Case No. 80615

IN THE SUPREME COURT 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.	Electronically Filed Oct 02 2020 03:56 p.m. Elizabeth A. Brown Clerk of Supreme Court

MOTION FOR STAY OF DISTRICT COURT
PROCEEDINGS PENDING OUTCOME OF THIS APPEAL

Appellant Panorama Towers Condominium Unit Owners' Association, a Nevada non-profit corporation (the "Association"), moves this Court for a stay of any further proceedings in the district court case pending the outcome of this appeal. NRAP 8(a), 8(c).

I. INTRODUCTION

This is an appeal from the district court's Rule 54(b) certified order granting Respondents' motion for summary judgment based on the 6-year statute of repose contained in NRS 11.202(1). The Legislature shortened the statute of repose from

10 years to six years shortly before the Association served its Chapter 40 notice and then, in June 2019, retroactively extended the statute of repose back to 10 years just 11 days after the district court granted Respondents' motion for summary judgment. The district court denied the Association's motion to stay Respondents' claims pending the outcome of this appeal, and the Association now seeks such relief from this Honorable Court.

All NRAP 8(c) considerations support a stay of Respondents' claims until this Court resolves the Association's appeal. *First*, absent a stay, the object of the appeal will be in jeopardy. Should Respondents prevail on any of their remaining claims, the Association's appeal would likely be mooted. *Second*, a stay is the only way to prevent the Association from suffering irreparable or serious harm through inconsistent rulings, having to redo discovery, or trying this case more than one time before different juries. These harms are particularly acute where, as here, Respondents seek to have the Association pay all "defense" expenses. *Third*, Respondents will suffer no harm from a stay. Their decision to serially file dispositive motions over the course of three years shows Respondents are in no hurry to conduct discovery and get to trial. *Finally*, the Association respectfully submits it will likely succeed on the merits of its appeal, particularly due to the district court's decision to not apply the new, retroactive statute of repose even after it went into effect.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

In February 2016, the Association timely served Respondents with a Chapter 40 Notice (the "Notice") alleging four discrete constructional defects pertaining to: (i) windows, (ii) fire blocking, (iii) mechanical room piping, and (iv) a sewer malfunction. On September 28, 2016, just two days after an unsuccessful pre-suit mediation required by NRS 40.680, Respondents filed a pre-emptive suit against the Association. Respondents' complaint extensively references the Notice and, through claims for declaratory and substantive relief, seeks money damages and challenges the Association's ability to pursue claims related to the constructional defect identified in the Notice. **Ex. 1**. Significantly, Respondents' complaint reframes as claims for relief the affirmative defenses that contractors typically assert in constructional defect cases (*e.g.*, First, Second, Third, Sixth, and Seventh Claims). *See id*.

After unsuccessfully moving to dismiss Respondents' complaint, the Association filed its answer and counterclaim on March 1, 2017, asserting claims for the same four construction defects identified in the Notice. **Ex. 2**.

Between March 20, 2017 and October 22, 2018, Respondents filed three carefully sequenced case-dispositive motions regarding (1) the sufficiency of the Association's Notice, (2) the sufficiency of the Association's amended Notice, and (3) the Association's standing to assert clams for the window defect. The district

court resolved the last of these motions on March 11, 2019.

On February 11, 2019, Respondents filed their fourth dispositive motion, this time a motion for summary judgment grounded in NRS 11.202(1). In 2015, the Legislature shortened the statute of repose from 10 years to six years. On May 23, 2019, the district court entered an order granting summary judgment that applied the six-year repose period to time-bar the Association's claims ("Repose Order"). **Ex. 3**. Days later, on June 1, 2019, the Legislature passed AB 421 to retroactively extend the statute of repose in NRS 11.202(1) from six years to 10 years.

On June 3, 2019, the Association timely sought reconsideration of the Repose Order noting the passage of AB 421. On June 13, 2019, after AB 421 was signed into law, the Association filed motion for reconsideration of the Repose Order based on AB 421's enactment. By August 12, 2019, the Court had considered and denied both of the Association's reconsideration requests and granted Respondents' motion to certify the Repose Order as a final judgment pursuant to NRCP 54(b).

On September 9, 2019, the Association timely filed a motion to alter or amend the Rule 54(b)-certified Repose Order pursuant to NRCP 59(e). On January 14, 2020, the district court entered its order denying the Association's Rule 59(e) motion, which declined to apply the new, retroactive 10-year repose period. The Association filed its notice of appeal on February 13, 2020.

On May 15, 2020, the Association filed its motion to stay the proceedings

pending disposition of the appeal. **Ex. 4**. The district court heard that motion on May 26, 2020, **Ex. 5**, and denied it by order filed on September 3, 2020. **Ex. 6**. The district court's order did not specify the reasons for the denial. However, it was evident from the district court's comments during the hearing that the denial was, at least in part, based on irrelevant considerations such as the age of the case and the amount of time this Court may take to resolve the Association's appeal:

> And believe me, I'm very well aware of it [filing date of case], it's one of my oldest cases – [**Ex. 5** at 19:12–13.]
>
> I mean, ***I don't like having old cases*** but this is just a complicated one and we just have to deal with it I think and then of course we got the super imposing of the COVID-19 situation [at 56:20–22 (emphasis added)].
>
> ***I'm not staying until the appeal*** . . . what Mr. Brown said I take solace in that because I've had at least one case, it was up on appeal for seven years. I've had an arbitration case . . . I think that was up there for four years. And I have no idea how long the Hayward case was up there. How long was that, Mr. Brown? Was that five years? … Oh boy, that was a seven year case too. Well, ***I'm not gonna stay a case for seven years*** [at 57: 6–17 (emphasis added)].

Respondents have four remaining claims, all of which would typically be either affirmative defenses or counterclaims related to the Association's Notice. Instead, Respondents pled these defenses as declaratory relief claims (second, sixth and seventh claims for relief) and a claim for damages (fifth claim for relief), arising from the settlement of a prior constructional defect suit by the Association against Respondents—in which *the Association released known claims only*.

Respondents remaining claims, three of which are pled as indemnity claims (fifth, sixth and seventh claims for relief), are based on the contention that the Association's remaining claim for window defects was known at the time of the prior settlement and, therefore, is precluded by the release. Any further litigation of Respondents' claim-preclusion and indemnity defenses will require extensive fact and expert discovery regarding each of the constructional defects in the Notice that will be duplicated if this Association succeeds in this appeal. Specifically, fact and expert discovery will be required to determine (1) what constructional defects the Association and its experts in the prior lawsuit knew of at that time and (2) whether any of the four constructional defects, including the technical window-design and fire-blocking defects, were part of or known about at the time of the settlement.

Many of the same technical defect issues will require extensive discovery if the Association's appeal succeeds. There is no rational reason to conduct extensive and expensive discovery and try Respondents' claim-preclusion and indemnity defenses before the Association's appeal is resolved.

III. ARGUMENT

In accordance with NRAP 8(a) the Association moved for a stay in the district court (**Ex. 4**), which was denied (**Ex. 6**), before filing the present motion. NRAP 8(c) provides the following factors to consider when determining whether to issue a stay based on a pending appeal:

> (1) [W]hether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Although no single factor carries "more weight than the others," this Court has held that one or two "especially strong" factors "may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). The NRAP 8(c) factors weigh heavily in favor of a stay.

1. The object of the Association's appeal will be defeated absent a stay.

This Court has placed importance on properly defining the object of an appeal for purposes of determining whether to enter a stay. *See, e.g., Mikohn Gaming*, 120 Nev. at 252–53, 89 P.3d at 38–39. Here, the object of the appeal is to allow the Association to conduct discovery and resolve its constructional defect claims on the merits. Should this Court allow Respondents to proceed with their claim-preclusion and indemnity defenses, the appeal would be completely mooted by a judgment in Respondents' favor—without the Association ever having an opportunity to present the merits of its constructional defect claims. In other words, if Respondents' prevail on their other defenses while this appeal is pending, it will not matter one bit whether the Association succeeds in this appeal.

2. A stay will prevent the Association from suffering irreparable and serious harm.

As shown in the Association's Opening Brief, Respondents' complaint and the Association's counterclaim arise from the same transaction or occurrence, and Respondents have even so alleged in their complaint: "All the rights and obligations of the parties hereto **arose out of what is actually one transaction or one series of transactions**, happenings or events, all of which **can be settled** and determined in a judgment **in this one action**." **Ex. 1**, ¶ 68 (emphasis added).

Here, a stay will protect the Association from suffering irreparable and serious harm due to the risk of inconsistent rulings caused by litigating these related claims in piecemeal fashion. *See Bradford-Scott Data Corp., Inc. v. Physician Computer Network, Inc.*, 128 F.3d 504, 505 (7th Cir. 1997) ("Continuation of proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals"). Granting a stay is particularly crucial when, as here, the pending appeal "is likely to have a substantial or controlling effect on the claims and issues" in the district court. *Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist.,* 559 F.3d 1191, 1198 (11th Cir. 2009).

Additionally, while increased litigation costs do not typically constitute irreparable harm, *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39, Respondents seek indemnification from the Association for all expenses related to this action. A party bearing its own litigation costs is very different than a party also bearing the

opposing party's litigation costs, potentially for two trials if a stay is not granted now. This avoidable risk constitutes serious harm to the non-profit Association, which already faces substantial risk from the expenses needed to repair the four constructional defects should this Court not reverse the district court's judgment and permit the claims to proceed on the merits.

Similarly, considerations of judicial economy favor staying all proceedings in the matter until the appeal gets resolved. Allowing Respondents' claims to be litigated while the Association's closely related counterclaim is pending on appeal "could create chaos with the appellate process." *City of Hanford v. Superior Court*, 208 Cal.App.3d 580, 588 (1989). Avoiding unnecessary litigation to achieve "economy of time and effort" constitutes good cause to issue a stay. *Maheu v. Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973).

3. A stay will not cause Respondents to suffer any harm.

"[A] mere delay in pursuing discovery and litigation normally does not constitute irreparable harm." *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39. Here, Respondents' serial dispositive motion practice has dominated this 2016 case from the beginning, to the exclusion of nearly everything else. The parties have yet to engage in any fact or expert discovery. A stay pending appeal will have no prejudicial impact on Respondents' claims for claim-preclusion, breach of contract,

and declaratory relief on duties to defend and indemnify. Therefore, Respondents will not suffer prejudice while awaiting this Court's decision on the appeal.

4. The Association is likely to succeed on the merits of its appeal.

"[A] movant does not always have to show a probability of success on the merits" when moving for "a stay pending an appeal." *Fritz Hansen A/S v. Dist. Court*, 116 Nev. 650, 658–59, 6 P.3d 982, 987 (2000). There are several issues on appeal, some of which are of first impression. *See* Appellant's Opening Brief at 1. Any one of these issues, if decided in the Association's favor, would allow the Association to proceed on the merits of its constructional defect claims. The number of appealable issues that, if successful, would result in reversal increases the likelihood of the Association's success on the merits. Thus, this factor weighs heavily in favor of a stay.

IV. CONCLUSION

For the foregoing reasons, the Association respectfully asks this Court to issue an order staying the district court matter pending disposition of this appeal.

/ / /

/ / /

/ / /

DATED: October 2, 2020

KEMP JONES, LLP

/s/ Michael J. Gayan
MICHAEL J. GAYAN (#11135)
JOSHUA D. CARLSON (#11781)
3800 Howard Hughes Pkwy, 17th Fl.
Las Vegas, Nevada 89169
(702) 385-6000

FRANCIS I. LYNCH (#4145)
Lynch & Associates Law Group
1445 American Pacific Drive, Ste 110 #293
Henderson, NV 89074

SCOTT WILLIAMS (*pro hac vice)*
Williams & Gumbiner, LLP
1010 B Street, Ste 200
San Rafael, CA 94901

Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that on the 2nd day of October, 2020, I caused to be served via the District Court's e-filing system and pursuant to NRAP 25(b) and NEFCR 9, and electronically filed the foregoing APPELLANT'S MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS PENDING OUTCOME OF THIS APPEAL with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-filing system (Eflex). Participants in the case who are registered Eflex users will be served by the Eflex system as follows:

Peter C. Brown
Jeffrey W. Saab
Devin R. Gifford
BREMER WHYTE BROWN & O'MERA LLP
1160 N. Town Center Drive
Las Vegas, Nevada 89144

Daniel F. Polsenberg
Joel D. Henriod
Abraham G. Smith
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway #600
Las Vegas, Nevada 89169

Counsel for Respondents

/s/ Pamela Montgomery
An employee of Kemp Jones, LLP

Exhibit 1

DISTRICT COURT CIVIL COVER SHEET

A-16-744146-D

XXII

_____ County, Nevada

Case No. _____

(Assigned by Clerk's Office)

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

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

RECEIVED
OCT 3 2016

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

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	■ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ 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.

Electronically Filed
09/28/2016 10:25:57 AM

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; 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 **COMPLAINT**

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:

///

PARTIES

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

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

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

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

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

JURISDICTION AND VENUE

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

GENERAL ALLEGATIONS

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

sewer piping.

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

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

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

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

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

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

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

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

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

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

37. Pursuant to NRS 40.615, as amended by AB 125, Section 8, a claimant's Chapter 40 Notice must "identify in specific detail each defect, damage and injury 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..."

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

39. Pursuant to NRS 116.3102 (1)(d), as amended by AB 125, Section 20, "...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 of units' owners with respect to an action for constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of the act unless the action pertains exclusively to common elements."

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

will defend, indemnify, and hold harmless" Plaintiffs (and others) "and their insurers with respect to such litigation."

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Declaratory Relief – Application of AB 125)

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

inclusive, as though fully set forth herein.

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

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

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

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

70. 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.

SECOND CLAIM FOR RELIEF

(Declaratory Relief – Claim Preclusion)

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

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

80. 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.

THIRD CLAIM FOR RELIEF

(Failure to Comply With NRS 40.600 et seq.)

81. Plaintiffs refer to, reallege and incorporate by reference Paragraphs 1 through 80, inclusive, as though fully set forth herein.

82. Defendant failed to comply with NRS 40.645(2)(b) and (c) in that Defendant's Chapter 40 Notice does not identify in specific detail the alleged defect, damage and injury, including without limitation, the exact location of the alleged defect, damage and injury, relating to the alleged residential tower windows defects.

83. Defendant failed to comply with NRS 40.645(2)(b) and (c) in that Defendant's Chapter 40 Notice does not identify in specific detail the alleged defect, damage and injury, including without limitation, the exact location of the alleged defect, damage and injury, relating to the alleged residential tower fire blocking defects.

84. Defendant failed to comply with NRS 40.645(2)(b) and (c) in that Defendant's Chapter 40 Notice does not identify in specific detail the alleged defect, damage and injury, including

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

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

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

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

90. 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.

FOURTH CLAIM FOR RELIEF

(Suppression of Evidence/Spoliation)

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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.

///

///

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

SIXTH CLAIM FOR RELIEF

(Declaratory Relief - Duty to Defend)

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

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

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

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

106. 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.

SEVENTH CLAIM FOR RELIEF

(Declaratory Relief - Duty to Indemnify)

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

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

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

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

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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

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

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

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

114. 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.

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

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

///

///

///

///

///

///

4. For prejudgment interest; and

5. For such other and further relief as this Court may deem just, equitable and proper.

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.

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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; 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. Dept. No. **INITIAL APPEARANCE FEE DISCLOSURE**

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

CONSTRUCTION DEFECT FILING FEE:	$520.00
LAURENT HALLIER:	$30.00
PANORAMA TOWERS I, LLC:	$30.00
PANORAMA TOWERS I MEZZ, LLC:	$30.00

///

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.

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

Exhibit 2

Electronically Filed
03/01/2017 08:25:19 PM

CLERK OF THE COURT

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.	CASE NO.: A-16-744146-D DEPT. NO.: XXII **DEFENDANT PANORAMA TOWER CONDOMINIUM UNIT OWNERS' ASSOCIATION'S ANSWER TO COMPLAINT AND COUNTERCLAIM**
PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation, and Does 1 through 1000, Counterclaimants, vs.	

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

Counterdefendants.

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

PARTIES

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

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

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

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

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

JURISDICTION AND VENUE

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.

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

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

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

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

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

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

22. Answering Paragraph 22 of the Complaint, The Association admits that on February 24, 205, the Nevada Legislature enacted Homeowner Protection Act of 2015 (*aka* AB 125). 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.

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

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

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

denies them.

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

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

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

29. Answering Paragraph 29 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.

30. Answering Paragraph 30 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.

31. Answering Paragraph 31 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.

32. Answering Paragraph 32 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.

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

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

contained therein.

35. Answering Paragraph 35 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.

36. Answering Paragraph 36 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.

37. Answering Paragraph 37 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.

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

39. Answering Paragraph 39 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.

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

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

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

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

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

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

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

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

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

48. Answering Paragraph 48 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.

49. Answering Paragraph 49 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.

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

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

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

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

contained therein.

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Declaratory Relief – Application of AB 125)

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

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

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

64. Answering Paragraph 64 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.

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

contained therein.

86. Answering Paragraph 86 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.

87. Answering Paragraph 87 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.

88. Answering Paragraph 88 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.

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

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

FOURTH CLAIM FOR RELIEF

(Suppression of Evidence/Spoliation)

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

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

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

FIFTH CLAIM FOR RELIEF

(Breach of Contract)

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

95. Answering Paragraph 95 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.

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

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

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

SIXTH CLAIM FOR RELIEF

(Declaratory Relief – Duty to Defend)

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

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

101. Answering Paragraph 101 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.

102. Answering Paragraph 102 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.

103. Answering Paragraph 103 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.

104. Answering Paragraph 104 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.

105. Answering Paragraph 105 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.

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.

EIGTH 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 bought 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.

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

17. Counterdefendants Sierra Glass & Mirror, Inc., F. Rogers Corporation, Dean Roofing Company, Ford 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 301 through 400 (collectively, "the Contractors"), were hired by the General Contractors to perform work for the construction of the Development.

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

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

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

21. The Developers, Designers, General Contractors, Contractors and Manufacturers are sometimes collectively referred to as "the Builders." The Developer Principals, Designer Principals, GC Principals, Contractor Principals and Manufacturer Principals are sometimes collectively referred to as "the Principals."

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

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

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

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

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

/ / /

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 incompliance 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Breach if 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

Against the Builders

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION

Negligence and Negligence Per Se

Against the Developers, Designers, General Contractors and Contractors

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

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

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

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

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

54. 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.

THIRD CAUSE OF ACTION

Products Liability

Against the Manufacturers

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

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

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

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

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

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

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

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

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

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

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

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

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

64. 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.

/ / /

/ / /

FOURTH CAUSE OF ACTION

Breach of Contract

Against the Developers

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

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

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

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

69. In addition to the representations made in the Sales Contracts, the Developers made representations and warranties in their sales brochures and advertising and promotional materials that the Development and the individual units therein were constructed in a professional and workmanlike manner, in accordance with all applicable standards of care in the building industry, and in accordance with all applicable building codes and ordinances, and that the individual units 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

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

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

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

80. 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.

SIXTH CAUSE OF ACTION

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

Against the Developers

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

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

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

/ / /

/ / /

/ / /

/ / /

/ / /

PRAYER FOR RELIEF

WHEREFORE, The Association requests the following relief:

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.

LYNCH HOPPER, LLP

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

IAFD

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.	CASE NO.: A-16-744146-D DEPT. NO.: XXII **INITIAL APPEARANCE FEE DISCLOSURE**
PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION, a Nevada non-profit corporation, and Does 1 through 1000, Counterclaimants, vs.	

LYNCH HOPPER, LLP
1210 S. Valley View Blvd.
Suite 208
Las Vegas, NV 89102
702-868-1115

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

Counterdefendants.

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above-entitled action as indicated below:

Defendant :

Panorama Towers Condominium Unit Owners Association:	$473.00
TOTAL REMITTED:	$473.00

Dated: March 1, 2017

LYNCH HOPPER, LLP

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

LYNCH HOPPER, LLP
1210 S. Valley View Blvd.
Suite 208
Las Vegas, NV 89102
702-868-1115

Exhibit 3

FFCO

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 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.	

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

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

Third-Party Plaintiff,

Vs.

SIERRA GLASS & MIRROR, INC.; F. ROGERS CORPORATION; DEAN ROOFING COMPANY; FORD CONSTRUCTING, INC.; INSULPRO, INC.; XTREME EXCAVATION; 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,

Third-Party Defendants.[1]

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

These matters concerning:

1. Plaintiffs'/Counter-Defendants' Motion for Summary Judgment Pursuant to NRS 11.202(1) filed February 11, 2019; and

2. Defendant's/Counter-Claimant's Conditional Counter-Motion for Relief Pursuant to NRS 40.695(2) filed March 1, 2019,

both came on for hearing on the 23rd day of April 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 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."

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

FINDINGS OF FACT AND PROCEDURAL HISTORY

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

1. Declaratory Relief—Application of AB 125;

2. Declaratory Relief—Claim Preclusion;

[2]SCOTT A. WILLIAMS, ESQ. of the law firm, WILLIAMS & GUMBINER, also appeared telephonically on 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]

. . .

[3] *See* Findings of Fact, Conclusions of Law and Order filed September 15, 2017.
[4] *See* Findings of Fact, Conclusions of Law and Order filed November 30, 2018.

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

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

---

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

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

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

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

. . .

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

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

. . .

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

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

6. The four-year limitations period identified in NRS 11.220 begins to run at the time the plaintiff learns, or in the exercise of reasonable diligence should have learned of the harm to the property caused by the constructional defect. Tahoe Village Homeowners Association v. Douglas County, 106 Nev. 660, 662-664, 799 P.2d 556, 558 (1990), *citing* Oak Grove Investment v. Bell & Gossett Co., 99 Nev. 616621-623, 669 P.2d 1075, 1078-1079 (1983); *also see* G and H Associates, 113 Nev. at 272, 934 P.2d at 233, *citing* Nevada State Bank v. Jamison Partnership, 106 Nev. 792, 800, 801 P.2d 1377, 1383 (1990) (statutes of limitations are procedural bars to a plaintiff's action; the time limits do not commence and the cause of action does not accrue until the aggrieved party knew or reasonably should have known of the facts giving rise to the damage or injury); Beazer Homes Nevada, Inc. v. District Court, 120 Nev. 575, 587, 97 P.3d 1132, 1139 (2004) ("For constructional defect cases, the statute of limitations does not begin to run until 'the time the plaintiff learns, or in the exercise of reasonable diligence should have learned, of the harm to the property.'").

---

[6]In Hartford Insurance Group, an action was brought for damages to a home caused by an explosion of a heater made for use with natural as opposed to propane gas. The State's high court held such matter was not an "action for 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.

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

8. In addition, prior to the enactment of AB 125, NRS 11.202 identified an exception to the application of the statute of repose. This exception was the action could 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 where the deficiency was the result of willful misconduct or fraudulent misconduct. For the NRS 11.202 exception to apply, it was the plaintiff, not the defendant, who had the burden to demonstrate defendant's behavior was based upon willful misconduct. *See* Acosta v. Glenfed Development Corp., 128 Cal.App.4th 1278, 1292, 28 Cal.Rptr.3d 92, 102 (2005).

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

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.

. . .

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

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

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

13. In this case, the Owners' Association argues the Builders have not provided sufficient information to determine when the statute of repose started to accrue, and without it, this Court cannot decide the motion for summary judgment. Specifically, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION proposes the Builders have identified only one date addressed within NRS 11.2055(1), and to establish the date of accrual, this Court needs all three as the defining date is the one which occurs last. This Court disagrees with the Association's assessment the date of substantial completion has not been established for at least a couple of reasons. *First,* the Builders did not provide just one date; they identified two events addressed in NRS 11.2055, i.e. the date of the final building inspection and when the Certificate of Occupancy was issued as identified in Exhibits C and D of their motion. Those dates are March 16, 2007 and January 16, 2008, respectively, for Tower I, and July 16, 2007 and March 26, 2008, respectively, for

Tower II. *Second,* this Court does not consider the Builders' inability or failure to provide the date of the third event, i.e. when the notice of completion was issued, as fatal to the motion, especially given the common-law "catch-all" provision expressed in NRS 11.2055(2) that applies if none of the events described in NRS 11.2055(1) occurs. This Court concludes the dates of substantial completion are January 16, 2008 (Tower I) and March 16, 2008 (Tower II), respectively, as these dates are the latest occurrences. Given this Court's decision, the dates of substantial completion obviously accrued before the enactment of AB 125. Applying the aforementioned analysis to the facts here, this Court concludes the statute of repose applicable to the Association's constructional defects claim is six (6) years, but, as it accrued prior to the effective date of AB 125 or February 24, 2015, the action is not limited if it was commenced within one (1) year after, or by February 24, 2016.

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

15. PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION filed its Counter-Claim against the Builders on March 1, 2017, over four (4) months after October 26, 2016. As noted above, in the Builders' view, the constructional defect claims relating to the

windows, therefore, are time-barred. The Association disagrees, arguing its Counter-Claim was compulsory, and it relates back to the date of the Complaint's filing, September 28, 2016. Alternatively, the Association counter-moves this Court for relief, and to find good cause exists to toll the statute of repose for a longer period given its diligence in prosecuting the constructional defect claims against the Builders. The Court analyzes both of the Association's points below.

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

17. Here, PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION proposes its counter-claims are compulsory as they arise out of the same transaction or occurrence that is the subject matter of the Builders' claims. This Court disagrees. The Builders' claims are for breach of the prior settlement agreement and declaratory relief regarding the sufficiency of the NRS 40.645 notice and application of AB 125. The Association's counter-claims of negligence, intentional/negligent disclosure, breach of sales contract, products liability, breach of express and implied warranties under and violations of NRS Chapter 116, and breach of duty of good faith and fair dealing are for monetary damages as a result of constructional defects to its windows in the two towers. If this Court ruled against the Builders on their Complaint,

the Association would not have lost their claims if they had not pled them as counter-claims in the instant lawsuit. In this Court's view, the Association had two options: it could make a counter-claim which is permissive or assert its constructional defect claims in a separate Complaint. Here, it elected to make the permissive counter-claim. The counter-claim does not relate back to the filing of the Complaint, September 28, 2016.

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

. . .

by a defendant after the statute has expired. In short, whether the Association's counter-claims are compulsory or permissive, the filing of the Builders' Complaint did not toll the statute of repose.

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

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

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

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

. . .

. . .

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

DATED this 23rd day of May 2019.

Susan H. Johnson

SUSAN H. JOHNSON, DISTRICT COURT JUDGE

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

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

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

File Into Existing Case

Case Number	Location	Description	Case Type
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s...	Chapter 40

1 20 items per page 1 - 1 of 1 items

Service Contacts: A-16-744146-D

Name	Email
▸ **Party:** Laurent Hallier - Plaintiff	
▾ **Party:** Panorama Towers Condominium Unit Owners Association - Defendant	
Angela Embrey	a.embrey@kempjones.com
Michael J. Gayan	m.gayan@kempjones.com
Nicole McLeod	n.mcleod@kempjones.com
Patricia Ann Pierson	p.pierson@kempjones.com
▸ **Party:** Laurent Hallier - Counter Defendant	
▸ **Party:** Panorama Towers I LLC - Plaintiff	
▸ **Party:** Panorama Towers I LLC - Counter Defendant	
▸ **Party:** Panorama Towers I Mezz LLC - Plaintiff	
▸ **Party:** Panorama Towers I Mezz LLC - Counter Defendant	
▸ **Party:** MJ Dean Construction Inc - Plaintiff	
▸ **Party:** MJ Dean Construction Inc - Counter Defendant	
▸ **Party:** Panorama Towers Condominium Unit Owners Association - Counter Claimant	

1 2 3 10 items per page

File Into Existing Case

Case Number	Location	Description	Case Type
A-16-744146-D	Department 22	Laurent Hallier, Plaintiff(s...	Chapter 40

1 20 items per page 1 - 1 of 1 items

Service Contacts: A-16-744146-D

Party: Southern Nevada Paving Inc - Counter Defendant

Party: Insulpro Inc - Counter Defendant

Other Service Contacts

Name	Email
"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 .	jjuarez@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

Exhibit 4

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

MICHAEL J. GAYAN, ESQ. (#11125)
JOSHUA D. CARLSON (#11781)
KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
T: (702) 385-6000
F: (702) 385-6001
m.gayan@kempjones.com

Counsel for Defendant/Counterclaimant Panorama Towers Condominium Unit Owners' Association

HEARING REQUIRED

DATE: May 26, 2020
TIME: 8:30 AM

File with Master Calendar

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 on Shortened Time]

Defendant/Counterclaimant's Motion to Stay Proceedings Pending Disposition of the Appeal on Order Shortening Time

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

Counterclaimants,

vs.

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

Counterdefendants.

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

Defendant/Counterclaimant Panorama Towers Condominium Unit Owners' Association (the "Association"), by and through its counsel of record, hereby submits this Motion to Stay Proceedings Pending Disposition of the Appeal on Order Shortening Time.

/ / /

/ / /

/ / /

This Motion is made and based upon the following Points and Authorities, any exhibits attached thereto, the pleadings and papers on file herein, the Declaration of Michael J. Gayan, Esq., the oral argument of counsel, and such other or further information as this Honorable Court may request.

DATED this 15th day of May, 2020.

Respectfully submitted,
KEMP JONES, LLP

/s/ Michael Gayan

MICHAEL J. GAYAN, ESQ. (#11135)
JOSHUA D. CARLSON, ESQ. (#11781)
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/Counterclaimant Panorama Towers Condominium Unit Owners' Association

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

Declaration of Michael J. Gayan, Esq. in Support of Motion and Application for Order Shortening Time

I, Michael Gayan, Esq., state and affirm as follows:

1. I am a partner in the firm of Kemp Jones, LLP and have personal knowledge of the facts stated herein except those matters stated on information and belief, and as to those matters I believe them to be true. Along with the firms of Lynch & Associates Law Group and Williams & Gumbiner, LLP and others in my firm, I am counsel for the Defendant/Counterclaimant Panorama Towers Condominium Unit Owners' Association (the "Association") in the above-captioned matter.

2. On January 14, 2020, the Court filed its Order Re: Defendant's Motion to Alter or Amend Court's Findings of Fact, Conclusions of Law and Order Entered May 23, 2019 ("Rule 59(e) Order"). The notice of entry of the Rule 59(e) Order was entered on January 16, 2020.

3. On February 13, 2020, the Association timely filed its Notice of Appeal of that order and the district court's various orders made appealable by entry of that order, including but not limited to the Repose Order and the Rule 54(b) Order. After removing the matter from the settlement program, the Nevada Supreme Court recently directed the Association to file its Opening Brief by July 21, 2020.

4. The Builders' remaining claims include breach of contract related to the parties' prior settlement agreement and declaratory relief regarding the Association's alleged duties to defend and contained within the same settlement agreement. *See, e.g.*, 3/31/20 Minute Order at 1. At the most recent Special Master hearing, the Builders also took the position that their claim for declaratory relief on claim preclusion based on the same settlement agreement also remains in the case even though the Association's counterclaims have already been disposed of via the Repose Order.

5. All of the Builders' remaining claims are, for all practical purposes, defenses to the Association's claims that have been artfully plead as causes of action. Each of the Builders' claims will require discovery into various aspects of the defects previously litigated by the parties as well as all of the defects alleged in the Association's Chapter 40 Notice that led to the Builders filing this action. The Builders' recent attempt to serve discovery requests illustrates the point. *See* **Exhibit 1** (Letter).

6. This case is currently scheduled to proceed to trial on the Court's jury trial stack on September 8, 2020. *See* Order filed November 20, 2018. The current discovery cutoff date is May 29,

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

2020. *See* Order entered on May 20, 2019. To date, no discovery has been conducted in this case, including but not limited to written discovery, expert disclosures, and depositions. Although a Case Agenda was entered, the Special Master has not allowed discovery to commence until after the Court resolved the Builders' dispositive motions. This was done to avoid wasting the parties' resources on potentially unnecessary discovery.

7. On March 20, 2020, Chief Judge Bell entered Administrative Order 20-09 ("AO 20-09") which provided in relevant part that "[a] stay of any case should be liberally granted at this time based on any COVID-19 related issues." AO 20-09 at Section VI.

8. Further, recent Eighth Judicial District Court and State of Nevada restrictions due to the COVID-19 emergency make conducting any discovery impractical for all parties. In part, Governor Sisolak's Declaration of Emergency Directive 010 directs Nevadans to stay home except to seek or provide essential services. Consistent with this directive, Administrative Order 20-13 ("AO 20-13") not only suspends jury trials during the pendency of the Order but also tolls the deadlines to respond for all written discovery. *See* AO 20-13 at ¶¶ 1, 18. AO 20-13 also states that COVID-19 constitutes "good cause" warranting extension of time in non-essential civil case types. *See id.* at ¶ 17.

9. The State of Nevada's COVID-19 restrictions, including prohibitions against certain meeting size and social distancing, have also delayed or inhibited most contact with the Association.

10. Good cause exists to hear this Motion on shortened time because (a) less than 30 days remain to complete discovery, which the parties have not commenced; (b) the Builders have sought leave to serve written discovery on the Association, which, even if appropriate, could not be answered before the discovery cutoff absent the provisions of AO 20-13; (c) AO 20-13 provides that written discovery responses are not due until 30 days after that order expires, is modified or is rescinded, which precludes either side from completing discovery in time for the current trial date; (d) the Builders have indicated they will not stipulate to a stay of this case, *see* Ex. 1 (Letter); and (e) the Association needs certainty so it can be prepared to defend the claims asserted against it.

/ / /

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

11. To avoid prejudice and obtain certainty, the Association respectfully requests a hearing date at the earliest available time that is convenient for the Court.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 15th day of May, 2020.

/s/ Michael Gayan
MICHAEL GAYAN

ORDER SHORTENTING TIME

The Court having reviewed the Application for Order Shortening Time, and good cause appearing, IT IS HEREBY ORDERED that the foregoing **Defendant/Counterclaimant's Motion to Stay Proceedings Pending Disposition of the Appeal on Order Shortening Time** shall be heard on shortened time on the 26th day of May, 2020, at the hour of 8:30:00 a.m./p.m. in Department XXII of the Eighth Judicial District Court.

DATED this 15th day of May, 2020.

DISTRICT COURT JUDGE

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Association respectfully requests an order staying this case pending the outcome of the Association's appeal. The NRAP 8(c) considerations all support staying this case to avoid defeating the object of the appeal, prevent irreparable or serious harm to the Association from the potential for inconsistent results, and avoid waste and/or duplication of effort via redundant discovery efforts and/or multiple trials. ***First***, absent a stay, the object of the appeal will be in jeopardy. Should the Builders prevail on any of their remaining claims, the appeal would likely be mooted. ***Second***, a stay is the only way to ensure the Association will not suffer irreparable or serious harm through inconsistent rulings, having to redo discovery, or trying this case more than one time. These harms are particularly acute where, as here, the Builders seek to have the Association pay all "defense" expenses, which could more than quadruple the Association's litigation expenses if the parties have to conduct discovery and try the case two times. Further, due to issues caused by COVID-19, the Court should not risk wasting its valuable and especially scarce resources trying a case that may need to be tried again. ***Third***, the Builders will suffer no harm at all from a stay. Their decision to serially file dispositive motions over the course of three years shows they are in no hurry to conduct discovery and get to trial. ***Finally***, the Association respectfully submits it will likely succeed on the merits of its appeal, particularly due to the sheer number of appellate issues. Even if the Court disagrees on this point, the three other NRAP 8(c) considerations weigh so heavily in favor of a stay as to justify granting this Motion by staying the case until the Nevada Supreme Court resolves the Association's pending appeal.

II.

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

In February 2016, the Association served the Builders with a Chapter 40 Notice alleging four discrete construction defects in the Association's two high-rise condominium towers. After the Builders conducted perfunctory pre-litigation inspections and disclaimed all liability for any of the construction defects, the parties participated in the pre-litigation mediation required by statute.

On September 28, 2016, just two days after that mediation ended without any resolution of the issues raised in the Association's Chapter 40 Notice, the Builders filed this pre-emptive action against the Association seeking to enforce a prior settlement agreement and obtain declaratory relief related to the Association's Chapter 40 Notice.

On March 1, 2017, after the Association unsuccessfully sought to dismiss the Builders' Complaint, the Association timely filed its Answer and Counterclaim. The Association's Counterclaim contained the construction defect claims contained within the Chapter 40 Notice.

On March 20, 2017, the Builders filed their first motion for summary judgment that challenged, among other things, the sufficiency of the Association's Chapter 40 Notice. On September 15, 2017, the Court granted the Builders' motion in part and gave the Association leave to amend its Chapter 40 Notice to provide additional detail.

On August 3, 2018, after the Association served the Builders with an Amended Chapter 40 Notice, the Builders filed another motion for summary judgment challenging the sufficiency of the amended notice. On November 30, 2018, the Court granted the Builders' motion in part and determined the Association provided sufficient notice of the window design defect ("Notice Order").

On October 22, 2018, the Builders filed their third motion for summary judgment challenging the Association's standing to assert claims related to the window design defect. On March 11, 2019, the district court entered its order denying that motion.

On December 17, 2018, the Builders filed a motion for reconsideration of the Notice Order. On March 11, 2019, the Court entered its order denying the Builders' motion for reconsideration.

On February 11, 2019, the Builders filed their fourth motion for summary judgment, this time challenging the timeliness of the Association's construction defect counterclaims under NRS 11.202(1). On March 1, 2019, the Association filed its opposition to the motion and a countermotion for relief pursuant to NRS 40.695(2). On May 23, 2019, the Court entered its Order granting the Builders' motion and denying the Association's countermotion ("Repose Order").

On June 1, 2019, the Nevada Legislature passed Assembly Bill 421 and delivered it to Governor Sisolak for consideration. On June 3, 2019, the Association filed a motion for reconsideration of the Order. In that motion, the Association noted the status of AB 421 and the possibility of filing another

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

motion for reconsideration should the bill become Nevada law. On June 13, 2019, the Association filed a separate motion for reconsideration of the Repose Order based on AB 421's enactment. On July 16, 2019, the Court heard both of the Association's motions and denied the Homeowners Association's first motion for reconsideration but took the second motion for reconsideration under advisement. On August 9, 2019, the Court entered its order denying the Association's second motion for reconsideration ("AB 421 Order").

On July 22, 2019, the Builders filed their motion requesting to certify the Repose Order as a final judgment pursuant to Rule 54(b). The Association opposed that motion. On August 12, 2019, the Court filed its order granting the Builders' motion and certifying the Repose Order as a final judgment under Rule 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 timely filed its first motion to alter or amend the Repose Order pursuant to Rule 59(e). On January 14, 2020, the Court filed its order denying the Association's motion ("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 timely filed its Notice of Appeal of the Court's various orders, including but not limited to the Repose Order, the Rule 54(b) Order, and the Rule 59(e) Order. After removing the matter from the settlement program, the Nevada Supreme Court recently directed the Association to file its opening brief by July 21, 2020.

In addition to these efforts, the Builders have twice prematurely filed a memorandum of costs and a motion for attorney's fees. *See, e.g.*, 5/28/19 Pltf.'s Memo. of Costs, 1/20/20 Pltf.'s First Supp. Memo. of Costs, 6/16/19 Pltf.'s Mot. for Fees, 2/7/20 Pltf.'s First Supp. Mot. for Fees. Each time, the Builders' filings have required the Association to needlessly brief these premature issues before the Court vacated the motions. *See* 7/16/19 Minute Order, 3/31/20 Minute Order.

/ / /

/ / /

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

III.

LEGAL ARGUMENT

A. The Court Should Stay this Case Pending Disposition of the Association's Appeal.

Nevada courts considers the following factors in deciding whether to grant a stay pending disposition of an appeal:

> (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 659, 6 P.3d 982, 986 (2000) (citing NRAP 8(c)). Although no single factor carries "more weight than the others," the Nevada Supreme Court has held that one or two "especially strong" factors "may counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). Such stays serve important values. Among other things, they help conserve the time of courts, jurors, and parties alike, particularly when (as here) the pending appeal "is likely to have a substantial or controlling effect on the claims and issues" in the district court. *Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist.,* 559 F.3d 1191, 1198 (11th Cir. 2009). A stay pending appeal also helps prevent inconsistent rulings.

Here, a stay pending disposition of the appeal is necessary for three reasons. First, a stay will prevent the parties and the Court from expending significant time and resources preparing for and participating in a trial (or two) that could be compromised or mooted by a successful appeal. Second, a stay will prevent inconsistent rulings and unfair prejudice to all parties by ensuring all claims and defenses related to the Association's claims are tried together. Finally, in light of the Builders' claims seeking to have the Association defend and indemnify them, any inefficiencies in litigating this case may unfairly prejudice and seriously harm the Association by needlessly multiplying the amount of attorney's fees and costs the Builders will attempt to shift to the Association.

1. The object of the Association's appeal will be defeated absent a stay.

The Nevada Supreme Court has placed importance on properly defining the object of an appeal for purposes of determining whether to enter a stay. *See, e.g., Mikohn Gaming*, 120 Nev. at 252–53,

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

89 P.3d at 38–39; *Hansen*, 116 Nev. at 658, 6 P.3d at 986. Here, the object of the appeal is to allow the Association to conduct discovery and resolve its counterclaims on the merits. At present, the only claims left in this case are the Builders' remaining defenses to the counterclaims that have been plead as claims. Moving forward before resolution of the appeal will effectively allow the Builders to litigate all of their defenses separate from the Association's substantive claims. Should this Court allow the Builders to go to trial on their claims for claim preclusion or indemnity, the appeal could be completely mooted by a second judgment in the Builders' favor—all before the Association has any opportunity to proceed in any way on the merits of its counterclaims. Therefore, this factor weighs heavily in favor of a stay to avoid defeating the object of the appeal.

2. A stay will prevent the Association from suffering irreparable or serious harm.

The Nevada Supreme Court has held that, "in certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis." *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39. In general, litigation costs and a delay in pursuing discovery do not constitute irreparable harm. *See id.*

Here, a stay will protect the Association from suffering irreparable or serious harm due to the risk of inconsistent rulings caused by litigating in piecemeal fashion. *Bradford-Scott Data Corp., Inc. v. Physician Computer Network, Inc.*, 128 F.3d 504, 505 (7th Cir. 1997) ("Continuation of proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals"). If the Builders' remaining claims (i.e., defenses) proceed in this Court before the Supreme Court resolves the appeal, the Builders may get two bites at the apple to prevail on their defenses/claims. The Builders have two claims for declaratory relief, one claim for breach of contract, and potentially one claim for claim preclusion. A jury demand has been filed in this case, but a jury may not resolve all of the Builders' claims (e.g., declaratory relief). However the claims get divvyed up between factfinders, the jury or this Court, the same factfinder shoulder consider and decide the Association's counterclaims at the same time it decides the Builders' defenses/claims. As may be expected, the Association's claims and the Builders' defenses involve a very similar set of facts, particularly with respect to the alleged defects and how those defects were treated (if at all) in the prior litigation. Considering these factually similar issues in separate trials necessarily creates the likelihood

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

for inconsistent results. And if the Builders were to prevail on any of their other defenses before the Supreme Court resolves the appeal, the Association will suffer irreparable or serious harm by having the appeal mooted and being precluded from ever having its claims heard on the merits even if it prevails on appeal.

And while increased litigation costs do not typically constitute irreparable harm, this is no ordinary case. The Builders have asserted claims seeking to have the Association defend and indemnify them for all expenses related to this action. Although the Association denies and disputes these claims, trying this case in piecemeal fashion and potentially retrying the case would unfairly and drastically increase the Association's potential liability. A party bearing its own litigation expenses, as contemplated by the *Mikohn Gaming* court, is very different from a party also potentially bearing the opposing parties' attorney's fees and litigation expenses for two (or more) trials. While these expenses may not rise to the level of irreparable harm, they certainly constitute serious harm for the Association.

Similarly, judicial economy favors staying all proceedings in the matter. Allowing the Builders' claims to be litigated while the Association's related counterclaims are pending on appeal "could create chaos with the appellate process." *City of Hanford v. Superior Court*, 208 Cal.App.3d 580, 588 (1989). In this case, granting a stay is necessary to protect the Association's right of appeal as well as the Supreme Court's forthcoming decision. Further, in the event the Association prevails on its appeal, a denial of this stay will likely result in duplicative litigation and discovery efforts and potentially a second trial. Avoiding unnecessary litigation is also good cause to stay a matter. A stay will be a real "economy of time and effort," and that is a legitimate purpose for a stay pending a writ or appeal. *See Maheu v. Eighth Judicial Dist. Court In & For Clark County, Dept. No. 6*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973). The Builders' remaining legal claims–claim preclusion, breach of a prior settlement agreement, and declaratory relief for defense and indemnity–are related to and primarily defenses to the Association's counterclaims. There is little justification to subject the Court, the parties, and prospective jurors to potentially unnecessary and duplicative proceedings. Thus, judicial economy is best served by staying the instant proceedings until the Supreme Court resolves the appeal.

For all of these reasons, the second factor weighs heavily in favor of a stay.

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

3. A stay will not cause the Builders to suffer any irreparable or serious harm.

"[A] mere delay in pursuing discovery and litigation normally does not constitute irreparable harm." *Mikohn Gaming*, 120 Nev. at 253, 89 P.3d at 39. The Builders will not suffer any harm if the case is stayed in order to permit the Supreme Court to render a decision. The Builders' claims of claim preclusion, breach of a prior settlement agreement, and declaratory relief on duties to defend and indemnify the Builders will not be impaired by a stay. The Builders have yet to conduct any inspections or discovery, produce expert reports, or depose any witnesses. A stay of the litigation will not harm the Builders at all.

And as the Court knows, the Builders have intentionally conducted three (3) years of serial dispositive motion practice in this 2016 case. That being the case, the Builders cannot seriously argue they are in any hurry to reach trial or would suffer prejudice from waiting for the appellate decision. The only reason the Builders may push for a trial at this point is to create leverage for negotiating a dismissal of the appeal in exchange for a dismissal of the Builders' remaining claims. Whatever the case, this factor weighs heavily in favor of a stay.

4. The Association is likely to succeed on the merits of its appeal.

While the Court may consider the Association's likelihood of success on the merits of its appeal, "a movant does not always have to show a probability of success on the merits" when moving for "a stay pending an appeal." *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658-59, 6 P.3d 982, 987 (2000). Thus, this Court has discretion to stay the proceedings pending appeal even though the Court denied the Association's motion to alter or amend the Repose Order.

This factor puts the Association in the awkward position of arguing that it is likely to persuade the Supreme Court to reverse the Court's Repose Order and/or other appealable orders. While the Association respects this Court and understands the orders, it respectfully disagrees and would like the opportunity to present its arguments on appeal. The Court is very familiar with the facts and issues on appeal based on the extensive briefing and hearings and the fact that the Court frequently prepared its own lengthy written orders. That being the case, the Association will simply list the key issues on appeal—several of which are of first impression—rather than revisiting them here. The issues include but are not limited to:

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

- Whether the Association brought its claims within the applicable statute of repose and, if necessary, whether good cause exists under NRS 40.695(2) and the unique facts of this case to toll the statute of repose;
- Whether the Association's counterclaims are compulsory counterclaims that relate back to the date of the Builders' Complaint;
- Whether AB 421's express retroactivity provision went into effect before October 1, 2019, and, if so, whether it impacted the timeliness of the Association's claims; and
- Whether the passage of AB 421, which occurred within weeks of the Court's Repose Order, constituted a change in the controlling law that entitled the Association to an order altering or amending the Repose Order after the Court entered the Rule 54(b) Order.

Any one of these issues, if decided in the Association's favor, would allow the Association to proceed on the merits of its counterclaims. The number of appealable issues that would result in reversal increases the likelihood of the Association's success on the merits. Therefore, this factor weighs heavily in favor of a stay.

IV.

CONCLUSION

For the foregoing reasons, the Association respectfully requests this matter to be stayed pending disposition of the Association's appeal.

DATED: May 15, 2020

Respectfully submitted,

KEMP JONES, LLP

/s/ Michael Gayan

MICHAEL J. GAYAN, ESQ., (#11135)
JOSHUA D. CARLSON, ESQ. (#11781)
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

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

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/Counterclaimant Panorama Towers Condominium Unit Owners' Association

Certificate of Service

I hereby certify that on the ___ day of May, 2020, the foregoing **Defendant/Counterclaimant's Motion to Stay Proceedings Pending Disposition of the Appeal on Order Shortening Time** was served on the following by Electronic Service to all parties on the Court's service list.

An employee of Kemp Jones, LLP

KEMP JONES, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

Exhibit 1

Lynch & Associates
Law Group

1445 AMERICAN PACIFIC DR.
SUITE 110, #293
HENDERSON, NV 89074
PHONE: (702) 868-1115
FAX: (702) 868-1114

505 FRONT STREET
SUITE 226
LAHAINA, HI 96761
PHONE: (808) 757-9222
FAX: (808) 440-0694

FRANCIS I. LYNCH, ESQ. - LICENSED IN NV

OF COUNSEL
SHAUNA M. HUGHES, ESQ. – LICENSED IN NV

March 22, 2019

Delivered Via E-Service

Special Master Floyd A. Hale, Esq.
3800 Howard Hughes Pkwy. 11th Fl.
Las Vegas, Nevada 89169

Re: Laurent Hallier, et al. vs. Panorama Towers Condominium Unit Owners' Association
Case No. A-16-744146-D

Dear Special Master Hale:

As you are aware, a Special Master hearing in the above referenced matter is currently scheduled for April 8, 2019 at 2:30pm. This hearing was scheduled in order to follow the hearing of Plaintiff's most recent potentially case-dispositive motion, which was previously scheduled for March 26, 2019. However, the Court has requested that the March 26 hearing be rescheduled for a later date.

Earlier today, a Stipulation and Order was filed with the Court that rescheduled the March 26 hearing for April 23, 2019. Consequently, please consider this letter to serve as a request that the Special Master hearing currently scheduled for April 8, 2019 be rescheduled for April 30, 2019.

Thank you for your consideration.

Respectfully,

Lynch Hopper LLP

/s/ Francis Lynch
Francis I. Lynch, Esq.
FLynch@lynchhopper.com

Exhibit 5

Electronically Filed
7/2/2020 12:20 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

LAURENT HALLIER, Plaintiff, vs. PANAROMA TOWERS CONDOMINIUM OWNERS ASSOCIATION, Defendant.	CASE NO. A-16-744146-D DEPT. XXII

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

MAY 26, 2020

RECORDER'S TRANSCRIPT OF HEARING RE

DEFENDANT/COUNTERCLAIMANT'S MOTION TO STAY PROCEEDINGS PENDING DISPOSITION OF THE APPEAL ON ORDER SHORTENING TIME

APPEARANCES:

For the Plaintiff: PETER C. BROWN, ESQ.
DEVIN A GIFFORD, ESQ.
Appearances via Video Conference

For the Defendant: MICHAEL J. GAYAN, ESQ.
FRANCIS I. LYNCH, ESQ.
SCOTT WILLIAMS, ESQ.
Appearances via Video Conference

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

these criminal matters and then of course we have to worry about medical malpractice cases because those are supposed to be tried within three years. We will have those cases dealing with preferential trial settings that we will have to deal with. And I guess what my concern is is that before even you speak, Mr. Brown, this case may be back burnered anyway because of the logistics of the courts.

So, -- and I – anyway, I want to hear from you.

MR. BROWN: Thank you, Your Honor. I believe Mr. Gifford is going to start off with the arguments on behalf of our client. I will just preliminarily respond to what you just said that obviously COVID19 is has impacted upon us all and upon the courts. I do note that this matter was filed in – on September 16, 2015 and so the five year is coming up on September 16, 2021.

THE COURT: I understand. And believe me, I'm very well aware of it, it's one of my oldest cases so --

MR. BROWN: Then I would refer to Mr. Gifford and then I will take up the argument after he finishes with his section.

THE COURT: Okay. Mr. Gifford.

MR. GIFFORD: Yes. Thank you, Your Honor. I appreciate the ability to do this on video. I think it's a little bit better than – yeah, I'd like to just address a few things first and then we'll get into some of the factors.

So, the Association has – they accuse us of – they accuse the Builders of – of making disingenuous claims or allegations or citations in the motion but in fact I think that blame falls on the Association in their brief. They utilize citations, they utilize case law. [indecipherable] with the holdings of those cases. They accuse the Builders of -- as you heard counsel, they accuse the Builders of having a narrow view, a vastly narrow overview of the issues of the [indecipherable]. But I

So, I am staying the case for about six months and I need a date – a status check date in December.

THE COURT CLERK: Mid December?

THE COURT: Mid December. So, I guess you could say, Mr. Gayan, your motion is denied but I am going to stay the case for at least six months.

MR. GAYAN: Thank you, Your Honor. I was hoping for that clarification just for the record.

THE COURT CLERK: And the status check will be December 16th at 8:30.

THE COURT: December 16th at 8:30 will be the status check and I'm looking to lift the stay at that point. And just to give you guys an FYI, I do have four construction defect stacks, January, March, June and September, okay? So, you might want to think about that in December or when we start scheduling the trial and I will make sure, Mr. Brown, that we have no five year issues and I think Mr. Gayan is probably right because we did have – what did we have, about a three month stay at one point to –

MR. GAYAN: Your Honor, I believe it was six or seven months.

THE COURT: Okay. I know it dealt with the amending of the Chapter 40 notice. But whatever that is, whether it's three months or six months we will maybe revisit that so that we know how long we're talking about and obviously if I'm staying this for six months that will also tack on. I mean, I don't like having old cases but this is just a complicated one and we just have to deal with it I think and then of course we got the super imposing of the COVID-19 situation. So, we just gotta a lot of pieces and parts that are moving in this case, all right? So, there will be a stay – go ahead. Who needed to speak?

MR. BROWN: Your Honor, Peter Brown. I just wanted to confirm. And I

believe what you just said did confirm that but I just want to have on the record that this particular stay does extend the five year rule of Rule 41(e).

THE COURT: It does.

MR. BROWN: All right. Thank you, Your Honor.

THE COURT: Okay. And like I said, technically, Mr. Gayan, while I think you got some of the relief you wanted your motion is denied because I'm not staying until the appeal although we may have a better sense of where your appeal is going by December, who knows, but I – what Mr. Brown said I take solace in that because I've had at least one case, it was up on appeal for seven years. I've had had an arbitration case – well, actually several arbitration cases – or I should say that provisions for arbitration and purchase sale agreements and CC&R's actually dealing with a constructional defect case. I think that was up there for four years. And I have no idea how long the Hayward case was up there. How long was that, Mr. Brown? Was that five years?

MR. BROWN: I think, Your Honor, that was one that was seven years.

THE COURT: Oh boy, that was a seven year case too. Well, I'm not gonna stay a case for seven years but maybe we'll have a better sense of where we are in December, okay?

MR. BROWN: Your Honor, our office will prepare the proposed order and run it by Mr. Gayan.

THE COURT: All right. And, Mr. Gayan, I just need you to approve as to form and content, not that you agree with my decision.

MR. GAYAN: Understood, Your Honor.

THE COURT: All right.

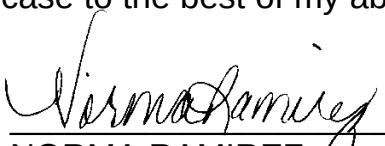
* * * * *

MR. GAYAN: Thank you.

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

* * * * *

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



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

Exhibit 6

ODM

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/Counter-Defendants,
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.	Case No. A-16-744146-D Dept. XXII **ORDER DENYING DEFENDANT/COUNTERCLAIMANT'S MOTION TO STAY PROCEEDINGS PENDING DISPOSITION OF THE APPEAL ON ORDER SHORTENING TIME**
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; SIERRA GLASS & MIRROR, INC.; F. ROGERS CORPORATION; DEAN ROOFING COMPANY; FORD CONTRACTING, INC.; INSULPRO, INC.; XTREME EXCAVATION; 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 , inclusive,

Counter-Defendants.

ORDER DENYING DEFENDANT/COUNTERCLAIMANT'S MOTION TO STAY PROCEEDINGS PENDING DISPOSITION OF THE APPEAL ON ORDER SHORTENING TIME

On May 26, 2020, at 8:30 a.m., Defendant/Counterclaimant's Motion to Stay Proceedings Pending Disposition of the Appeal on Order Shortening Time 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, the Court concludes as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant/Counterclaimant's Motion to Stay Proceedings Pending Disposition of the Appeal on Order Shortening Time is DENIED. However, due to the impact of the current COVID-19 pandemic, this case will not be able to proceed with a jury trial in September 2020 (the current trial setting). The Court therefore also orders that the case is stayed for six (6) months ~~from the date of the hearing on the underlying Motion, until Thursday, November 26, 2020~~.

/// and a status check to lift the stay to be set for December 16, 2020, at 8:30 a.m.

///

///

///

///

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

This stay of litigation tolls the 5-year rule codified in NRCP 41(e) by six (6) months.

DATED this ____ day of _____ 2020.

Dated this 3rd day of September, 2020

DISTRICT COURT JUDGE

8C8 12C D609 89A1
Susan Johnson
District Court Judge

Respectfully submitted by:

BREMER WHYTE BROWN & O'MEARA LLP

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.

KEMP JONES, LLP

By: /s/ Michael J. Gayan
Michael J. Gayan, Esq.
Nevada State Bar No. 11135
Joshua D. Carlson, Esq.
Nevada State Bar No. 11781
Attorney for Defendant/Counterclaimant,
PANORAMA TOWERS CONDOMINIUM UNIT OWNERS' ASSOCIATION

BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

RE: Panorama Towers 1287.551 - Order Re: Motion to Stay

DR

Devin R. Gifford <dgifford@bremerwhyte.com>

To ○ Michael Gayan

Cc ○ Joshua Carlson; ● Peter Brown; ○ Scott Williams (swilliams@williamsgumbiner.com); ○ Francis Lynch; ○ Smith, Abraham; ○ Polsenberg, Daniel F.; ● Jeffrey W. Saab; **+1 other**

10:01 AM

f: 702.258.6662

From: Michael Gayan <m.gayan@kempjones.com>
Sent: Tuesday, September 01, 2020 1:59 PM
To: Devin R. Gifford <dgifford@bremerwhyte.com>
Cc: Joshua Carlson <j.carlson@kempjones.com>; Peter Brown <pbrown@bremerwhyte.com>; Scott Williams (swilliams@williamsgumbiner.com) <swilliams@williamsgumbiner.com>; Francis Lynch <flynch@lynchhopper.com>; Smith, Abraham <ASmith@lrrc.com>; Polsenberg, Daniel F. <DPolsenberg@lrrc.com>; Jeffrey W. Saab <jsaab@bremerwhyte.com>; Shannon Formont <sformont@bremerwhyte.com>
Subject: RE: Panorama Towers 1287.551 - Order Re: Motion to Stay

***** This is an external email *****

Hi Devin,

You may use my esignature and submit to the court.

Thanks,

Michael Gayan, Esq.

KEMP JONES
Attorneys At Law

3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169
(P) 702-385-6000 | (F) 702 385-6001 | m.gayan@kempjones.com
(profile) (vCard)

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Laurent Hallier, Plaintiff(s) vs. Panorama Towers Condominium Unit Owners Association, Defendant(s)	CASE NO: A-16-744146-D DEPT. NO. Department 22

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 9/3/2020

"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
Debbie Holloman .	dholloman@jamsadr.com
Depository .	Depository@litigationservices.com
Floyd Hale .	fhale@floydhale.com
Jennifer Juarez .	jjuarez@lynchhopper.com

Peter C. Brown .	pbrown@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
Nancy Ray	nray@kringandchung.com
Terry Kelly-Lamb	tkelly-lamb@kringandchung.com
Robert Thompson	rthompson@kringandchung.com
Joshua Carlson	j.carlson@kempjones.com
Nicole McLeod	n.mcleod@kempjones.com
Ali Augustine	a.augustine@kempjones.com
Jeff Saab	jsaab@bremerwhyte.com
Michael Gayan	m.gayan@kempjones.com
Joel Henriod	jhenriod@lrrc.com
Abraham Smith	asmith@lrrc.com
Jessie Helm	jhelm@lrrc.com
Devin Gifford	dgifford@bremerwhyte.com
Alondra Reynolds	areynolds@bremerwhyte.com
Christie Cyr	ccyr@leachjohnson.com
Pamela Montgomery	p.montgomery@kempjones.com
Kimberley Chapman	kchapman@bremerwhyte.com
Courtney Hackett	chackett@fmglegal.com