party: Insulpro Inc - Counter Defendant			
		Other Service Contacts			
		"Charles ""Dee"" Hopper, Esq. "			CDHopper@lynchhopper.com
		"Francis I. Lynch, Esq. "			FLynch@lynchhopper.com
		Ben Ross .			Ben@litigationservices.com
		Calendar .			calendar@litigationservices.com
		Colin Hughes .			colin@lynchhopper.com
		Crystal Williams .			cwilliams@bremerwhyte.com
		Darlene Cartier .			dcartier@bremerwhyte.com
		Debbie Holloman .			dholloman@jamsadr.com
		Depository .			Depository@litigationservices.com
		Floyd Hale .			fhale@floydhale.com
		Jennifer Juarez .			jjuaraz@lynchhopper.com
		Peter C. Brown .			pbrown@bremerwhyte.com
		Rachel Bounds .			rbounds@bremerwhyte.com
		Scott Williams .			swilliams@williamsgumbiner.com
		Shauna Hughes .			shughes@lynchhopper.com
		Terri Scott .			tscott@fmglegal.com
		Vicki Federoff .			vicki@williamsgumbiner.com
		Wendy Jensen .			wjensen@williamsgumbiner.com
		Kimberley Chapman			kchapman@bremerwhyte.com
		Christie Cyr			ccyr@leachjohnson.com
		Devin R. Gifford			dgifford@bremerwhyte.com
		Terry Kelly-Lamb			tkelly-lamb@kringandchung.com
		Nancy Ray			nray@kringandchung.com
		Alondra A Reynolds			areynolds@bremerwhyte.com
		Jeff W. Saab			jsaab@bremerwhyte.com
		Robert L. Thompson			rthompson@kringandchung.com
		Jennifer Vela			Jvela@bremerwhyte.com
		1	2	3	10 items per page

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Exhibit 2

CHAPTER.....

AN ACT relating to construction; revising provisions relating to the information required to be included in a notice of a constructional defect; removing provisions requiring the presence of an expert during an inspection of an alleged constructional defect; establishing provisions relating to a claimant pursuing a claim under a builder's warranty; removing certain provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; revising provisions relating to the recovery of damages proximately caused by a constructional defect; increasing the period during which an action for the recovery of certain damages may be commenced; revising the prohibition against a unit-owners' association pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant: (1) is required to give written notice to the contractor; and (2) if the contractor is no longer licensed or acting as a contractor in this State, is authorized to give notice to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect. Existing law also requires that such a notice identify in specific detail each defect, damage and injury to each residence or appurtenance that is the subject of the claim. (NRS 40.645) **Section 2** of this bill instead requires that such a notice specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim.

Existing law requires that after notice of a constructional defect is given by a claimant to a contractor, subcontractor, supplier or design professional, the claimant and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert or his or her representative with knowledge of the alleged defect must: (1) be present when a contractor, subcontractor, supplier or design professional conducts an inspection of the alleged constructional defect; and (2) identify the exact location of each alleged constructional defect. (NRS 40.647) **Section 3** of this bill removes the requirement that an expert who provided an opinion concerning the alleged constructional defect or his or her representative be present at an inspection and revises certain other requirements.

Existing law provides that if a residence or appurtenance that is the subject of a claim is covered by a homeowner's warranty purchased by or on behalf of the claimant: (1) the claimant is prohibited from sending notice of a constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) notice of a constructional defect may only include claims that were denied by the insurer. (NRS 40.650) **Section 4** of this bill removes such provisions, and **section 1.5** of this bill replaces the term "homeowner's warranty" with



“builder’s warranty” and clarifies that such a warranty is not a type of insurance. **Section 4** provides that if a residence or appurtenance that is the subject of a claim is covered by a builder’s warranty, the claimant is required to diligently pursue a claim under the builder’s warranty. **Section 5.5** of this bill makes conforming changes.

Existing law also provides that if a residence or appurtenance that is the subject of a claim is covered by a homeowner’s warranty purchased by or on behalf of the claimant, statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner’s warranty until 30 days after the insurer rejects the claim, in whole or in part. (NRS 40.650) **Section 4** removes this provision.

Existing law establishes the damages proximately caused by a constructional defect that a claimant is authorized to recover, including additional costs reasonably incurred by the claimant for constructional defects proven by the claimant. (NRS 40.655) **Section 5** of this bill removes the requirement that such costs be limited to constructional defects proven by the claimant.

Existing law prohibits an action for the recovery of certain damages against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property, from being commenced more than 6 years after the substantial completion of such an improvement. (NRS 11.202) **Section 7** of this bill increases such a period to 10 years after the substantial completion of such an improvement. **Section 7** also: (1) authorizes such an action to be commenced at any time after the substantial completion of such an improvement if any act of fraud caused a deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement; and (2) exempts lower-tiered subcontractors from such an action in certain circumstances.

Existing law prohibits a unit-owners’ association from instituting, defending or intervening in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units’ owners relating to an action for a constructional defect unless the action pertains exclusively to common elements. (NRS 116.3102) **Section 8** of this bill requires that such an action for a constructional defect pertain to: (1) common elements; (2) any portion of the common-interest community that the association owns; or (3) any portion of the common-interest community that the association does not own but has an obligation to maintain, repair, insure or replace because the governing documents of the association expressly make such an obligation the responsibility of the association.

Existing law authorizes a unit-owners’ association to enter the grounds of a unit to conduct certain maintenance or remove or abate a public nuisance, or to enter the grounds or interior of a unit to abate a water or sewage leak or take certain other actions in certain circumstances. (NRS 116.310312) **Section 8.5** of this bill provides that such provisions do not give rise to any rights or standing for a claim for a constructional defect.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)



Sec. 1.5. NRS 40.625 is hereby amended to read as follows:

40.625 ~~["Homeowner's"]~~ **"Builder's** warranty" means a warranty ~~for policy of insurance:~~

~~—1. Issued~~ **issued** or purchased by or on behalf of a contractor for the protection of a claimant. ~~;~~ **or**

~~—2. Purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive.~~

~~↪~~ The term ~~[includes]~~ :

1. Includes a warranty contract issued by **or on behalf of a contractor whose liability pursuant to the warranty contract is subsequently insured** by a risk retention group that operates in compliance with chapter 695E of NRS and insures all or any part of the liability of a contractor for the cost to repair a constructional defect in a residence.

2. Does not include a policy of insurance for home protection as defined in NRS 690B.100 or a service contract as defined in NRS 690C.080.

Sec. 2. NRS 40.645 is hereby amended to read as follows:

40.645 1. Except as otherwise provided in this section and NRS 40.670, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant:

(a) Must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's address listed in the records of the State Contractors' Board or in the records of the office of the county or city clerk or at the contractor's last known address if the contractor's address is not listed in those records; and

(b) May give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect, if the claimant knows that the contractor is no longer licensed in this State or that the contractor no longer acts as a contractor in this State.

2. The notice given pursuant to subsection 1 must:

(a) Include a statement that the notice is being given to satisfy the requirements of this section;

(b) ~~[Identify]~~ **Specify** in ~~[specify]~~ **reasonable** detail ~~each defect, damage and injury~~ **the defects or any damages or injuries** to each residence or appurtenance that is the subject of the claim ~~;~~ **;** ~~including, without limitation, the exact location of each such defect, damage and injury;~~



(c) Describe in reasonable detail the cause of the defects if the cause is known and the nature and extent that is known of the damage or injury resulting from the defects; and

(d) Include a signed statement, by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners' association, the statement required by this paragraph must be signed under penalty of perjury by a member of the executive board or an officer of the homeowners' association.

3. A representative of a homeowners' association may send notice pursuant to this section on behalf of an association if the representative is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS.

4. Notice is not required pursuant to this section before commencing an action if:

(a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or

(b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.

Sec. 3. NRS 40.647 is hereby amended to read as follows:

40.647 1. After notice of a constructional defect is given pursuant to NRS 40.645, before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to NRS 40.6462;

(b) Be present *or have a representative of the claimant present* at an inspection conducted pursuant to NRS 40.6462 and *, to the extent possible, reasonably* identify the ~~{exact location of each alleged constructional defect}~~ *proximate locations of the defects, damages or injuries* specified in the notice *;* ~~{and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert, or a representative of the expert who has knowledge of the alleged constructional defect, must also be present at the inspection and identify the exact location of each alleged constructional defect for which the expert provided an opinion;}~~ and



(c) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to NRS 40.6472.

2. If a claimant commences an action without complying with subsection 1 or NRS 40.645, the court shall:

(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or

(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.

Sec. 4. NRS 40.650 is hereby amended to read as follows:

40.650 1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, the court in which the action is commenced may:

(a) Deny the claimant's attorney's fees and costs; and

(b) Award attorney's fees and costs to the contractor.

↪ Any sums paid under a ~~homeowner's~~ **builder's** warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, must be deducted from any recovery.

2. If a contractor, subcontractor, supplier or design professional fails to:

(a) Comply with the provisions of NRS 40.6472;

(b) Make an offer of settlement;

(c) Make a good faith response to the claim asserting no liability;

(d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; or

(e) Participate in mediation,

↪ the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, do not apply and the claimant may commence an action or amend a complaint to add a cause of action for a constructional defect without satisfying any other requirement of NRS 40.600 to 40.695, inclusive.

3. If a residence or appurtenance that is the subject of the claim is covered by a ~~homeowner's~~ **builder's** warranty ~~that is purchased~~



~~by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive:~~

~~—(a) A claimant may not send a notice pursuant to NRS 40.645 or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, unless the claimant has first submitted a claim under the homeowner's warranty and the insurer has denied the claim.~~

~~—(b) A claimant may include in a notice given pursuant to NRS 40.645 only claims for the constructional defects that were denied by the insurer.~~

~~—(c) If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.~~

~~—(d) Statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, are tolled from the time notice of the claim under the homeowner's warranty is submitted to the insurer until 30 days after the insurer rejects the claim, in whole or in part, in writing.] , a claimant shall diligently pursue a claim under the builder's warranty.~~

4. Nothing in this section prohibits an offer of judgment pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS 40.652.

Sec. 5. NRS 40.655 is hereby amended to read as follows:

40.655 1. Except as otherwise provided in NRS 40.650, in a claim governed by NRS 40.600 to 40.695, inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) The reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair;

(b) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

(c) The loss of the use of all or any part of the residence;

(d) The reasonable value of any other property damaged by the constructional defect;

(e) Any additional costs reasonably incurred by the claimant , ~~[for constructional defects proven by the claimant.]~~ including, but



not limited to, any costs and fees incurred for the retention of experts to:

(1) Ascertain the nature and extent of the constructional defects;

(2) Evaluate appropriate corrective measures to estimate the value of loss of use; and

(3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and

(f) Any interest provided by statute.

2. If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, the claimant may not recover from the contractor, as a result of the constructional defect, any damages other than damages authorized pursuant to NRS 40.600 to 40.695, inclusive.

3. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

4. As used in this section, “structural failure” means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

Sec. 5.5. NRS 40.687 is hereby amended to read as follows:
40.687 Notwithstanding any other provision of law:

1. A ~~claimant shall, within 10 days after commencing an action against a contractor, disclose to the contractor all information about any homeowner’s warranty that is applicable to the claim.~~

~~2. The~~ contractor shall, no later than 10 days after a response is made pursuant to this chapter, disclose to the claimant any information about insurance agreements that may be obtained by discovery pursuant to rule 26(b)(2) of the Nevada Rules of Civil Procedure. Such disclosure does not affect the admissibility at trial of the information disclosed.

~~3.~~ 2. Except as otherwise provided in subsection ~~4.~~ 3, if ~~either party~~ the contractor fails to provide the information required pursuant to subsection 1 ~~or 2~~ within the time allowed, the ~~other party~~ claimant may petition the court to compel production of the information. Upon receiving such a petition, the court may order the ~~party~~ contractor to produce the required information and may award the ~~petitioning party~~ claimant reasonable attorney’s fees and costs incurred in petitioning the court pursuant to this subsection.



~~14.1~~ 3. The parties may agree to an extension of time *for the contractor* to produce the information required pursuant to this section.

~~15.1~~ 4. For the purposes of this section, “information about insurance agreements” is limited to any declaration sheets, endorsements and contracts of insurance issued to the contractor from the commencement of construction of the residence of the claimant to the date on which the request for the information is made and does not include information concerning any disputes between the contractor and an insurer or information concerning any reservation of rights by an insurer.

Sec. 6. (Deleted by amendment.)

Sec. 7. NRS 11.202 is hereby amended to read as follows:

11.202 1. No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~16~~ 10 years after the substantial completion of such an improvement, for the recovery of damages for:

(a) ~~Any~~ *Except as otherwise provided in subsection 2, any* deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. *Except as otherwise provided in this subsection, an action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property at any time after the substantial completion of such an improvement, for the recovery of damages for any act of fraud in causing a deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement. The provisions of this subsection do not apply to any lower-tiered subcontractor who performs work that covers up a defect or deficiency in another contractor’s trade if the lower-tiered subcontractor does not know, and should not reasonably know, of the existence of the alleged defect or deficiency at the time of performing such work. As used in this subsection, “lower-tiered subcontractor” has the meaning ascribed to it in NRS 624.608.*

3. The provisions of this section do not apply:



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

(2) Any person on account of a defect in a product.

Sec. 8. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

(c) May hire and discharge managing agents and other employees, agents and independent contractors.

(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. The association may not institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units' owners with respect to an action for a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, unless the action pertains ~~exclusively~~ to ~~common~~ :

(1) *Common* elements ~~†~~;

(2) *Any portion of the common-interest community that the association owns; or*

(3) *Any portion of the common-interest community that the association does not own but has an obligation to maintain, repair, insure or replace because the governing documents of the association expressly make such an obligation the responsibility of the association.*

(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

(f) May regulate the use, maintenance, repair, replacement and modification of common elements.



(g) May cause additional improvements to be made as a part of the common elements.

(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) May grant easements, leases, licenses and concessions through or over the common elements.

(j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) May impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) May impose construction penalties when authorized pursuant to NRS 116.310305.

(m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.

(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) May exercise any other powers conferred by the declaration or bylaws.

(r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or



other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community



that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, “assessment” does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

Sec. 8.5. NRS 116.310312 is hereby amended to read as follows:

116.310312 1. A person who holds a security interest in a unit must provide the association with the person’s contact information as soon as reasonably practicable, but not later than 30 days after the person:

(a) Files an action for recovery of a debt or enforcement of any right secured by the unit pursuant to NRS 40.430; or

(b) Records or has recorded on his or her behalf a notice of a breach of obligation secured by the unit and the election to sell or have the unit sold pursuant to NRS 107.080.

2. If an action or notice described in subsection 1 has been filed or recorded regarding a unit and the association has provided the unit’s owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association, including its employees, agents and community manager, may, but is not required to, enter the grounds of the unit, whether or not the unit is vacant, to take any of the following actions if the unit’s owner refuses or fails to take any action or comply with any requirement imposed on the unit’s owner within the time specified by the association as a result of the hearing:

(a) Maintain the exterior of the unit in accordance with the standards set forth in the governing documents, including, without limitation, any provisions governing maintenance, standing water or snow removal.

(b) Remove or abate a public nuisance on the exterior of the unit which:

(1) Is visible from any common area of the community or public streets;

(2) Threatens the health or safety of the residents of the common-interest community;

(3) Results in blighting or deterioration of the unit or surrounding area; and

(4) Adversely affects the use and enjoyment of nearby units.

3. If:



(a) A unit is vacant;
(b) The association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031; and

(c) The association or its employee, agent or community manager mails a notice of the intent of the association, including its employees, agents and community manager, to maintain the exterior of the unit or abate a public nuisance, as described in subsection 2, by certified mail to each holder of a recorded security interest encumbering the interest of the unit's owner, at the address of the holder that is provided pursuant to NRS 657.110 on the Internet website maintained by the Division of Financial Institutions of the Department of Business and Industry,

↪ the association, including its employees, agents and community manager, may enter the grounds of the unit to maintain the exterior of the unit or abate a public nuisance, as described in subsection 2, if the unit's owner refuses or fails to do so.

4. If a unit is in a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, and the unit is vacant, the association, including its employees, agents and community manager, may enter the grounds and interior of the unit to:

(a) Abate a water or sewage leak in the unit and remove any water or sewage from the unit that is causing damage or, if not immediately abated, may cause damage to the common elements or another unit if the unit's owner refuses or fails to abate the water or sewage leak.

(b) After providing the unit's owner with notice but before a hearing in accordance with the provisions of NRS 116.31031:

(1) Remove any furniture, fixtures, appliances and components of the unit, including, without limitation, flooring, baseboards and drywall, that were damaged as a result of water or mold damage resulting from a water or sewage leak to the extent such removal is reasonably necessary because water or mold damage threatens the health or safety of the residents of the common-interest community, results in blighting or deterioration of the unit or the surrounding area and adversely affects the use and enjoyment of nearby units, if the unit's owner refuses or fails to remediate or remove the water or mold damage.

(2) Remediate or remove any water or mold damage in the unit resulting from the water or sewage leak to the extent such remediation or removal is reasonably necessary because the water or



mold damage threatens the health or safety of the residents of the common-interest community, results in blighting or deterioration of the unit or the surrounding area and adversely affects the use and enjoyment of nearby units, if the unit's owner refuses or fails to remediate or remove the water or mold damage.

5. After the association has provided the unit's owner with notice and an opportunity for a hearing in the manner provided in NRS 116.31031, the association may order that the costs of any maintenance or abatement or the reasonable costs of remediation or removal conducted pursuant to subsection 2, 3 or 4, including, without limitation, reasonable inspection fees, notification and collection costs and interest, be charged against the unit. The association shall keep a record of such costs and interest charged against the unit and has a lien on the unit for any unpaid amount of the charges. The lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

6. A lien described in subsection 5 bears interest from the date that the charges become due at a rate determined pursuant to NRS 17.130 until the charges, including all interest due, are paid.

7. Except as otherwise provided in this subsection, a lien described in subsection 5 is prior and superior to all liens, claims, encumbrances and titles other than the liens described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116. If the federal regulations of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior and superior to other security interests shall be determined in accordance with those federal regulations. Notwithstanding the federal regulations, the period of priority of the lien must not be less than the 6 months immediately preceding the institution of an action to enforce the lien.

8. A person who purchases or acquires a unit at a foreclosure sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS 107.080 is bound by the governing documents of the association and shall maintain the exterior of the unit in accordance with the governing documents of the association. Such a unit may only be removed from a common-interest community in accordance with the governing documents pursuant to this chapter.

9. Notwithstanding any other provision of law, an association, its directors or members of the executive board, employees, agents or community manager who enter the grounds or interior of a unit pursuant to this section are not liable for trespass.



10. *Nothing in this section gives rise to any rights or standing for a claim for a constructional defect made pursuant to NRS 40.600 to 40.695, inclusive.*

11. As used in this section:

(a) “Exterior of the unit” includes, without limitation, all landscaping outside of a unit, the exterior of all property exclusively owned by the unit owner and the exterior of all property that the unit owner is obligated to maintain pursuant to the declaration.

(b) “Remediation” does not include restoration.

(c) “Vacant” means a unit:

(1) Which reasonably appears to be unoccupied;

(2) On which the owner has failed to maintain the exterior to the standards set forth in the governing documents of the association; and

(3) On which the owner has failed to pay assessments for more than 60 days.

Secs. 9 and 10. (Deleted by amendment.)

Sec. 11. 1. The provisions of NRS 40.645 and 40.650, as amended by sections 2 and 4 of this act, respectively, apply to a notice of constructional defect given on or after October 1, 2019.

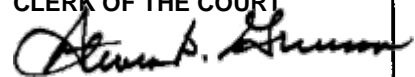
2. The provisions of NRS 40.647, as amended by section 3 of this act, apply to an inspection conducted pursuant to NRS 40.6462 on or after October 1, 2019.

3. The provisions of NRS 40.655, as amended by section 5 of this act, apply to any claim for which a notice of constructional defect is given on or after October 1, 2019.

4. The period of limitations on actions set forth in NRS 11.202, as amended by section 7 of this act, apply retroactively to actions in which the substantial completion of the improvement to the real property occurred before October 1, 2019.



Exhibit 3



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **LAURENT HALLIER, an individual;**
7 **PANORAMA TOWERS I, LLC, a Nevada**
8 **limited liability company; PANORAMA**
9 **TOWERS I MEZZ, LLC, a Nevada limited**
10 **liability company; and M.J. DEAN**
11 **CONSTRUCTION, INC., a Nevada**
12 **corporation,**

13 **Plaintiffs,**

14 **Vs.**

15 **PANORAMA TOWERS**
16 **CONDOMINIUM UNIT OWNERS'**
17 **ASSOCIATION, a Nevada non-profit**
18 **corporation.**

19 **Defendant.**

20 **PANORAMA TOWERS**
21 **CONDOMINIUM UNIT OWNERS'**
22 **ASSOCIATION, a Nevada non-profit**
23 **corporation,**

24 **Counter-Claimant,**

25 **Vs.**

26 **LAURENT HALLIER, an individual;**
27 **PANORAMA TOWERS I, LLC, a Nevada**
28 **limited liability company; PANORAMA**
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

ORDER RE: DEFENDANT'S
MOTION FOR
RECONSIDERATION AND/OR
TO ALTER OR AMEND THE
COURT'S MAY 23, 2019
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER GRANTING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
PURSUANT TO NRS 11.202(1)
FILED JUNE 13, 2019

1 PANORAMA TOWERS
2 CONDOMINIUM UNIT OWNERS'
3 ASSOCIATION, a Nevada non-profit
4 corporation,

5
6 Third-Party Plaintiff,

7 Vs.

8 SIERRA GLASS & MIRROR, INC.; F.
9 ROGERS CORPORATION; DEAN
10 ROOFING COMPANY; FORD
11 CONSTRUCTING, INC.; INSULPRO,
12 INC.; XTREME EXCAVATION;
13 SOUTHERN NEVADA PAVING, INC.;
14 FLIPPINS TRENCHING, INC.;
15 BOMBARD MECHANICAL, LLC; R.
16 RODGERS CORPORATION; FIVE
17 STAR PLUMBING & HEATING, LLC
18 dba SILVER STAR PLUMBING; and
19 ROES 1 through 1000, inclusive,

20 Third-Party Defendants.¹

21
22 **ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER
23 OR AMEND THE COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF
24 LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
25 PURSUANT TO NRS 11.202(1) FILED JUNE 13, 2019**

26
27 This matter concerning Defendant's Motion for Reconsideration of and/or to Alter or Amend
28 the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs'
Motion for Summary Judgment Pursuant to NRS 11.202(1) filed June 13, 2019 was heard on the
16th day of July 2019 at the hour of 8:30 a.m. before Department XXII of the Eighth Judicial District
Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding;
Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC,
PANORAMA TOWERS I MESS, LLC and M.J. DEAN CONSTRUCTION, INC. appeared by and

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¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 through its attorneys, DANIEL F. POLSENBERG, ESQ. of the law firm, LEWIS ROCA
2 ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ. and DEVIN R. GIFFORD, ESQ.,
3 ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and Defendant/Counter-
4 Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
5 ASSOCIATION appeared by and through its attorneys, MICHAEL J. GAYAN, ESQ. and
6 WILLIAM L. COULTHARD, ESQ. of the law firm, KEMP JONES & COULTHARD, and
7 FRANCIS I. LYNCH, ESQ. of the law firm, LYNCH HOPPER. Having reviewed the papers and
8 pleadings on file herein, heard oral arguments of the lawyers and taken this matter under
9 advisement, this Court makes the following Findings of Fact and Conclusions of Law:

11 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

12 1. This case arises as a result of alleged constructional defects within both the common
13 areas and the 616 residential condominium units located within two tower structures of the
14 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
15 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
16 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
17 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), identifying
18 deficiencies within the residential tower windows, fire blocking, mechanical room piping and sewer.
19 Subsequently, after the parties engaged in the pre-litigation process ending with an unsuccessful
20 NRS 40.680 mediation held September 26, 2016, the Contractors filed their Complaint on
21 September 28, 2016 against the Owners' Association, asserting, for the most part, its NRS 40.645
22 notice was deficient. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT
23 OWNERS' ASSOCIATION filed its Answer and Counter-Claim,

24 2. As set forth within its September 15, 2017 Findings of Fact, Conclusions of Law and
25 Order, this Court dismissed the Association's claims for constructional defect located within its
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1 mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4)
2 years set forth in NRS 11.220. With respect to challenges to the sufficiency and validity of the NRS
3 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS’ ASSOCIATION to amend it with more specificity. As expressed within its
5 November 30, 2018 Findings of Fact, Conclusions of Law and Order, this Court ultimately
6 determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid
7 only with respect to the windows’ constructional defects.
8

9 3. On April 23, 2019, this Court heard two motions filed by the parties, to wit: (1) the
10 Builders’ Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 and
11 (2) the Association’s Conditional Counter-Motion for Relief Pursuant to NRS 4.0695(2) filed March
12 1, 2019. After hearing the parties’ arguments, this Court took the matter under advisement, and on
13 May 23, 2019, issued its third Findings of Fact, Conclusions of Law and Order in this case which
14 granted the Builders’ motion, and denied the Association’s Conditional Counter-Motion. As
15 pertinent here, this Court concluded the Owners’ Association’s remaining constructional defect
16 claims lodged against the Builders were time-barred by the six-year statute of repose set forth in
17 NRS 11.202(1).
18

19 4. On June 3, 2019, the Association filed its Motion for Reconsideration of the Court’s
20 May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs’ Motion for
21 Summary Judgment or alternatively, a Motion to Stay the Court’s Order.² Ten days later, on June
22 13, 2019 the Association filed a second Motion for Reconsideration and/or to Alter or Amend the
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25 ²The Association moved this Court to stay the Order upon the basis the Nevada Legislature had passed
26 Assembly Bill (referred to as “AB” herein) 421 on June 1, 2019, which “immediately and retroactively extends the
27 statute of repose to 10 years.” See Motion for Reconsideration of the Court’s May 23, 2019 Findings of Fact,
28 Conclusions of Law and Order Granting Plaintiffs’ Motion for Summary Judgment or alternatively, a Motion to Stay the
Court’s Order filed June 3, 2019, p. 4. The Association urged this Court to stay the Order until such time as AB 241 was
enacted or rejected by the Governor. As set forth *infra*, the Governor signed the bill on June 3, 2019 which was to take
effect October 1, 2019.

1 Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion
2 for Summary Judgment. The second Motion for Reconsideration differed from the first in that it
3 alerted the Court, on June 1, 2019, the Nevada Legislature passed AB 421, and such was signed by
4 the Governor on June 3, 2019. AB 421 amends NRS 11.202 by extending the statute of repose
5 period from six (6) to ten (10) years and it is to be applied retroactively to actions in which the
6 substantial completion of the improvement to real property occurred before October 1, 2019, the
7 date in which the amendment takes effect.
8

9 5. The Builders opposed the two motions on several grounds. First, they noted this
10 Court entered a final order on May 23, 2019, the Notice of Entry of Order was filed May 28, 2019,
11 and thus, by the time the Motion for Reconsideration and/or Stay was filed June 3, 2019, there was
12 no pending matter to stay. Second, while AB 421 was enacted and will apply retroactively, it does
13 not become effective until October 1, 2019, meaning as of now, there is no change in the law. That
14 is, the current period for the statute of repose is six (6) years as enacted February 24, 2015, and not
15 ten (10). Third, as the Association's claims have already been adjudicated, AB 421 cannot be
16 interpreted to revive those causes of action.
17

18 CONCLUSIONS OF LAW

19 1. Rule 60 of the Nevada Rules of Civil Procedure (NRCP) accords the district courts
20 authority to relieve a party from a final judgment, order or proceeding where some error or injustice
21 is shown. Specifically NRCP 60(b) states as follows:
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23 (b) *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud,*
24 *etc.* On motion and upon such terms as are just, the court may relieve a party or a party's
25 legal representative from a final judgment, order, or proceeding for the following reasons:
26 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence
27 which by due diligence could not have been discovered in time to move for a new trial under
28 Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic),
misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or (5)
the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is

1 based has been reversed or otherwise vacated, or it is no longer equitable that an injunction
2 should have prospective application. ...

3 2. Further, a district court, by virtue of its inherent authority, may grant a motion for
4 rehearing if the judge concludes re-argument is warranted. See Gibbs v. Giles, 96 Nev. 243, 244,
5 607 P.2d 118, 119 (1980), *citing* former District Court Rule (DCR) 20(4). Indeed, unless and until
6 an order is appealed, the district court retains jurisdiction to reconsider the matter. *Id.* at 244.

7 3. The Owners' Association has moved this Court to reconsider its decision expressed
8 within its Findings of Fact, Conclusions of Law and Order filed May 23, 2019. The basis for the
9 Association's position stems from the Nevada Legislature's passage of AB 421 on June 1, 2019 as
10 signed by the state's Governor on June 3, 2019. As noted above, AB 421, *inter alia*, extends the
11 statute of repose from six (6) to ten (10) years, and such is to be applied retroactively from its
12 effective date of October 1, 2019. AB 421, Section 7, states in part:

14 NRS 11.202 is hereby amended to read as follows:

15 11.202 1. No action may be commenced against the owner, occupier or any person
16 performing or furnishing the design, planning, supervision or observation of construction, or
17 the construction of an improvement to real property more than **10** years after the substantial
18 completion of such an improvement. ... (Emphasis in original)

19 AB 421, Section 11, Subsection 4 also provides "[t]he period of limitations on actions set forth in
20 NRS 11.202, as amended by section 7 of this act, apply *retroactively* to actions in which the
21 substantial completion of the improvement to real property occurred before October 1, 2019."
(Emphasis added).

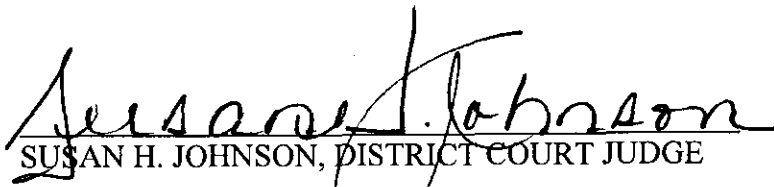
22 4. While there is no question the Nevada Legislature has amended NRS 11.202(1) to
23 extend the statute of repose period from six (6) to ten (10) years, and it is to be applied retroactively,
24 this Court is mindful the new enactment is not effective yet. NRS 218D.330(1) specifically provides
25 "[e]ach law and joint resolution passed by the Legislature becomes effective on October 1 following
26 its passage, unless the law or joint resolution specifically prescribes a different effective date." In
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1 this case, while it specifically passed a law that is to be applied retroactively, the Nevada Legislature
2 did not prescribe an effective date earlier or different than October 1, 2019. By it not prescribing an
3 earlier date, the Legislature indicated its intention NRS 11.202, as amended February 24, 2015, and
4 setting forth a six (6) years' statute of repose would remain in effect until October 1, 2019. In short,
5 the newly-enacted law becomes operational October 1, 2019 and its retroactive effect will take place
6 at that time.

7
8 5. Simply put, there is no basis upon which this Court can relieve the Owners'
9 Association from the grant of the Builders' Motion for Summary Judgment as set forth within the
10 Findings of Fact, Conclusions of Law and Order filed May 23, 2019. *See* NRCP 60(b). Re-
11 argument is not warranted. Accordingly,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant's Motion for
13 Reconsideration of and/or to Alter or Amend the Court's May 23, 2019 Findings of Fact,
14 Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment Pursuant to NRS
15 11.202(1) filed June 13, 2019 is denied.

16
17 DATED this 9th day of August 2019.

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20 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 9th day of August 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION AND/OR TO ALTER OR AMEND THE COURT'S MAY 23, 2019 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRS 11.202(1) FILED JUNE 13, 2019 to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

FRANCIS I. LYNCH, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

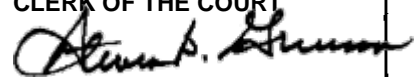
SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant

Exhibit 4



OGM

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,

Plaintiffs,

Vs.

PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation.

Defendant.

PANORAMA TOWERS
CONDOMINIUM UNIT OWNERS'
ASSOCIATION, a Nevada non-profit
corporation,

Counter-Claimant,

Vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

**ORDER RE: MOTION TO
CERTIFY JUDGMENT AS
FINAL UNDER NRCP 54(b)**

1 **PANORAMA TOWERS**
2 **CONDOMINIUM UNIT OWNERS'**
3 **ASSOCIATION, a Nevada non-profit**
4 **corporation,**

5 **Third-Party Plaintiff,**

6 **Vs.**

7 **SIERRA GLASS & MIRROR, INC.; F.**
8 **ROGERS CORPORATION; DEAN**
9 **ROOFING COMPANY; FORD**
10 **CONSTRUCTING, INC.; INSULPRO,**
11 **INC.; XTREME EXCAVATION;**
12 **SOUTHERN NEVADA PAVING, INC.;**
13 **FLIPPINS TRENCHING, INC.;**
14 **BOMBARD MECHANICAL, LLC; R.**
15 **RODGERS CORPORATION; FIVE**
16 **STAR PLUMBING & HEATING, LLC**
17 **dba SILVER STAR PLUMBING; and**
18 **ROES 1 through 1000, inclusive,**

19 **Third-Party Defendants.¹**

20 **ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b)**

21 This matter concerning the Motion to Certify Judgment as Final Under NRCP 54(b) filed by
22 Plaintiffs/Counter-Defendants LAURENT HALLIER, PANORAMA TOWERS I, LLC,
23 PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. on July 22, 2019
24 was heard, on Order Shortening Time, on the 6th day of August 2019 at the hour of 8:30 a.m. before
25 Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with
26 JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER,
27 PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN
28 CONSTRUCTION, INC. appeared by and through its attorneys, DANIEL F. POLSENBERG, ESQ.
of the law firm, LEWIS ROCA ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ. and

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 CYRUS S. WHITTAKER, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
2 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
3 UNIT OWNERS' ASSOCIATION appeared by and through its attorneys, MICHAEL J. GAYAN,
4 ESQ. and WILLIAM L. COULTHARD, ESQ. of the law firm, KEMP JONES & COULTHARD.
5 Having reviewed the papers and pleadings on file, heard oral arguments of the lawyers and taken
6 this matter under advisement, this Court makes the following Findings of Fact and Conclusions of
7 Law:
8

9 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

10 1. This case arises as a result of alleged constructional defects within both the common
11 areas and the 616 residential condominium units located within two tower structures of the
12 PANORAMA TOWERS located at 4525 and 4575 Dean Martin Drive in Las Vegas, Nevada. On
13 February 24, 2016, Defendant/Counter-Claimant PANORAMA TOWERS CONDOMINIUM UNIT
14 OWNERS' ASSOCIATION served its original NRS 40.645 Notice of Constructional Defects upon
15 Plaintiffs/Counter-Defendants (also identified herein as the "Contractors" or "Builders"), alleging
16 deficiencies within its residential tower windows, fire blocking, mechanical room piping and sewer.
17 Subsequently, after the parties engaged in the pre-litigation process ending with an unsuccessful
18 NRS 40.680 mediation held September 26, 2016, the Contractors filed their Complaint on
19 September 28, 2016 against the Owners' Association, asserting the following claims that, for the
20 most part, deal with their belief the NRS 40.645 notice was deficient:
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- 23 1. Declaratory Relief—Application of AB 125;
- 24 2. Declaratory Relief—Claim Preclusion;
- 25 3. Failure to Comply with NRS 40.600, *et seq.*;
- 26 4. Suppression of Evidence/Spoliation;
- 27 5. Breach of Contract (Settlement Agreement in Prior Litigation);
- 28

6. Declaratory Relief—Duty to Defend; and

7. Declaratory Relief—Duty to Indemnify.

2. On March 1, 2017, PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Answer and Counter-Claim, alleging the following claims:

1. Breach of NRS 116.4113 and 116.4114 Express and Implied Warranties; as well as those of Habitability, Fitness, Quality and Workmanship;

2. Negligence and Negligence *Per Se*;

3. Products Liability (against the manufacturers);

4. Breach of (Sales) Contract;

5. Intentional/Negligent Disclosure; and

6. Duty of Good Faith and Fair Dealing; Violation of NRS 116.1113.

3. This Court previously dismissed the constructional defect claims within the mechanical room as being time-barred by virtue of the “catch-all” statute of limitations of four (4) years set forth in NRS 11.220.² With respect to challenges to the sufficiency and validity of the NRS 40.645 notice, this Court stayed the matter to allow PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION to amend it with more specificity. This Court ultimately determined the amended NRS 40.645 notice served upon the Builders on April 15, 2018 was valid only with respect to the windows' constructional defects.³

4. On April 23, 2019, this Court heard two motions filed by the parties, to wit: (1) the Contractors' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019 and (2) the Association's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019. After hearing the parties' arguments, this Court took the matter under advisement, and on

²See Findings of Fact, Conclusions of Law and Order filed September 15, 2017.

³See Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

1 May 23, 2019, issued its third Findings of Fact, Conclusions of Law and Order which granted the
2 Builders' motion, and denied the Association's Conditional Counter-Motion. As pertinent here, this
3 Court concluded the Owners' Association's remaining constructional defect claims lodged against
4 the Builders were time-barred by the six-year statute of repose set forth in NRS 11.202(1).

5 4. On June 3, 2019, the Association filed its Motion for Reconsideration and/or Stay of
6 the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs'
7 Motion for Summary Judgment or alternatively, a Motion to Stay the Court's Order.⁴ Ten days
8 later, on June 13, 2019, the Association filed a second Motion for Reconsideration and/or to Alter or
9 Amend the Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting
10 Plaintiffs' Motion for Summary Judgment. These two motions essentially were the same except the
11 second alerted the Court the Nevada Legislature passed AB 421 on June 1, 2019, and such was
12 signed by the Governor and formally enacted on June 3, 2019. As pertinent here, AB 421 amends
13 NRS 11.202 by extending the statute of repose period from six (6) to ten (10) years and it is to be
14 applied retroactively to actions in which the substantial completion of the improvement to real
15 property occurred before October 1, 2019, the date in which the amendment takes effect.

16 The Builders opposed the two motions on several grounds. First, they noted this Court
17 entered a final order on May 23, 2019, the Notice of Entry of Order was filed May 28, 2019, and
18 thus, by the time the Motion for Reconsideration and/or Stay was filed June 3, 2019, there was no
19 pending matter to stay. Second, while AB 421 was enacted and will apply retroactively, it does not
20 become effective until October 1, 2019, meaning, currently, there is no change in the law. That is,

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⁴The Association moved this Court to stay the Order upon the basis the Nevada Legislature had passed
26 Assembly Bill (referred to as "AB" herein) 421 on June 1, 2019, which "immediately and retroactively extends the
27 statute of repose to 10 years." See Motion for Reconsideration of the Court's May 23, 2019 Findings of Fact,
28 Conclusions of Law and Order Granting Plaintiffs' Motion for Summary Judgment or alternatively, a Motion to Stay the
Court's Order filed June 3, 2019, p. 4. The Association urged this Court to stay the Order until such time as AB 241 was
enacted or rejected by the Governor. As set forth *infra*, the Governor signed the bill on June 3, 2019 which was to take
effect October 1, 2019.

1 as the law stands, the period for the statute of repose is six (6) years as enacted February 24, 2015,
2 and not ten (10). Third, as the Association's claims have already been adjudicated, AB 421 cannot
3 be interpreted to revive those causes of action.

4 This Court denied the Association's first Motion for Reconsideration and/or Stay filed June
5 3, 2019 at the July 16, 2019 hearing; it took the June 13, 2019 motion under advisement, and
6 ultimately, it was denied via Order filed August 9, 2019. In summary, this Court concluded the
7 newly-amended NRS 11.202 becomes effective October 1, 2019, whereby the current state of the
8 law is such the statute of repose is six (6) years, and not ten (10). If the Nevada Legislature had
9 intended AB 421's retroactive effect to be applied now, it would have said so just as it had in
10 enacting AB 125 in February 2015.

12 5. The Contractors have moved this Court to certify the May 23, 2019 Findings of Fact,
13 Conclusions of Law and Order as final under Rule 54(b) of the Nevada Rules of Civil Procedure
14 (NRCP). They argue the Order is final in that it granted summary judgment with respect to the
15 Association's claims in their entirety, and there is no just reason for delaying the entry of final
16 judgment. The Owners' Association opposes upon the bases (1) the May 23, 2019 Order is "silent
17 as to which of the Association's legal claims were resolved in this action,"⁵ and "[t] repeated
18 references to 'construction defect claims' are too vague and insufficient to make the [] Order final
19 and appealable;"⁶ (2) the Order "could not have resolved the Association's contract-based claims;"⁷
20 and (3) the Builders will not face hardship or injustice by waiting for the issue to be appealed after
21 all parties' claims are resolved.
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26 ⁵See Defendant's (1) Opposition to Plaintiffs'/Counter-Defendants' Motion to Certify Judgment as Final Under
27 Rule 54(b) and (2) Response to Plaintiffs'/Counter-Defendants' Opposition to Defendant's/Counter-Claimant's July 16,
28 2019 Oral Motion to Postpone the Court's Ruling on the Motion for Reconsideration of and/or to Alter or Amend the
Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

⁶*Id.*, p. 12.

⁷*Id.*, p. 14.

CONCLUSIONS OF LAW

1
2 1. NRCP 54 was recently amended to reflect virtually the identical wording of Rule 54
3 of the Federal Rules of Civil Procedure (FRCP). NRCP 54(b) provides:

4 (b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents
5 more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party
6 claim—or when multiple parties are involved, the court may direct entry of a final judgment
7 as to one or more, but fewer than all, claims or parties only if the court expressly determines
8 that there is no just reason for delay. Otherwise, any order or other decision, however
9 designated, that adjudicates fewer than all claims or the rights and liabilities of fewer than all
the parties does not end the action as to any of the claims or parties and may be revised at
any time before the entry of a judgment adjudicating all the claims and all the parties' rights
and liabilities.

10 Clearly, NRCP 54(b) permits district courts to authorize immediate appeal of dispositive rulings on
11 separate claims in a civil action raising multiple claims. This rule “was adopted...specifically to
12 avoid the possible injustice of delay[ing] judgment o[n] a *distinctly separate* claim [pending]
13 adjudication of the entire case....The Rule thus aimed to augment, not diminish, appeal
14 opportunity.” See Jewel v. National Security Agency, 810 F.3d 622, 628 (9th Cir. 2015), *quoting*
15 Gelboim v. Bank of America Corp., ____ U.S. ____ 135 S.Ct. 897, 902-903, 190 L.Ed.2d 789 (2015)
16 (interpreting FRCP 54).

17
18 2. Over sixty (60) years ago, the United States Supreme Court outlined steps to be
19 followed in making determinations under FRCP 54(b), of which NRCP 54(b) is now the same. See
20 Sears, Roebuck & Company v. Mackey, 351 U.S. 427, 76 S.Ct. 895, 100 L.Ed. 1297 (1956), *cited by*
21 Curtiss-Wright Corporation v. General Electric Company, 446 U.S. 1, 7, 100 S.Ct. 1460, 1464, 64
22 L.Ed.2d 1 (1980). The district court first must determine it is dealing with a “final judgment.” It
23 must be a “judgment” in the sense it is a decision upon a cognizable claim for relief, and it must be
24 “final” or an “an ultimate disposition of an individual claim entered in the course of a multiple
25 claims action.” *Id.*, *quoting* Sears, Roebuck & Company, 351 U.S. at 436, 76 S.Ct. at 900.
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1 3. Once it finds “finality,” the district court must determine whether there is any just
2 reason for delay. Not all final judgments on individual claims should be immediately appealable
3 even if they are separable from the remaining unresolved claims. It is left to the sound judicial
4 discretion of the district court to determine the appropriate time when each final decision in a
5 multiple claims action is ready for appeal. Curtiss-Wright Corporation, 446 U.S. at 8, 100 S.Ct. at
6 1464-1465, *citing* Sears, Roebuck & Company, 351 U.S. at 437, 76 S.Ct. at 899, 900. Thus, in
7 deciding whether there is no just reason to delay the appeal of the May 23, 2019 Findings of Fact,
8 Conclusions of Law and Order, which granted the Builders’ February 11, 2019 Motion for Summary
9 Judgment, this Court must take into account the judicial administrative interests as well as the
10 equities involved. Consideration of the former is necessary to assure application of NRCP 54(b) will
11 not result in the appellate courts deciding the same issues more than once on separate appeals.
12

13 4. Here, the Owners’ Association argues against NRCP 54(b) certification upon the
14 bases the May 23, 2019 Order is not final as it is “silent as to which of the Association’s legal claims
15 were resolved in this action”⁸ and further, the Order “could not have resolved the Association’s
16 contract-based claims.”⁹ This Court disagrees with both of the Association’s positions. The May
17 23, 2019 16-page Order specifically details this Court’s reasoning and conclusion the Owners’
18 Association’s constructional defect claims are time-barred by the six-year statute of repose.
19 Notably, this Court specifically set forth on page 13 of the Order “[t]he Association’s counter-claims
20 of negligence, intentional/negligent disclosure, breach of sales contract, products liability, breach of
21 express and implied warranties under and violations of NRS Chapter 116, and breach of duty of
22 good faith and fair dealing are for monetary damages as a result of constructional defects to its
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26 ⁸See Defendant’s (1) Opposition to Plaintiffs’/Counter-Defendants’ Motion to Certify Judgment as Final Under
27 Rule 54(b) and (2) Response to Plaintiffs’/Counter-Defendants’ Opposition to Defendant’s/Counter-Claimant’s July 16,
28 2019 Oral Motion to Postpone the Court’s Ruling on the Motion for Reconsideration of and/or to Alter or Amend the
Court’s May 23, 2019 Findings of Fact, Conclusions of Law and Order filed August 1, 2019, p. 11.

⁹*Id.*, p. 14.

1 windows in the two towers.” In short, the May 23, 2019 Order was not silent as to which of the
2 Association’s counter-claims were resolved; the Order specifically enumerated and decided all the
3 claims.

4 Further, while the Association argues the Order “could not have resolved the Association’s
5 contract-based claims.”¹⁰ a review of the Association’s Fourth Cause of Action entitled “Breach of
6 Contract” within the Counter-Claim indicates it is an action seeking monetary damages as a result of
7 constructional defects. It states, *inter alia*, the Developers entered into written contracts¹¹
8 representing the individual units were constructed in a professional and workmanlike manner and in
9 accordance with all applicable standards of care in the building industry. The Developers breached
10 the Sales Contracts “by selling units containing the Defects described above, *and as a direct result*
11 *of said breaches, The (sic) Association and its individual members have suffered the losses and*
12 *damages described above.*”¹² (Emphasis added) Clearly, the “Breach of Contract” action, seeking
13 monetary damages as a result of constructional defects, was addressed and analyzed within this
14 Court’s May 23, 2019 Order as time-barred by virtue of the six-year statute of repose. This Court
15 concludes its May 23, 2019 Findings of Fact, Conclusions of Law and Order is final as it was an
16 ultimate disposition of all the Association’s causes of action set forth within the Counter-Claim.
17
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19 5. The next issue that must be determined is whether there is any just reason for delay.
20 In this regard, this Court considers whether the May 23, 2019 Findings of Fact, Conclusions of Law
21 and Order dealt with matters distinctly separable from the remaining unresolved claims. This Court,
22 therefore, turns to the claims for relief set forth in the Builders’ Complaint to determine which of
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26 ¹⁰*Id.*, p. 14.

27 ¹¹Notably, the Fourth Cause of Action does not state with whom the Developers entered into the Sales
28 Contracts. Presumably, the contracts were between the Developers and the members of the Association, and not with the
Association itself. The homeowners are not Counter-Claimants in this case.

¹²See Defendant Panorama Tower Condominium Unit Owners’ Association’s Answer to Complaint and
Counterclaim filed March 1, 2017, p. 32, Paragraph 71.

1 them remain unresolved, and if they are separate from the Association's causes of action contained
2 in the Counter-Claim.

3 The First Claim for Relief sought declaratory relief regarding the application of Assembly
4 Bill (AB) 125 enacted and effective as of February 24, 2015. In its various Findings of Fact,
5 Conclusions of Law and Orders issued in this case, this Court determined AB 125 reflects the state
6 of the law between February 24, 2015 to September 30, 2019' and was applied in this Court's
7 analyses whereby this cause of action is resolved. The Second Claim for Relief seeks a declaration
8 from this Court the Association's claims are precluded, as in this Builders' view, the rights and
9 obligations of the parties in this matter were resolved by way of Settlement Agreement reached in a
10 prior litigation. This Second Claim for Relief is distinctly different from the causes adjudged in the
11 May 23, 2019 Order, and thus, it is not yet resolved. The Third Claim for Relief accuses the
12 Association of failure to comply with the pre-litigation process set forth in NRS 40.600 through
13 40.695. This Court dealt with the issues presented in the Third Claim for Relief within its
14 September 15, 2017 and November 30, 2018 Findings of Fact, Conclusions of Law and Orders;
15 ultimately, it found the Association failed to provide an adequate NRS 40.645 notice with respect to
16 the constructional defects allegedly found in the Towers' sewer system¹³ and fire walls. It
17 determined the notice was adequate concerning the constructional defects found in the Towers'
18 windows. The Third Claim for Relief is resolved.

19 The Fourth Claim for Relief is entitled "suppression of evidence/spoliation," and essentially
20 the Contractors seek sanctions against the Association for its alleged failure to retain the parts and
21 mechanisms removed or replaced during the sewer repair, and prior to sending the Builders the NRS
22 40.645 notice. Assuming there were no other suppression of evidence or spoliation issues with
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28 ¹³The sewer system had been repaired prior to the Association sending the NRS 40.645 notice meaning the
Builders were not accorded their right to repair under NRS Chapter 40.

1 respect to constructional defects in the windows, fire walls or mechanical room, the Fourth Claim
2 for Relief also is resolved as this Court concluded, in its November 30, 2018 Order, the NRS 40.645
3 notice was insufficient with respect to the sewer deficiencies and the Builders were not notified of
4 the constructional defects prior to repair. If there are remaining suppression of evidence or
5 spoliation issues, such deal with whether this Court should issue sanctions upon the Association for
6 its failure to preserve. In this Court's view, such matters are moot given its prior conclusions claims
7 relating to the mechanical room are barred by the four-year statute of limitations, the NRS 40.645
8 notice was insufficient with respect to constructional defects allegedly within the fire walls, and
9 lastly, the window deficiencies are time-barred by the six-year statute of repose. In other words,
10 whether there remain spoliation issues, this Court concludes the Fourth Claim for Relief is moot.
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12 The Fifth Claim for Relief for breach of the Settlement Agreement made in resolving party
13 differences in the prior litigation remains undecided for the same reason this Court concluded the
14 "claim preclusion" issues identified in the Second Claim for Relief were not determined. Likewise,
15 the Sixth and Seventh Claims for Relief, seeking declaratory relief given the Association's duty to
16 defend and indemnify under the Settlement Agreement, have not been decided. In short, the
17 remaining causes are the Second, Fifth, Sixth and Seventh Claims for Relief set forth in the
18 Contractors' Complaint and they are distinctly separate from the Associations' constructional defect
19 claims decided in the Findings of Fact, Conclusions of Law and Orders filed September 15, 2017,
20 November 30, 2018 and May 23, 2019.
21

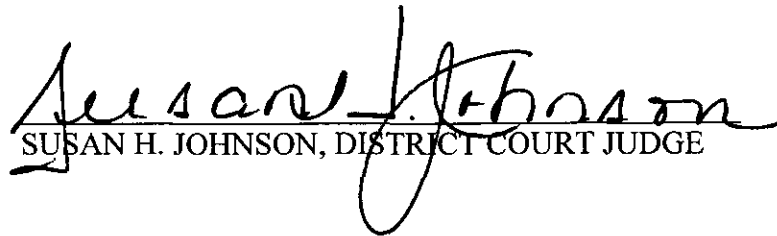
22
23 6. In summary, the May 23, 2019 Findings of Fact, Conclusions of Law and Order
24 resulted in a culmination of a final adjudication, wholly resolving the causes set forth within the
25 Association's Counter-Claim. The claims remaining are those are made by the Builders and deal
26 specifically with the adherence of the parties' concessions set forth within the prior litigation's
27 Settlement Agreement. These causes are distinctly different from the constructional defect claims
28

1 alleged in the Counter-Claim. In this Court's view, entry of a separate judgment now would not
2 require any appellate court to decide the same issues more than once on separate appeals.

3 Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the Motion to Certify
5 Judgment as Final Under NRCP 54(b) filed by Plaintiffs/Counter-Defendants LAURENT
6 HALLIER, PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J.
7 DEAN CONSTRUCTION, INC. on July 22, 2019 is granted.
8

9 DATED this 12th day of August 2019.

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12 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 12th day of August 2019, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: MOTION TO CERTIFY JUDGMENT AS FINAL UNDER NRCP 54(b) to the following counsel of record, and that first-class postage was fully prepaid thereon:

PETER C. BROWN, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
JOEL D. HENRIOD, ESQ.
ABRAHAM G. SMITH, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

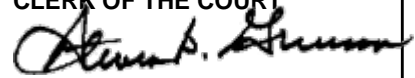
FRANCIS I. LYNCH, ESQ.
CHARLES "DEE" HOPPER, ESQ.
SERGIO SALZANO, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **LAURENT HALLIER, an individual;**
7 **PANORAMA TOWERS I, LLC, a Nevada**
8 **limited liability company; PANORAMA**
9 **TOWERS I MEZZ, LLC, a Nevada limited**
10 **liability company; and M.J. DEAN**
11 **CONSTRUCTION, INC., a Nevada**
12 **corporation,**

13 **Plaintiffs,**

14 **Vs.**

15 **PANORAMA TOWERS**
16 **CONDOMINIUM UNIT OWNERS'**
17 **ASSOCIATION, a Nevada non-profit**
18 **corporation.**

19 **Defendant.**

20 **PANORAMA TOWERS**
21 **CONDOMINIUM UNIT OWNERS'**
22 **ASSOCIATION, a Nevada non-profit**
23 **corporation,**

24 **Counter-Claimant,**

25 **Vs.**

26 **LAURENT HALLIER, an individual;**
27 **PANORAMA TOWERS I, LLC, a Nevada**
28 **limited liability company; PANORAMA**
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

ORDER RE: DEFENDANT'S
MOTION TO ALTER OR
AMEND COURT'S FINDINGS
OF FACT, CONCLUSIONS OF
LAW AND ORDER ENTERED
MAY 23, 2019

1 **PANORAMA TOWERS**
2 **CONDOMINIUM UNIT OWNERS'**
3 **ASSOCIATION, a Nevada non-profit**
4 **corporation,**

5 **Third-Party Plaintiff,**

6 **Vs.**

7 **SIERRA GLASS & MIRROR, INC.; F.**
8 **ROGERS CORPORATION; DEAN**
9 **ROOFING COMPANY; FORD**
10 **CONSTRUCTING, INC.; INSULPRO,**
11 **INC.; XTREME EXCAVATION;**
12 **SOUTHERN NEVADA PAVING, INC.;**
13 **FLIPPINS TRENCHING, INC.;**
14 **BOMBARD MECHANICAL, LLC; R.**
15 **RODGERS CORPORATION; FIVE**
16 **STAR PLUMBING & HEATING, LLC**
17 **dba SILVER STAR PLUMBING; and**
18 **ROES 1 through 1000, inclusive,**

19 **Third-Party Defendants.¹**

20 **ORDER RE: DEFENDANT'S MOTION TO ALTER OR AMEND COURT'S FINDINGS OF**
21 **FACT, CONCLUSIONS OF LAW AND ORDER ENTERED MAY 23, 2019**

22 This matter concerning Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA
23 TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S Motion to Alter or Amend
24 Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019 which was filed
25 September 9, 2019, came on for hearing on the 17th day of October 2019 at the hour of 9:00 a.m.
26 before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada with
27 JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER,
28 PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN
CONSTRUCTION, INC. appeared by and through their attorneys, DANIEL F. POLSENBERG,

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 ESQ. of the law firm, LEWIS ROCA ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ.
2 and DEVIN R. GIFFORD, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
3 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS' ASSOCIATION appeared by and through its attorneys, FRANCIS I. LYNCH,
5 ESQ. of the law firm, LYNCH & ASSOCIATES, and WILLIAM L. COUTHARD, ESQ. and
6 MICHAEL J. GAYAN, ESQ. of the law firm, KEMP JONES COULTHARD. Having reviewed the
7 papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under
8 advisement, this Court makes the following Findings of Fact and Conclusions of Law.

10 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

11 1. The facts and procedural history have been set forth several times within this Court's
12 various orders filed in this case with the most updated and recent information being written in the
13 August 9, 2019 Order Re: Defendant's Motion for Reconsideration and/or to Alter or Amend the
14 Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion
15 for Summary Judgment Pursuant to NRS 11.202(1). This Court adopts its Findings of Fact and
16 Procedural History as set forth within the August 9, 2019 Order, and incorporates them as though
17 fully set forth herein.

19 2. Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS
20 CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its most recent motion on September 9,
21 2019, arguing, by the time this matter is heard, it will be after October 1, 2019 when Assembly Bill
22 (referred to as "AB" herein) 421 becomes effective, and the retroactive application of the new ten-
23 year Statute of Repose is to be applied. In the view of the Owners' Association, the now-controlling
24 law no longer supports dismissal of its claims as time-barred by the six-year Statute of Repose in
25 effect prior to October 1, 2019. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'

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1 ASSOCIATION, therefore, seeks an order altering or amending this Court's May 23, 2019 Order
2 with the finding its claims were timely filed.

3 3. Plaintiffs LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA
4 TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. oppose upon the bases AB 421
5 does not resurrect claims previously adjudicated as time-barred under 2015 Legislature's AB 125's
6 six (6) year Statute of Repose. Further, if AB 421 were to be applied to revive the association's
7 constructional defect claims, such would result in a "clear constitutional infringement" ²on the
8 builders' vested due process rights.
9

10 CONCLUSIONS OF LAW

11 1. As alluded to above, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
12 ASSOCIATION moves this Court to amend or alter its May 23, 2019 decision pursuant to Rule 59
13 of the Nevada Rules of Civil Procedure (NRCP). NRCP 59 accords litigants the opportunity to
14 move the Court to alter or amend a judgment or seek a new trial for any of the following causes or
15 grounds materially affecting the substantial rights of the moving party:
16

17 A. Irregularity in the proceedings of the court, jury, master or adverse party or in
18 any order of the court or master, or any abuse of discretion by which either party was
19 prevented from having a fair trial;

20 B. Misconduct of the jury or prevailing party;

21 C. Accident or surprise that ordinary prudence could not have guarded against;

22 D. Newly discovered evidence material for the party making the motion that the
23 party could not, with reasonable diligence, have discovered and produced at the trial;

24 E. Manifest disregard by the jury of the instructions of the Court;
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28 ²See Plaintiffs'/Counter-Defendants' Opposition to Defendants'/Counter-Claimants' Motion to Alter or Amend
the Court's Findings of Fact, Conclusions of Law, and Order Entered on May 23, 2019 filed September 26, 2019, p.4.

1 F. Excessive damages appearing to have been given under the influence of
2 passion or prejudice; or

3 G. Error in law occurring at the trial and objected to by the party making the
4 motion.

5 Case law interpreting NRCP 59 provides the motion to amend or alter must state the grounds with
6 particularity and the relief sought. *See United Pacific Insurance Co. v. St. Denis*, 81 Nev. 103, 399
7 P.3d 135 (1965). Further, the motion to alter or amend a judgment must be filed no later than 28
8 days after service of written notice of entry of judgment. *See* NRCP 59(e). In this case, there was
9 no argument presented to suggest PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
10 ASSOCIATION'S motion was untimely.³

11
12 3. The basis for the Owners' Association's position this Court should amend or alter its
13 May 23, 2019 decision stems from the enactment of AB 421 which, as stated above, became
14 effective October 1, 2019. AB 421 extends the statute of repose addressed in NRS 11.202 from six
15 (6) to ten (10) years. AB 421, Section 7, states in part:

17 NRS 11.202 is hereby amended to read as follows:

18 11.202 1. No action may be commenced against the owner, occupier or any person
19 performing or furnishing the design, planning, supervision or observation of construction, or
20 the construction of an improvement to real property more than **10** years after the substantial
completion of such an improvement. ... (Emphasis in original)

21 AB 421, Section 11, Subsection 4 also provides "[t]he period of limitations on actions set forth in
22 NRS 11.202, as amended by section 7 of this act, apply *retroactively* to actions in which the
23 substantial completion of the improvement to real property occurred before October 1, 2019."
24 (Emphasis added). This Court now considers whether AB 421 should be applied retroactively to
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27 ³On September 9, 2019, the Owners' Association moved this Court to amend or alter its decision expressed
28 within its Findings of Fact, Conclusions of Law and Order filed May 23, 2019. The May 23, 2019 Order became final
and appealable on August 12, 2019 when this Court granted Plaintiffs' Motion to Certify Judgment as Final and
Appealable under NRCP 54(b), whereby the motion is timely under NRCP 59(e).

1 resurrect the Owners' Association's constructional defect claims under the new ten-year Statute of
2 Repose when they previously had expired under the prior six-year period as set forth within this
3 Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order.

4 4. It has long been established in American jurisprudence a court is to apply the law in
5 effect at the time it renders its decision unless doing so would result in manifest injustice or there is
6 statutory direction or legislative history to the contrary. Bradley v. School Board of City of
7 Richmond, 416 U.S. 696, 710, 94 S.Ct. 2006, 2016, 40 L.Ed.2d 476 (1974). The origin and
8 justification for this rule are found in the words of Mr. Chief Justice Marshall in United States v.
9 Schooner Peggy, 1 Cranch 103, 110, 2 L.Ed. 49 (1801):
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11 It is in the general true that the province of an appellate court is only to enquire whether a
12 judgment when rendered was erroneous or not. But if subsequent to the judgment and before
13 the decision of the appellate court, a law intervenes and positively changes the rule which
14 governs, the law must be obeyed, or its obligation denied. If the law be constitutional...I
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20 law, the judgment must be set aside.

21 5. In keeping with the dictates set forth by the United States Supreme Court, this Court
22 considers whether its application of NRS 11.202 (2015)'s six-year statute of repose within its May
23 23, 2019 Order would not be affirmed or result in manifest injustice, as, unfortunately, there appears
24 to be no statutory directive or legislative history to the contrary.

25 6. "[O]nce a statute of limitations has expired, the defendant has a vested right to invoke
26 the bar of the limitations period as a defense to a cause of action. That right cannot be taken away
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28 Ill.2d 393, 409, 917 N.E.2d 475, 485 (2009), *quoting* M.E.H. v. L.H., 177 Ill.2d 207, 214-215, 685
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1 time-barred after the repose period was abolished by the legislature.” M.E.H., 177 Ill.2d at 215, 685
2 N.E.2d 335.

3 7. It is clear when the bar of a statute of limitations has become complete by the running
4 of the full statutory period, the right to plead the statute as a defense is a vested right, which cannot
5 be destroyed by legislation, since it is protected therefrom by Section 1 of the Fourteenth
6 Amendment to the United States Constitution, as well as the Nevada Constitution.⁴ Thus, while the
7 Nevada Legislature most certainly has the authority to enact or change NRS 11.202 to reflect a
8 longer Statute of Repose period with retroactive effect, it lacks the power to reach back and breathe
9 life into a time-barred claim.
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11 8. Suffice it to say, in its view, this Court’s application of NRS 11.202 (2015) at the
12 time it rendered its May 23, 2019 Findings of Fact and Conclusions of Law was, and still is correct.
13 Arguably, manifest injustice would result if this Court were to amend or alter its prior ruling to
14 reverse itself and revive PANORAMA TOWERS CONDOMINIUM UNIT OWNERS’
15 ASSOCIATION’S time-barred claims. Notwithstanding the aforementioned, this Court notes none
16 of the factors set forth by NRCP 59 for amending or altering its May 23, 2019 decision are present
17 here. Indeed, there were no irregularities in the proceedings. There was no misconduct by any
18 party. There were no accidents or surprises, or errors in law. For these reasons, this Court denies
19 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
20 UNIT OWNERS’ ASSOCIATION’S Motion to Alter or Amend Court’s Findings of Fact,
21 Conclusions of Law and Order Entered May 23, 2019 which was filed September 9, 2019.
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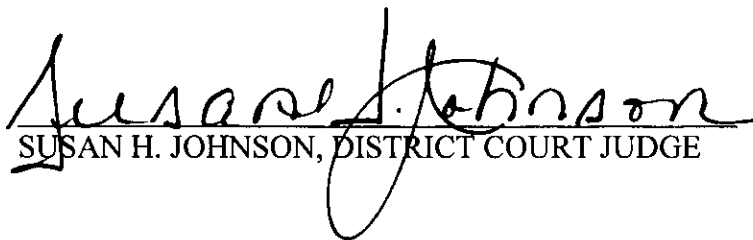
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26 ⁴Section 1 of the Fourteenth Amendment to the United States Constitution provides “[a]ll persons born or
27 naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State
28 wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*” (Emphasis added). *Also see* Article 1, Sections 1 and 2 of the Nevada Constitution.

1 Based upon the foregoing Findings of Fact and Conclusions of Law,

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant/Counter-
3 Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
4 ASSOCIATION'S Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and
5 Order Entered May 23, 2019 which was filed September 9, 2019, is denied.

6 DATED this 14th day of January 2020.

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9 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 14th day of January 2020, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: DEFENDANT'S MOTION TO ALTER OR AMEND COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERED MAY 23, 2019 to the following counsel of record, and that first-class postage was fully prepaid thereon:


PETER C. BROWN, ESQ.
DEVIN R. GIFFORD, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

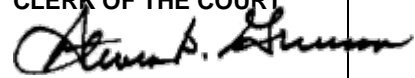
FRANCIS I. LYNCH, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant



PETER C. BROWN, ESQ.
Nevada State Bar No. 5887
JEFFREY W. SAAB, ESQ.
Nevada State Bar No. 11261
DEVIN R. GIFFORD, ESQ.
Nevada State Bar No. 14055
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
pbrown@bremerwhyte.com
jsaab@bremerwhyte.com
dgifford@bremerwhyte.com

Attorneys for Plaintiffs,
LAURENT HALLIER; PANORAMA TOWERS I, LLC;
PANORAMA TOWERS I MEZZ, LLC; and M.J. DEAN
CONSTRUCTION, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada Corporation,

Plaintiffs,

vs.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Defendant.

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Counter-Claimant,

vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA

) Case No. A-16-744146-D

) Dept. XXII

) **NOTICE OF ENTRY OF ORDER RE:**
) **DEFENDANT'S MOTION TO ALTER**
) **OR AMEND COURT'S FINDINGS OF**
) **FACTS, CONCLUSIONS OF LAW AND**
) **ORDER ENTERED MAY 23, 2019**

1 TOWERS I MEZZ, LLC, a Nevada limited)
liability company; and M.J. DEAN)
2 CONSTRUCTION, INC., a Nevada Corporation;)
SIERRA GLASS & MIRROR, INC.; F.)
3 ROGERS CORPORATION; DEAN ROOFING)
COMPANY; FORD CONTRACTING, INC.;)
4 INSULPRO, INC.; XTREME EXCAVATION;)
SOUTHERN NEVADA PAVING, INC.;)
5 FLIPPINS TRENCHING, INC.; BOMBARD)
MECHANICAL, LLC; R. RODGERS)
6 CORPORATION; FIVE STAR PLUMBING &)
HEATING, LLC, dba SILVER STAR)
7 PLUMBING; and ROES 1 through , inclusive,)
Counter-Defendants.)
8)
9)

10
11 PLEASE TAKE NOTICE that an Order Re: Defendant's Motion to Alter or Amend Court's
12 Findings of Facts, Conclusions Of Law and Order Entered May 23, 2019 was entered on the 14th day
13 of January 2020. A true copy is attached hereto and made part hereof.
14

15 Dated: January 16, 2020

BREMER WHYTE BROWN & O'MEARA LLP


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18 By: 

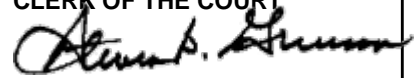
Peter C. Brown, Esq.
Nevada State Bar No. 5887
Jeffrey W. Saab, Esq.
Nevada State Bar No. 11261
Devin R. Gifford, Esq.
Nevada State Bar No. 14055
Attorneys for Plaintiffs/Counter-Defendants
LAURENT HALLIER, PANORAMA
TOWERS I, LLC, PANORAMA
TOWERS I MEZZ, LLC, and M.J. DEAN
CONSTRUCTION, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January 2020, a true and correct copy of the foregoing document was electronically served through Odyssey upon all parties on the master e-file and serve list.


Kimberley Chapman, and employee of
Bremer Whyte Brown & O'Meara



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **LAURENT HALLIER, an individual;**
7 **PANORAMA TOWERS I, LLC, a Nevada**
8 **limited liability company; PANORAMA**
9 **TOWERS I MEZZ, LLC, a Nevada limited**
10 **liability company; and M.J. DEAN**
11 **CONSTRUCTION, INC., a Nevada**
12 **corporation,**

13 **Plaintiffs,**

14 **Vs.**

15 **PANORAMA TOWERS**
16 **CONDOMINIUM UNIT OWNERS'**
17 **ASSOCIATION, a Nevada non-profit**
18 **corporation.**

19 **Defendant.**

20 **PANORAMA TOWERS**
21 **CONDOMINIUM UNIT OWNERS'**
22 **ASSOCIATION, a Nevada non-profit**
23 **corporation,**

24 **Counter-Claimant,**

25 **Vs.**

26 **LAURENT HALLIER, an individual;**
27 **PANORAMA TOWERS I, LLC, a Nevada**
28 **limited liability company; PANORAMA**
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
Corporation,

Counter-Defendants.

Case No. A-16-744146-D

Dept. No. XXII

ORDER RE: DEFENDANT'S
MOTION TO ALTER OR
AMEND COURT'S FINDINGS
OF FACT, CONCLUSIONS OF
LAW AND ORDER ENTERED
MAY 23, 2019

1 **PANORAMA TOWERS**
2 **CONDOMINIUM UNIT OWNERS'**
3 **ASSOCIATION, a Nevada non-profit**
4 **corporation,**

5 **Third-Party Plaintiff,**

6 **Vs.**

7 **SIERRA GLASS & MIRROR, INC.; F.**
8 **ROGERS CORPORATION; DEAN**
9 **ROOFING COMPANY; FORD**
10 **CONSTRUCTING, INC.; INSULPRO,**
11 **INC.; XTREME EXCAVATION;**
12 **SOUTHERN NEVADA PAVING, INC.;**
13 **FLIPPINS TRENCHING, INC.;**
14 **BOMBARD MECHANICAL, LLC; R.**
15 **RODGERS CORPORATION; FIVE**
16 **STAR PLUMBING & HEATING, LLC**
17 **dba SILVER STAR PLUMBING; and**
18 **ROES 1 through 1000, inclusive,**

19 **Third-Party Defendants.¹**

20 **ORDER RE: DEFENDANT'S MOTION TO ALTER OR AMEND COURT'S FINDINGS OF**
21 **FACT, CONCLUSIONS OF LAW AND ORDER ENTERED MAY 23, 2019**

22 This matter concerning Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA
23 TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION'S Motion to Alter or Amend
24 Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019 which was filed
25 September 9, 2019, came on for hearing on the 17th day of October 2019 at the hour of 9:00 a.m.
26 before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada with
27 JUDGE SUSAN H. JOHNSON presiding; Plaintiffs/Counter-Defendants LAURENT HALLIER,
28 PANORAMA TOWERS I, LLC, PANORAMA TOWERS I MEZZ, LLC and M.J. DEAN
CONSTRUCTION, INC. appeared by and through their attorneys, DANIEL F. POLSENBERG,

¹As the subcontractors are not listed as "plaintiffs" in the primary action, the matter against them is better characterized as a "third-party" claim, as opposed to "counter-claim."

1 ESQ. of the law firm, LEWIS ROCA ROTHGERBER CHRISTIE, and PETER C. BROWN, ESQ.
2 and DEVIN R. GIFFORD, ESQ. of the law firm, BREMER WHYTE BROWN & O'MEARA; and
3 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
4 UNIT OWNERS' ASSOCIATION appeared by and through its attorneys, FRANCIS I. LYNCH,
5 ESQ. of the law firm, LYNCH & ASSOCIATES, and WILLIAM L. COUTHARD, ESQ. and
6 MICHAEL J. GAYAN, ESQ. of the law firm, KEMP JONES COULTHARD. Having reviewed the
7 papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under
8 advisement, this Court makes the following Findings of Fact and Conclusions of Law.

10 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

11 1. The facts and procedural history have been set forth several times within this Court's
12 various orders filed in this case with the most updated and recent information being written in the
13 August 9, 2019 Order Re: Defendant's Motion for Reconsideration and/or to Alter or Amend the
14 Court's May 23, 2019 Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion
15 for Summary Judgment Pursuant to NRS 11.202(1). This Court adopts its Findings of Fact and
16 Procedural History as set forth within the August 9, 2019 Order, and incorporates them as though
17 fully set forth herein.

19 2. Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS
20 CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its most recent motion on September 9,
21 2019, arguing, by the time this matter is heard, it will be after October 1, 2019 when Assembly Bill
22 (referred to as "AB" herein) 421 becomes effective, and the retroactive application of the new ten-
23 year Statute of Repose is to be applied. In the view of the Owners' Association, the now-controlling
24 law no longer supports dismissal of its claims as time-barred by the six-year Statute of Repose in
25 effect prior to October 1, 2019. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
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1 ASSOCIATION, therefore, seeks an order altering or amending this Court's May 23, 2019 Order
2 with the finding its claims were timely filed.

3 3. Plaintiffs LAURENT HALLIER, PANORAMA TOWERS I, LLC, PANORAMA
4 TOWERS I MEZZ, LLC and M.J. DEAN CONSTRUCTION, INC. oppose upon the bases AB 421
5 does not resurrect claims previously adjudicated as time-barred under 2015 Legislature's AB 125's
6 six (6) year Statute of Repose. Further, if AB 421 were to be applied to revive the association's
7 constructional defect claims, such would result in a "clear constitutional infringement" ²on the
8 builders' vested due process rights.
9

10 CONCLUSIONS OF LAW

11 1. As alluded to above, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
12 ASSOCIATION moves this Court to amend or alter its May 23, 2019 decision pursuant to Rule 59
13 of the Nevada Rules of Civil Procedure (NRCP). NRCP 59 accords litigants the opportunity to
14 move the Court to alter or amend a judgment or seek a new trial for any of the following causes or
15 grounds materially affecting the substantial rights of the moving party:
16

17 A. Irregularity in the proceedings of the court, jury, master or adverse party or in
18 any order of the court or master, or any abuse of discretion by which either party was
19 prevented from having a fair trial;

20 B. Misconduct of the jury or prevailing party;

21 C. Accident or surprise that ordinary prudence could not have guarded against;

22 D. Newly discovered evidence material for the party making the motion that the
23 party could not, with reasonable diligence, have discovered and produced at the trial;

24 E. Manifest disregard by the jury of the instructions of the Court;
25
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27 ²See Plaintiffs'/Counter-Defendants' Opposition to Defendants'/Counter-Claimants' Motion to Alter or Amend
28 the Court's Findings of Fact, Conclusions of Law, and Order Entered on May 23, 2019 filed September 26, 2019, p.4.

1 F. Excessive damages appearing to have been given under the influence of
2 passion or prejudice; or

3 G. Error in law occurring at the trial and objected to by the party making the
4 motion.

5 Case law interpreting NRCP 59 provides the motion to amend or alter must state the grounds with
6 particularity and the relief sought. *See United Pacific Insurance Co. v. St. Denis*, 81 Nev. 103, 399
7 P.3d 135 (1965). Further, the motion to alter or amend a judgment must be filed no later than 28
8 days after service of written notice of entry of judgment. *See* NRCP 59(e). In this case, there was
9 no argument presented to suggest PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
10 ASSOCIATION'S motion was untimely.³

11
12 3. The basis for the Owners' Association's position this Court should amend or alter its
13 May 23, 2019 decision stems from the enactment of AB 421 which, as stated above, became
14 effective October 1, 2019. AB 421 extends the statute of repose addressed in NRS 11.202 from six
15 (6) to ten (10) years. AB 421, Section 7, states in part:

17 NRS 11.202 is hereby amended to read as follows:

18 11.202 1. No action may be commenced against the owner, occupier or any person
19 performing or furnishing the design, planning, supervision or observation of construction, or
20 the construction of an improvement to real property more than **10** years after the substantial
completion of such an improvement. ... (Emphasis in original)

21 AB 421, Section 11, Subsection 4 also provides "[t]he period of limitations on actions set forth in
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and appealable on August 12, 2019 when this Court granted Plaintiffs' Motion to Certify Judgment as Final and
Appealable under NRCP 54(b), whereby the motion is timely under NRCP 59(e).

1 resurrect the Owners' Association's constructional defect claims under the new ten-year Statute of
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11 It is in the general true that the province of an appellate court is only to enquire whether a
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20 law, the judgment must be set aside.

21 5. In keeping with the dictates set forth by the United States Supreme Court, this Court
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25 6. "[O]nce a statute of limitations has expired, the defendant has a vested right to invoke
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N.E.2d 335 (1997). Accordingly, "[i]f the claims were time-barred under the old law, they remain

1 time-barred after the repose period was abolished by the legislature.” M.E.H., 177 Ill.2d at 215, 685
2 N.E.2d 335.

3 7. It is clear when the bar of a statute of limitations has become complete by the running
4 of the full statutory period, the right to plead the statute as a defense is a vested right, which cannot
5 be destroyed by legislation, since it is protected therefrom by Section 1 of the Fourteenth
6 Amendment to the United States Constitution, as well as the Nevada Constitution.⁴ Thus, while the
7 Nevada Legislature most certainly has the authority to enact or change NRS 11.202 to reflect a
8 longer Statute of Repose period with retroactive effect, it lacks the power to reach back and breathe
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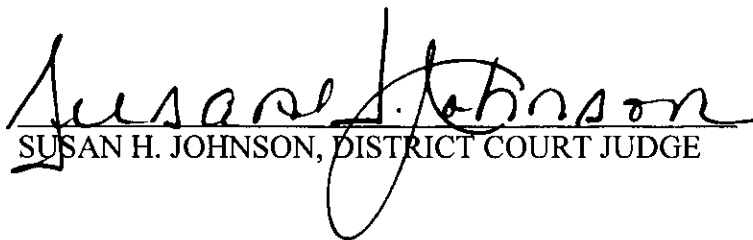
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13 Arguably, manifest injustice would result if this Court were to amend or alter its prior ruling to
14 reverse itself and revive PANORAMA TOWERS CONDOMINIUM UNIT OWNERS’
15 ASSOCIATION’S time-barred claims. Notwithstanding the aforementioned, this Court notes none
16 of the factors set forth by NRCP 59 for amending or altering its May 23, 2019 decision are present
17 here. Indeed, there were no irregularities in the proceedings. There was no misconduct by any
18 party. There were no accidents or surprises, or errors in law. For these reasons, this Court denies
19 Defendant/Counter-Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM
20 UNIT OWNERS’ ASSOCIATION’S Motion to Alter or Amend Court’s Findings of Fact,
21 Conclusions of Law and Order Entered May 23, 2019 which was filed September 9, 2019.
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27 naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State
28 wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*” (Emphasis added). *Also see* Article 1, Sections 1 and 2 of the Nevada Constitution.

1 Based upon the foregoing Findings of Fact and Conclusions of Law,

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant/Counter-
3 Claimant/Third-Party Plaintiff PANORAMA TOWERS CONDOMINIUM UNIT OWNERS'
4 ASSOCIATION'S Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and
5 Order Entered May 23, 2019 which was filed September 9, 2019, is denied.

6 DATED this 14th day of January 2020.

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9 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify, on the 14th day of January 2020, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER RE: DEFENDANT'S MOTION TO ALTER OR AMEND COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ENTERED MAY 23, 2019 to the following counsel of record, and that first-class postage was fully prepaid thereon:


PETER C. BROWN, ESQ.
DEVIN R. GIFFORD, ESQ.
BREMER WHYTE BROWN & O'MEARA, LLP
1160 North Town Center Drive, Suite 250
Las Vegas, Nevada 89144
pbrown@bremerwhyte.com

DANIEL F. POLSENBERG, ESQ.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
DPolsenberg@LRRC.com

FRANCIS I. LYNCH, ESQ.
LYNTH HOPPER, LLP
1210 South Valley View Boulevard, Suite 208
Las Vegas, Nevada 89102

SCOTT WILLIAMS
WILLIAMS & GUMBINER, LLP
100 Drakes Landing Road, Suite 260
Greenbrae, California 94904

MICHAEL J. GAYAN, ESQ.
WILLIAM L. COULTHARD, ESQ.
KEMP JONES & COULTHARD
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
m.gayan@kempjones.com



Laura Banks, Judicial Executive Assistant