

COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTERS MITH



04682642
JODI JERICH
Executive Director

PATRICIA L. BARFIELD
Director
Corporations Division

ARIZONA CORPORATION COMMISSION

Date APRIL 30, 2014

D. V. C. CONSTRUCTION COMPANY, INC
12475 W. ALICE AVENUE
EL MIRAGE, AZ 85335

Dear Sir or Madam:

Enclosed is a copy of the following document(s) that were served upon the Arizona Corporation Commission on 04/29/2014 as agent for D. V. C. CONSTRUCTION COMPANY, INC:

Case caption: **MARYANN DELAURENTIS, et.al v. BEAZER HOME SALES, INC, et.al ,**
Case number: **CV2013-016948** Court: **MARICOPA COUNTY, SUPERIOR COURT**

- ☒ Summons
- ☒ Complaint
- ☐ Subpoena
- ☐ Subpoena Duces Tecum
- ☐ Default Judgment
- ☐ Judgment
- ☐ Writ of Garnishment
- ☐ Motion For Summary Judgment
- ☐ Motion for
- ☒ Other **CERTIFICATE OF COMPULSORY ARBITRATION**

Sincerely,

A handwritten signature in black ink, appearing to read "Lynda B. Griffin", written over a horizontal line.
Lynda B. Griffin
Custodian of Records

Initials **LBG**
File number **-0162479-2**

COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTERSMTIH



ARIZONA CORPORATION COMMISSION

JODI JERICH
Executive Director

PATRICIA L. BARFIELD
Director, Corporations Division

CERTIFICATE OF MAILING

Date: **APRIL 30, 2014**

I, **LYNDA GRIFFIN** am an employee of the Arizona Corporation Commission ("ACC"). I hereby certify that on the **29TH** day of **APRIL, 2014**, I received on behalf of the ACC service of the following documents upon the ACC as agent for **D. V. C. CONSTRUCTION COMPANY, INC.**

Case caption: **MARYANN DELAURENTIS, et.al** v. **BEAZER HOME SALES, INC, et.al**

Case number: **CV2013-016948**

Court: **MARICOPA COUNTY, SUPERIOR COURT**

- | | |
|----------------------------------------------------------------------------------------|----------------------------------------------|
| <input checked="" type="checkbox"/> Summons | <input type="checkbox"/> Default Judgment |
| <input checked="" type="checkbox"/> Complaint | <input type="checkbox"/> Judgment |
| <input type="checkbox"/> Subpoena | <input type="checkbox"/> Writ of Garnishment |
| <input type="checkbox"/> Subpoena Duces Tecum | |
| <input type="checkbox"/> Motion For Summary Judgment | |
| <input type="checkbox"/> Motion for | |
| <input checked="" type="checkbox"/> Other CERTIFICATE OF COMPULSORY ARBITRATION | |

I hereby certify that on the **30TH** day of **APRIL, 2014**, I placed a copy of the above listed documents in the United States Mail, postage prepaid, addressed to

D. V. C. CONSTRUCTION COMPANY, INC

at its last known place of business as follows:

**12475 W. ALICE AVENUE
EL MIRAGE, AZ
85335**

OR

I hereby certify that I was unable to mail the above listed documents to

because that entity is not a registered corporation or limited liability company in the State of Arizona, and the Arizona Corporation Commission has no record of its known place of business.

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

Executed on this date: **April 30, 2014**

(signature)

1 William A. Nebeker, Esq., State Bar No. 004919
2 Zahnie L. Soe Myint, Esq., State Bar No. 020010
3 Judith A. Downs, Esq., State Bar No.: 019442

4 **KOELLER NEBEKER CARLSON & HALUCK, LLP**

5 3200 North Central Avenue, Ste. 2250

6 Phoenix, Arizona 85012

7 Tel. 602-256-0000

8 Fax 602-256-2488

9 nebeker@knchlaw.com

10 zahnie.soemyint@knchlaw.com

11 judith.downs@knchlaw.com

12 *Attorneys for Defendants/Third Party Plaintiffs Beazer Homes*

ORIGINAL

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

14 **IN AND FOR THE COUNTY OF MARICOPA**

15 **MARYANN DELAURENTIS, et al.**

CASE NO. CV2013-016948

16 **Plaintiffs,**

SUMMONS

17 **v.**

18 **BEAZER HOME SALES, INC. f/k/a**
19 **BEAZER HOMES SALES ARIZONA, INC.**
20 **a Delaware Corporation; BEAZER HOMES**
21 **HOLDINGS CORP., d/b/a BEAZER**
22 **HOMES, a Delaware corporation; and**
23 **DOES 1-100 inclusive,**

24 **Defendants.**

If you would like legal advice from a lawyer,
contact the Lawyer Referral Service at
(Honorable Robert Oberbillig)
602-257-4434

or
www.maricopalawyers.org
Sponsored by the
Maricopa County Bar Association

1 BEAZER HOMES HOLDINGS CORP.
2 d/b/a BEAZER HOMES, a Delaware
3 corporation; and BEAZER HOMES SALES,
4 INC. f/k/a BEAZER HOMES SALES
5 ARIZONA, INC. , a Delaware corporation;

6
7 Third-Party Plaintiffs,

8 v.

9 AARO DOOR & TRIM INC., an Arizona
10 corporation; A & M CONCRETE, INC., an
11 Arizona corporation; ADAMS BROS
12 INTERIORS & CABINETS, INC., an
13 Arizona corporation; AMERICAN
14 WOODMARK CORPORATION, a foreign
15 corporation; AMPAM RIGGS PLUMBING,
16 INC., an Arizona corporation; ARIZONA
17 DRYWALL CO., INC., an Arizona
18 corporation; ARIZONA SUN
19 ELECTRICAL CONTRACTORS, INC., an
20 Arizona corporation; B/H DRYWALL,
21 STUCCO & PAINTING CO. INC., an
22 Arizona corporation; CANYON STATE
23 DRYWALL, INC., an Arizona corporation;
24 CATALINA ROOFING AND SUPPLY,
25 INC., an Arizona corporation; C & C
ROOFING & SUPPLY, INC., an Arizona
corporation; CHAS ROBERTS AIR
CONDITIONING, INC., an Arizona
corporation; COHACO BUILDING
SPECIALTIES, INC., an Arizona
corporation; D.V.C. CONSTRUCTION
COMPANY, INC., an Arizona corporation;
DIAMOND GLASS & MIRROR, INC., an
Arizona corporation; FLYNN'S FLOOR
COVERING, INC., an Arizona corporation;
BUILDER SERVICES GROUP, INC. d/b/a/
GALE INSULATION, a foreign
corporation; GOTHIC LANDSCAPING,
INC., a foreign corporation; HASKINS
ELECTRIC, LLC, a foreign limited liability



1 company; HERITAGE INTERIORS, INC.
2 n/k/a HERITAGE INTERIORS ISI, LLC,
3 an Arizona limited liability company;
4 INTERIOR LOGIC, INC., an Arizona
5 corporation; J.M.R. PAINTING, INC., an
6 Arizona corporation; ROCK ISLAND
7 CORPORATION d/b/a THE JORDAN
8 COMPANY, a foreign corporation;
9 SELECTBUILD NEVADA, LLC f/k/a KBI
10 CONSTRUCTION, L.L.C., a foreign limited
11 liability company; LOFTCO, INC., an
12 Arizona corporation; MESA FULLY
13 FORMED, INC. n/k/a MFF, INC., an
14 Arizona corporation; MILGARD
15 MANUFACTURING INCORPORATED, a
16 foreign corporation; MITCHELL
17 ELECTRIC COMPANY, INC., an Arizona
18 corporation; MONTE VISTA
19 CONSTRUCTION, LLC, an Arizona limited
20 liability company; OSBORNE STUCCO,
21 INC., an Arizona corporation; PACIFIC
22 STUCCO OF ARIZONA, INC., an Arizona
23 Corporation; PARAMOUNT WINDOWS,
24 LLC, an Arizona limited liability company;
25 PAUL JOHNSON DRYWALL, INC., an
Arizona corporation; RIGGS PLUMBING,
LLC., an Arizona limited liability company;
ROADRUNNER DRYWALL CORP., an
Arizona corporation; SCP
CONSTRUCTION, L.L.C., an Arizona
limited liability company; SEXTON
EXTERMINATING, INC., an Arizona
corporation; SONORAN AIR INC., an
Arizona corporation; SPECIALTY
ROOFING, INC., an Arizona corporation;
STONECRAFTERS OF ARIZONA, INC.,
an Arizona corporation; STONE NET, INC.,
a foreign corporation; SUNDANCE
CARPENTRY, INC., an Arizona
corporation; SUN MASTER MASONRY,
INC., an Arizona corporation; SUNRISE
STUCCO, INC., an Arizona corporation;

100

1 **TRIPLE S FENCE COMPANY, an Arizona**
2 **corporation; U.S.A. PLUMBING, INC., an**
3 **Arizona corporation; VALLEY**
4 **LANDSCAPING, L.L.C., an Arizona limited**
5 **liability company; VW DIG, LLC, an**
6 **Arizona limited liability company;**
7 **WESTERN SHOWER DOOR, INC., a**
8 **foreign corporation; WESTERN STATES**
9 **GLASS AND BUILDING PRODUCTS,**
10 **INC., an Arizona corporation; WESTSIDE**
11 **DRYWALL, INC., an Arizona corporation;**
12 **WHITTON PLUMBING, INC., an Arizona**
13 **corporation; YOUNGER BROTHERS**
14 **DOOR & TRIM, LLC, an Arizona limited**
15 **liability company;**

16 **Third-Party Defendants.**

17 **THE STATE OF ARIZONA TO THE THIRD-PARTY DEFENDANT: D.V.C.**
18 **CONSTRUCTION COMPANY, INC.**

19 **YOU ARE HEREBY SUMMONED** and required to serve upon the attorney for
20 the third-party plaintiffs an answer to the Third-Party Complaint which is herewith served
21 upon you, within twenty (20) days, exclusive of the date of service, after service of this
22 summons upon you if served within the State of Arizona, and within thirty (30) days,
23 exclusive of the day of service, if served without the State of Arizona.

24 **YOU ARE HEREBY NOTIFIED** that in case of your failure to appear and
25 defend within the time applicable, judgment by default may be rendered against you for
the relief demanded in the Third-Party Complaint.

YOU ARE CAUTIONED that in order to appear and defend, you must file an
Answer or proper response in writing with the Clerk of this Court, accompanied by the
necessary filing fee, within the time required, and you are required to serve a copy of any
Answer or response upon the Third-Party Plaintiffs' attorney. A.R.C.P. 10(d), A.R.S.
§12-331; A.R.C.P. 5.

1 The names and address of the Third-Party Plaintiffs' attorneys are:

2 William A. Nebeker, Esq.

3 Zahnie L. Soe Myint, Esq.

4 Judith A. Downs, Esq.

5 KOELLER, NEBEKER, CARLSON & HALUCK, LLP

6 3200 N. Central Avenue, Suite 2250

7 Phoenix, Arizona 85012

8 REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS
9 WITH DISABILITIES MUST BE MADE TO THE DIVISION ASSIGNED TO
10 THE CASE BY PARTIES AT LEAST THREE (3) JUDICIAL DAYS IN
11 ADVANCE OF A SCHEDULED COURT PROCEEDING.

12 SIGNED AND SEALED this date: _____

13 APR 21 2014

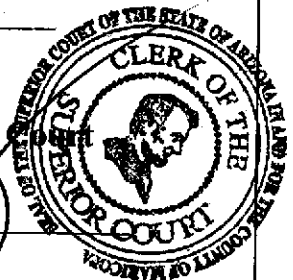
14 Clerk of Maricopa Superior Court

15 By _____

16 Deputy Clerk

17 MICHAEL K. JEANES CLERK

18 D. Cady
19 Deputy Clerk



1 William A. Nebeker, Esq., State Bar No. 004919
2 Zahnie L. Soe Myint, Esq., State Bar No. 020010
3 Judith A. Downs, Esq., State Bar No.: 019442
4 **KOELLER NEBEKER CARLSON & HALUCK, LLP**
5 3200 North Central Avenue, Ste. 2250
6 Phoenix, Arizona 85012
7 Tel. 602-256-0000
8 Fax 602-256-2488
9 nebeker@knchlaw.com
10 zahnie.soemyint@knchlaw.com
11 judith.downs@knchlaw.com
12 *Attorneys for Defendants Beazer Homes*

9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **MARYANN DELAURENTIS, et al.**

13 **Plaintiffs,**

14 **v.**

15 **BEAZER HOME SALES, INC. f/k/a**
16 **BEAZER HOMES SALES ARIZONA, INC.**
17 **a Delaware Corporation; BEAZER HOMES**
18 **HOLDINGS CORP., d/b/a BEAZER**
19 **HOMES, a Delaware corporation; and**
20 **DOES 1-100 inclusive,**

21 **Defendants.**

CASE NO. CV2013-016948

**BEAZER HOMES' THIRD
PARTY COMPLAINT**

(Honorable Robert Oberbillig)

1 **BEAZER HOMES HOLDINGS CORP.**
2 **d/b/a BEAZER HOMES, a Delaware**
3 **corporation; and BEAZER HOMES SALES,**
4 **INC. f/k/a BEAZER HOMES SALES**
5 **ARIZONA, INC. , a Delaware corporation;**

6 **Third-Party Plaintiffs,**

7 **v.**

8 **AARO DOOR & TRIM INC., an Arizona**
9 **corporation; A & M CONCRETE, INC., an**
10 **Arizona corporation; ADAMS BROS**
11 **INTERIORS & CABINETS, INC., an**
12 **Arizona corporation; AMERICAN**
13 **WOODMARK CORPORATION, a foreign**
14 **corporation; AMPAM RIGGS PLUMBING,**
15 **INC., an Arizona corporation; ARIZONA**
16 **DRYWALL CO., INC., an Arizona**
17 **corporation; ARIZONA SUN**
18 **ELECTRICAL CONTRACTORS, INC., an**
19 **Arizona corporation; B/H DRYWALL,**
20 **STUCCO & PAINTING CO. INC., an**
21 **Arizona corporation; CANYON STATE**
22 **DRYWALL, INC., an Arizona corporation;**
23 **CATALINA ROOFING AND SUPPLY,**
24 **INC., an Arizona corporation; C & C**
25 **ROOFING & SUPPLY, INC., an Arizona**
corporation; CHAS ROBERTS AIR
CONDITIONING, INC., an Arizona
corporation; COHACO BUILDING
SPECIALTIES, INC., an Arizona
corporation; D.V.C. CONSTRUCTION
COMPANY, INC., an Arizona corporation;
DIAMOND GLASS & MIRROR, INC., an
Arizona corporation; FLYNN'S FLOOR
COVERING, INC., an Arizona corporation;
BUILDER SERVICES GROUP, INC. d/b/a/
GALE INSULATION, a foreign
corporation; GOTHIC LANDSCAPING,
INC., a foreign corporation; HASKINS
ELECTRIC, LLC, a foreign limited liability

1 company; HERITAGE INTERIORS, INC.
2 n/k/a HERITAGE INTERIORS ISI, LLC,
3 an Arizona limited liability company;
4 INTERIOR LOGIC, INC., an Arizona
5 corporation; J.M.R. PAINTING, INC., an
6 Arizona corporation; ROCK ISLAND
7 CORPORATION d/b/a THE JORDAN
8 COMPANY, a foreign corporation;
9 SELECTBUILD NEVADA, LLC f/k/a KBI
10 CONSTRUCTION, L.L.C., a foreign limited
11 liability company; LOFTCO, INC., an
12 Arizona corporation; MESA FULLY
13 FORMED, INC. n/k/a MFF, INC., an
14 Arizona corporation; MILGARD
15 MANUFACTURING INCORPORATED, a
16 foreign corporation; MITCHELL
17 ELECTRIC COMPANY, INC., an Arizona
18 corporation; MONTE VISTA
19 CONSTRUCTION, LLC, an Arizona limited
20 liability company; OSBORNE STUCCO,
21 INC., an Arizona corporation; PACIFIC
22 STUCCO OF ARIZONA, INC., an Arizona
23 Corporation; PARAMOUNT WINDOWS,
24 LLC, an Arizona limited liability company;
25 PAUL JOHNSON DRYWALL, INC., an
Arizona corporation; RIGGS PLUMBING,
LLC., an Arizona limited liability company;
ROADRUNNER DRYWALL CORP., an
Arizona corporation; SCP
CONSTRUCTION, L.L.C., an Arizona
limited liability company; SEXTON
EXTERMINATING, INC., an Arizona
corporation; SONORAN AIR INC., an
Arizona corporation; SPECIALTY
ROOFING, INC., an Arizona corporation;
STONECRAFTERS OF ARIZONA, INC.,
an Arizona corporation; STONE NET, INC.,
a foreign corporation; SUNDANCE
CARPENTRY, INC., an Arizona
corporation; SUN MASTER MASONRY,
INC., an Arizona corporation; SUNRISE
STUCCO, INC., an Arizona corporation;

1 TRIPLE S FENCE COMPANY, an Arizona
2 corporation; U.S.A. PLUMBING, INC., an
3 Arizona corporation; VALLEY
4 LANDSCAPING, L.L.C., an Arizona limited
5 liability company; VW DIG, LLC, an
6 Arizona limited liability company;
7 WESTERN SHOWER DOOR, INC., a
8 foreign corporation; WESTERN STATES
9 GLASS AND BUILDING PRODUCTS,
10 INC., an Arizona corporation; WESTSIDE
11 DRYWALL, INC., an Arizona corporation;
12 WHITTON PLUMBING, INC., an Arizona
13 corporation; YOUNGER BROTHERS
14 DOOR & TRIM, LLC, an Arizona limited
15 liability company;

16 **Third-Party Defendants.**

17 Defendants BEAZER HOME SALES, INC. f/k/a BEAZER HOME SALES
18 ARIZONA, INC. and BEAZER HOMES HOLDINGS CORP. d/b/a BEAZER HOMES
19 (hereinafter collectively, "Third-Party Plaintiffs"), through undersigned counsel, and for
20 their Third-Party Complaint, hereby allege the following:

21 **GENERAL ALLEGATIONS**

22 1. Beazer Homes Sales, Inc. f/k/a Beazer Homes Sales Arizona, Inc. was at all
23 times material hereto a Delaware corporation authorized to do business and was doing
24 business within the County of Maricopa, State of Arizona.

25 2. Beazer Homes Holdings Corp. was at all times material hereto a Delaware
corporation authorized to do business and was doing business within the County of
Maricopa, State of Arizona.

1 3. Upon information and belief, Third-Party Defendant Aaro Door & Trim,
2 Inc., was at all times material hereto an Arizona corporation authorized to do business and
3 was doing business within the County of Maricopa, State of Arizona.

4 4. Upon information and belief, Third-Party Defendant A & M Concrete, Inc.,
5 was at all times material hereto an Arizona corporation authorized to do business and was
6 doing business within the County of Maricopa, State of Arizona.

7
8 5. Upon information and belief, Third-Party Defendant Adams Bros Interiors
9 & Cabinets, Inc., was at all times material hereto an Arizona corporation authorized to do
10 business and was doing business within the County of Maricopa, State of Arizona.

11
12 6. Upon information and belief, Third-Party Defendant American Woodmark
13 Corporation, was at all times material hereto a foreign corporation authorized to do
14 business and was doing business within the County of Maricopa, State of Arizona.

15 7. Upon information and belief, Third-Party Defendant AMPAM Riggs
16 Plumbing, Inc., was at all times material hereto an Arizona corporation authorized to do
17 business and was doing business within the County of Maricopa, State of Arizona.

18
19 8. Upon information and belief, Third-Party Defendant Arizona Drywall Co.,
20 Inc., was at all times material hereto an Arizona corporation authorized to do business and
21 was doing business within the County of Maricopa, State of Arizona.

22 9. Upon information and belief, Third-Party Defendant Arizona Sun Electrical
23 Contractors, Inc., was at all times material hereto an Arizona corporation authorized to do
24 business and was doing business within the County of Maricopa, State of Arizona.
25

10. Upon information and belief, Third-Party Defendant B/H Drywall, Stucco & Painting Co. Inc., was at all times material hereto an Arizona corporation authorized to do business and was doing business within the County of Maricopa, State of Arizona.

11. Upon information and belief, Third-Party Defendant Canyon State Drywall Incorporated, was at all times material hereto an Arizona corporation authorized to do business and was doing business within the County of Maricopa, State of Arizona.

12. Upon information and belief, Third-Party Defendant Catalina Roofing and Supply, Inc., was at all times material hereto an Arizona corporation authorized to do business and was doing business within the County of Maricopa, State of Arizona.

13. Upon information and belief, Third-Party Defendant C & C Roofing & Supply, Inc., was at all times material hereto an Arizona corporation authorized to do business and was doing business within the County of Maricopa, State of Arizona.

14. Upon information and belief, Third-Party Defendant Chas Roberts Air Conditioning, Inc., was at all times material hereto an Arizona corporation authorized to do business and was doing business within the County of Maricopa, State of Arizona.

15. Upon information and belief, Third-Party Defendant Cohaco Building Specialties, Inc., was at all times material hereto an Arizona corporation authorized to do business and was doing business within the County of Maricopa, State of Arizona.

16. Upon information and belief, Third-Party Defendant D.V.C. Construction Company, Inc., was at all times material hereto an Arizona corporation authorized to do business and was doing business within the County of Maricopa, State of Arizona.

1 17. Upon information and belief, Third-Party Defendant Diamond Glass and
2 Mirror, Inc., was at all times material hereto an Arizona corporation authorized to do
3 business and was doing business within the County of Maricopa, State of Arizona.

4 18. Upon information and belief, Third-Party Defendant Flynn's Floor
5 Covering, Inc., was at all times material hereto an Arizona corporation authorized to do
6 business and was doing business within the County of Maricopa, State of Arizona.

7 19. Upon information and belief, Third-Party Defendant Builder Services
8 Group, Inc. d/b/a Gale Insulation, was at all times material hereto a foreign corporation
9 authorized to do business and was doing business within the County of Maricopa, State of
10 Arizona.
11

12 20. Upon information and belief, Third-Party Defendant Gothic Landscaping,
13 Inc. was at all times material hereto a foreign corporation authorized to do business and
14 was doing business within the County of Maricopa, State of Arizona.
15

16 21. Upon information and belief, Third-Party Defendant Haskins Electric, LLC,
17 was at all times material hereto a foreign limited liability company authorized to do
18 business and was doing business within the County of Maricopa, State of Arizona.
19

20 22. Upon information and belief, Third-Party Defendant Heritage Interiors,
21 Inc., n/k/a Heritage Interiors ISI, LLC was at all times material hereto an Arizona entity
22 authorized to do business and was doing business within the County of Maricopa, State of
23 Arizona.
24
25

1 23. Upon information and belief, Third-Party Defendant Interior Logic, Inc.,
2 was at all times material hereto an Arizona corporation authorized to do business and was
3 doing business within the County of Maricopa, State of Arizona.

4 24. Upon information and belief, Third-Party Defendant J.M.R. Painting, Inc.,
5 was at all times material hereto an Arizona corporation authorized to do business and was
6 doing business within the County of Maricopa, State of Arizona.

7
8 25. Upon information and belief, Third-Party Defendant Rock Island
9 Corporation d/b/a The Jordan Company was at all times material hereto a foreign
10 corporation authorized to do business and was doing business within the County of
11 Maricopa, State of Arizona.

12
13 26. Upon information and belief, Third-Party Defendant Selectbuild Nevada,
14 LLC f/k/a KBI Construction, L.L.C., was at all times material hereto a foreign limited
15 liability company authorized to do business and was doing business within the County of
16 Maricopa, State of Arizona.

17
18 27. Upon information and belief, Third-Party Defendant Loftco, Inc. was at all
19 times material hereto an Arizona corporation authorized to do business and was doing
20 business within the County of Maricopa, State of Arizona.

21 28. Upon information and belief, Third-Party Defendant Mesa Fully Formed,
22 Inc., n/k/a MFF, Inc., was at all times material hereto an Arizona corporation authorized
23 to do business and was doing business within the County of Maricopa, State of Arizona.
24
25

1 29. Upon information and belief, Third-Party Defendant Milgard
2 Manufacturing Incorporated, was at all times material hereto a foreign corporation
3 authorized to do business and was doing business within the County of Maricopa, State of
4 Arizona.

5 30. Upon information and belief, Third-Party Defendant Mitchell Electric
6 Company, Inc. was at all times material hereto an Arizona corporation authorized to do
7 business and was doing business within the County of Maricopa, State of Arizona.
8

9 31. Upon information and belief, Third-Party Defendant Monte Vista
10 Construction, LLC, was at all times material hereto an Arizona limited liability company
11 authorized to do business and was doing business within the County of Maricopa, State of
12 Arizona.
13

14 32. Upon information and belief, Third-Party Defendant Osborne Stucco, Inc.,
15 was at all times material hereto an Arizona corporation authorized to do business and was
16 doing business within the County of Maricopa, State of Arizona.
17

18 33. Upon information and belief, Third-Party Defendant Pacific Stucco of
19 Arizona, Inc., was at all times material hereto an Arizona corporation authorized to do
20 business and was doing business within the County of Maricopa, State of Arizona.

21 34. Upon information and belief, Third-Party Defendant Paramount Windows,
22 LLC, was at all times material hereto an Arizona limited liability company authorized to
23 do business and was doing business within the County of Maricopa, State of Arizona.
24
25

1 35. Upon information and belief, Third-Party Defendant Paul Johnson Drywall,
2 Inc., was at all times material hereto an Arizona corporation authorized to do business and
3 was doing business within the County of Maricopa, State of Arizona.

4 36. Upon information and belief, Third-Party Defendant Riggs Plumbing, LLC,
5 was at all times material hereto an Arizona limited liability company authorized to do
6 business and was doing business within the County of Maricopa, State of Arizona.

7 37. Upon information and belief, Third-Party Defendant Roadrunner Drywall
8 Corp., was at all times material hereto an Arizona corporation authorized to do business
9 and was doing business within the County of Maricopa, State of Arizona.

10 38. Upon information and belief, Third-Party Defendant SCP Construction,
11 L.L.C. was at all times material hereto an Arizona limited liability company authorized to
12 do business and was doing business within the County of Maricopa, State of Arizona.

13 39. Upon information and belief, Third-Party Defendant Sexton Exterminating,
14 Inc. was at all times material hereto an Arizona corporation authorized to do business and
15 was doing business within the County of Maricopa, State of Arizona.

16 40. Upon information and belief, Third-Party Defendant Sonoran Air, Inc. was
17 at all times material hereto an Arizona corporation authorized to do business and was
18 doing business within the County of Maricopa, State of Arizona.

19 41. Upon information and belief, Third-Party Defendant Specialty Roofing,
20 Inc., was at all times material hereto an Arizona corporation authorized to do business and
21 was doing business within the County of Maricopa, State of Arizona.

1 42. Upon information and belief, Third-Party Defendant Stone Crafters of
2 Arizona, Inc. was at all times material hereto an Arizona corporation authorized to do
3 business and was doing business within the County of Maricopa, State of Arizona.

4 43. Upon information and belief, Third-Party Defendant Stone Net, Inc., was at
5 all times material hereto a foreign corporation authorized to do business and was doing
6 business within the County of Maricopa, State of Arizona.

7 44. Upon information and belief, Third-Party Defendant Sundance Carpentry,
8 Inc., was at all times material hereto an Arizona corporation authorized to do business and
9 was doing business within the County of Maricopa, State of Arizona.

10 45. Upon information and belief, Third-Party Defendant Sun Master Masonry,
11 Inc., was at all times material hereto an Arizona corporation authorized to do business and
12 was doing business within the County of Maricopa, State of Arizona.

13 46. Upon information and belief, Third-Party Defendant Sunrise Stucco, Inc.,
14 was at all times material hereto an Arizona corporation authorized to do business and was
15 doing business within the County of Maricopa, State of Arizona.

16 47. Upon information and belief, Third-Party Defendant Triple S Fence
17 Company, was at all times material hereto an Arizona corporation authorized to do
18 business and was doing business within the County of Maricopa, State of Arizona.

19 48. Upon information and belief, Third-Party Defendant U.S.A. Plumbing, Inc.,
20 was at all times material hereto an Arizona corporation authorized to do business and was
21 doing business within the County of Maricopa, State of Arizona.

1 49. Upon information and belief, Third-Party Defendant Valley Landscaping,
2 L.L.C., was at all times material hereto an Arizona limited liability company authorized to
3 do business and was doing business within the County of Maricopa, State of Arizona.

4 50. Upon information and belief, Third-Party Defendant VW Dig, LLC, was at
5 all times material hereto an Arizona limited liability company authorized to do business
6 and was doing business within the County of Maricopa, State of Arizona.

7 51. Upon information and belief, Third-Party Defendant Western Shower Door,
8 Inc., was at all times material hereto a foreign corporation authorized to do business and
9 was doing business within the County of Maricopa, State of Arizona.

10 52. Upon information and belief, Third-Party Defendant Western States Glass
11 and Building Products, Inc., was at all times material hereto an Arizona corporation
12 authorized to do business and was doing business within the County of Maricopa, State of
13 Arizona.

14 53. Upon information and belief, Third-Party Defendant Westside Drywall,
15 Inc., was at all times material hereto an Arizona corporation authorized to do business and
16 was doing business within the County of Maricopa, State of Arizona.

17 54. Upon information and belief, Third-Party Defendant Whitton Plumbing,
18 Inc., was at all times material hereto an Arizona corporation authorized to do business and
19 was doing business within the County of Maricopa, State of Arizona.

20 55. Upon information and belief, Third-Party Defendant Younger Brothers
21 Door & Trim, L.L.C., was at all times material hereto an Arizona limited liability
22
23
24
25

1 company authorized to do business and was doing business within the County of
2 Maricopa, State of Arizona.

3 56. Third-Party Defendants performed work and/or supplied materials and/or
4 products in regard to the Sierra Montana project in Surprise, Arizona, County of
5 Maricopa, ("the Project"), for and on behalf of Third-Party Plaintiffs, pursuant to one or
6 more written subcontract agreements or other agreements.
7

8 57. Upon information and belief, pursuant to indemnity language contained in
9 those referenced subcontract agreements, each Third-Party Defendant has an obligation to
10 defend and indemnify Third-Party Plaintiffs for alleged defects and damages arising from
11 or related to its respective work and/or professional services.
12

13 58. At present, Plaintiff homeowners at the Project, (collectively,
14 "Homeowners"), allege defects and damages with their home within the Project,
15 including, but not limited to, the following:

16 A. Failure to adequately design and construct site and retaining walls hat are
17 prone to corroding, cracking and/or displacement;
18

19 B. Flatwork, CMU walls and other appurtenances are not adequate in design
20 and construction to accommodate the site geotechnical conditions. Concrete is prone to
21 corroding, cracking and/or displacement;
22

23 C. Failure to provide adequately durable, low-permeable concrete for flatwork
24 and other appurtenances meeting the requirements for resistance against transmission of
25

1 moisture and resistance to the corrosive effects of the soil. Concrete is prone to etching,
2 spalling, deterioration and/or desert weathering;

3 D. Failure to provide concrete flatwork to accommodate site geotechnical
4 conditions and known climate influences;

5 E. Failure to provide adequate surface drainage;

6 F. Failure to adequately provide fill placement and/or compaction;

7 G. Failure to design and/or construct garage slabs to properly drain;

8 H. Failure to provide adequately durable, low-permeable concrete for slab
9 foundation meeting the requirements for resistance against the transmission of moisture
10 and resistance to the corrosive effects of the soil resulting in etching, spalling,
11 deterioration and/or desert weathering;
12

13 I. Failure to adequately design and/or construct the slabs on grade which are
14 deteriorated, cracked, improperly sloped and/or corroded;
15

16 J. Defectively installed stucco systems that are prone to crack, deteriorate and
17 leak;
18

19 K. Defectively installed and/or integrated stucco penetrations (doors, windows,
20 vents, plumbing & fascia penetrations) that are prone to leak;

21 L. Defectively designed and/or constructed parapet walls that are prone to
22 crack, deteriorate and leak;

23 M. Baseboards separated from walls, floors and/or have separated joints;
24
25

1 N. Cabinets, counter-tops and trim carpentry separated from walls and adjacent
2 surfaces;

3 O. Defectively installed floor tiles that are cracked and have grout joints that
4 have failed;

5 P. Defectively installed drywall systems that are prone to crack;

6 Q. Drywall has cracked, separated corner beads, nails popped, and/or is
7 separating from stucco;

8 R. Drywall is stained;

9 S. Defectively installed exterior door systems that are prone to leak;

10 T. Defectively installed door systems that are difficult to operate (frames
11 racked and/or doors bind);

12 U. Defectively installed weather stops on garage doors that is prone to become
13 loose;

14 V. Defectively designed and/or installed water heater pans that are inadequate
15 and/or omitted;

16 W. Installation of inherently defective yellow brass plumbing fittings that are
17 subject to premature deterioration, corrosion and/or failure;

18 X. Defectively installed window and door assemblies that are prone to leak;
19 and

20 Y. Defectively installed roofing assemblies (tile and low slope roofs) that are
21 prone to leak and deteriorate.
22
23
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1 59. Third-Party Plaintiffs have tendered the defense and requested
2 indemnification from each Third-Party Defendant.

3 60. If the Homeowners' allegations are true, then any and all damages claimed
4 by Plaintiffs are the direct and proximate result of the defective, negligent, careless,
5 reckless and/or substandard construction, work, professional services, and/or defective
6 materials supplied by Third-Party Defendants.
7

8 61. Each Third-Party Defendant expressly and impliedly warranted that, among
9 other things, its work would be performed in a good and workmanlike manner, be free
10 from defect, and that any products or materials provided would be free from defect and fit
11 for its intended purpose.
12

13 62. Each Third-Party Defendant expressly agreed to obtain additional insurance
14 endorsements naming Third-Party Plaintiffs as additional insureds with the certain and
15 specific insurance requirements.

16 63. Each Third-Party Defendant owed Third-Party Plaintiffs a duty to ensure its
17 work was performed in accordance with, among other things, applicable construction
18 standards, codes, instructions, ordinances, and the applicable project documents,
19 including plans and specifications, and that its products were without defect.
20

21 64. As a result of the Homeowners' allegations, Third-Party Plaintiffs have had,
22 and will have, to defend themselves, thus incurring expenses, including attorneys' fees,
23 expert/consultant fees, and costs.
24
25

FIRST CAUSE OF ACTION

(Express Indemnity)

65. Third-Party Plaintiffs fully incorporate herein by reference all allegations contained in Paragraphs 1 through 64 of this Third-Party Complaint.

66. Each subcontract agreement between Third-Party Plaintiff Beazer Homes Holding Corp. and each Third-Party Defendant contained language pursuant to which each Third-Party Defendant agreed to, among other things, defend, indemnify, and hold Third-Party Plaintiff Beazer Homes Holding Corp. harmless.

67. Pursuant to the express indemnity provisions, Third-Party Plaintiffs are entitled to be indemnified for any and all damages and losses incurred as a result of any claim, arbitration, action, or other suit brought by the Homeowners and/or repairs necessitated by the allegations of defective and/or negligent work and/or defective products supplied by Third-Party Defendants, including, but not limited to, attorneys' fees, expert/consultant fees, court costs, investigative costs, and any other amount incurred related to the Homeowners' claims.

68. The acts or omissions of Third-Party Defendants are the direct and proximate cause, in whole or in part, of the damages alleged by the Homeowners and/or incurred by Third-Party Plaintiffs.

69. If Third-Party Plaintiffs are held liable to the Plaintiffs for all or part of said damages, Third-Party Plaintiffs are entitled to be indemnified by Third-Party Defendants for all such damages or losses sustained as the result of the claims and/or allegations.

1 70. As a direct and proximate result of the Homeowners' claims and/or
2 allegations against Third-Party Plaintiffs, it has become necessary for Third-Party
3 Plaintiffs to initiate this Third-Party Complaint, and therefore, they are entitled to recover
4 their reasonable attorneys' fees, expert/consultant fees, costs, and all other expenses
5 related in any way to said claims and/or allegations.
6

7 **SECOND CAUSE OF ACTION**

8 **(Breach of Contract)**

9 71. Third-Party Plaintiffs fully incorporate herein by reference all allegations
10 contained in paragraphs 1 through 70 of this Third-Party Complaint.
11

12 72. Third-Party Defendants agreed under one or more subcontract agreements
13 with Third-Party Plaintiff Beazer Homes Holding Corp. to, among other things, conduct
14 their work in a good and workmanlike manner, in compliance with applicable plans and
15 specifications, applicable building codes, guidelines of the Arizona Registrar of
16 Contractors, and local customs and practices, and that such work and/or materials be free
17 from defect.
18

19 73. If the Homeowners' allegations of defects are true, Third-Party Defendants
20 have breached their respective subcontract agreements by failing to perform their work in
21 compliance with said contractual obligations and/or by failing to comply with their
22 express warranties.
23
24
25

1 74. As a direct and proximate result of Third-Party Defendants' individual
2 breaches of contract, Third-Party Plaintiffs have incurred damages, including attorneys'
3 fees, expert/consultant fees, costs, and other expenses.
4

5
6 **THIRD CAUSE OF ACTION**

7 **(Breach of Implied Warranty of Workmanship and Habitability)**

8 75. Third-Party Plaintiffs fully incorporate herein by reference all allegations
9 contained in Paragraphs 1 through 74 of this Third-Party Complaint.
10

11 76. Third-Party Defendants, and each of them, impliedly warranted that their
12 materials would be of merchantable quality and reasonably fit for its intended purpose,
13 and that the work and labor performed under any agreement or instruction would be done
14 in a careful and workmanlike manner, in conformance with Arizona construction
15 standards, customs, and/or practices and all applicable Project documents, including the
16 plans, specifications, and scopes of work.
17

18 77. Based upon the claims and allegations raised by the Homeowners, and/or
19 damages incurred by Third-Party Plaintiffs, the warranty referenced above provided by
20 Third-Party Defendants have been breached as the workmanship and labor were not
21 performed in a workmanlike manner or in accordance with Arizona construction
22 standards, customs, and/or practices, and/or the products or materials were not reasonably
23 fit for their intended purpose and/or of a merchantable quality and free from defects.
24
25

1 78. As a direct and proximate result of these breaches of warranty, Third-Party
2 Plaintiffs have and will suffer direct and consequential damages in an amount not yet
3 known, but in excess of this Court's minimal jurisdictional amount.

4 **FOURTH CAUSE OF ACTION**

5 **(Negligence)**

6
7 79. Third-Party Plaintiffs fully incorporate herein by reference all allegations
8 contained in Paragraphs 1 through 78 of this Third-Party Complaint.

9 80. Third-Party Defendants owed a duty to Third-Party Plaintiffs to, among
10 other things, ensure that their work would be performed in a workmanlike manner and in
11 accordance with Arizona construction standards, customs, and practices, and that
12 products or materials so provided would be free from defect and/or fit for their intended
13 or represented purpose.

14
15 81. Third-Party Defendants know, or should have known, that the breach of
16 those duties would cause damage to Third-Party Plaintiffs, who relied upon Third-Party
17 Defendants to perform their work properly and according to applicable standards, and to
18 provide products or materials that were free from material defects and were good for their
19 respective and conjunctive intended and represented purposes.

20
21 82. Based on the allegations raised by the Homeowners and/or damages
22 incurred by Third-Party Plaintiffs, Third-Party Defendants breached their duties to Third-
23 Party Plaintiffs by negligently failing to ensure that their work was performed in a
24 workmanlike manner in accordance with all applicable construction standards, and that
25

1 materials provided for use in development were free from defects, and were reasonably fit
2 for their respective and conjunctive intended purposes as represented to Third-Party
3 Plaintiffs.

4 83. As a result of these breaches of the duties, Third-Party Plaintiffs have and
5 will suffer direct consequential damages in an amount not yet known, but in excess of this
6 Court's minimal jurisdictional amount.
7

8 **FIFTH CAUSE OF ACTION**

9 **(Common Law/Implied Indemnity)**

10 84. Third-Party Plaintiffs fully incorporate herein by reference all allegations
11 contained in Paragraphs 1 through 83 of this Third-Party Complaint.
12

13 85. Third-Party Plaintiffs are entirely without active fault with regard to the acts
14 or omissions giving rise to the Homeowners' construction defect claims and allegations,
15 and thus, Third-Party Plaintiffs are entitled to recovery from Third-Party Defendants.
16

17 86. Pursuant to the facts of this case and the parties' relationships, as well as
18 Arizona Common Law and the Restatement of Torts (Second) §886B, Third-Party
19 Plaintiffs are entitled to Common Law Indemnity from Defendants for their reasonable
20 attorneys' fees, expert fees, costs, and all other expenses related in any way to this lawsuit
21 and the claims and allegations asserted by the Homeowners, including any amount paid as
22 a result of a settlement, judgment or compromise.
23
24
25

1 87. Third-Party Plaintiffs seek recovery in Common Law/Implied Indemnity
2 under various bases, including, without limitation, equity, unjust enrichment, tort, and
3 contract.

4 **SIXTH CAUSE OF ACTION**

5 **(Breach of Contract-Insurance Requirements)**

6
7 88. Third-Party Plaintiffs fully incorporate herein by reference all allegations
8 contained in Paragraphs 1 through 87 of this Third-Party Complaint.

9 89. Third-Party Defendants agreed in their individual subcontract agreements to
10 name Third-Party Plaintiff Beazer Homes Holding Corp. as an additional insured on
11 certain and required insurance policies.

12
13 90. Upon information and belief, Third-Party Defendants breached their
14 respective agreements by failing to name Third-Party Plaintiff Beazer Homes Holding
15 Corp. as an additional insureds and/or by not securing the proper insurance requirements.

16 91. Due to this breach, Third-Party Plaintiffs have been forced to incur
17 attorneys' fees, expert/consultant fees, and costs to defend themselves against
18 Homeowner allegations for implicated work performed by the Third-Party Defendants.

19
20 92. As a result of this breach of contract by the Third-Party Defendants, Third-
21 Party Defendants have become the insurers of Third Third-Party Plaintiffs, and are thus
22 liable and responsible for all attorneys' fees, expert/consultant fees, costs, expenses, and
23 any other amount related to the Homeowners' claims, including awards, judgments, and
24 settlement amounts.
25

SEVENTH CAUSE OF ACTION

(Declaratory Relief Regarding the Separate Duties to Defend and Indemnify)

93. Third-Party Plaintiffs fully incorporate herein by reference all allegations contained in Paragraphs 1 through 92 of this Third-Party Complaint.

94. Pursuant to the above-referenced subcontract agreements containing express indemnity provisions in favor of Beazer, each and every Third-Party Defendant agreed to immediately defend and indemnify Beazer for any and all claims, expenses, fees, costs, as well as any and all damages arising out of or related to each individual Third-Party Defendants' work and/or products or materials.

95. Based upon allegations set forth by the Plaintiffs, it is alleged that each and every Third-Party Defendant breached its duties to Beazer to ensure that its work was performed in a workmanlike manner, was free from defect, and was reasonably fit for its intended purpose, and that all products or materials provided be free from defect.

96. Third-Party Plaintiffs have requested that Third-Party Defendants defend and indemnify them for the claims and allegations asserted by the Homeowners but, to date, no Third-Party Defendant has agreed.

97. As a direct and proximate result of Third-Party Defendants' breaches, Third-Party Plaintiffs have and will suffer direct and consequential damages in defending the Homeowners' claims, for having to prosecute the Third-Party claims, and for any judgment or settlement in favor of the Homeowners.

EIGHTH CAUSE OF ACTION

(Contribution)

98. Third-Party Plaintiffs fully incorporate herein by reference all allegations contained in Paragraphs 1 through 97 of this Third-Party Complaint.

99. In the alternative, if Third-Party Plaintiffs are unsuccessful in their claims for express or implied indemnity, Third-Party Plaintiffs have been forced to defend the Homeowners' claims and allegations, and may have to pay damages related to the Homeowners' claims because of the Third-Party Defendants' work and/or products or materials.

100. Given the above, and pursuant to the facts of this case, the parties' relationship, and the laws of the State of Arizona, Third-Party Plaintiffs are entitled to contribution from Third-Party Defendants.

WHEREFORE, Third-Party Plaintiffs request that this Court enter Judgment in their favor and against Third-Party Defendants as follows:

1. For all damages in an amount to be proven at trial;
2. For pre-judgment and post-judgment interest thereon at the statutory rate;
3. For the Court to declare that Third-Party Plaintiffs are owed an immediate and continuing duty to defend, as well as for all amounts Third-Party Plaintiffs are obligated to pay, if any, by settlement, compromise, judgment or award to the Homeowners;

- 1 4. For their costs, expenses, reasonable attorneys' fees, and expert/consultant
2 fees incurred and allowed under any theory, including, but not limited to:
3 A.R.S. §§ 12-341, 12-341.01(A), 12-1364, and by contract; and
4 5. For such other relief as this Court may deem just and appropriate.
5

6 DATED this 21st day of February, 2014.

7 **KOELLER, NEBEKER, CARLSON**
8 **& HALUCK, LLP**

9
10 By /s/ Zahnie L. Soe Myint

11 William A. Nebeker

12 Zahnie L. Soe Myint

13 Judith A. Downs

14 Attorneys for Beazer Homes

15 ORIGINAL e-filed this 21st day of February, 2014 via AZ Turbo Court,
16 with a COPY of the foregoing e-served upon:

17 Honorable Robert Oberbillig

18 Copy of the foregoing mailed this same day to:

19 Stephen L. Weber, Esq.

20 Scott A. Booth, Esq.

21 William H. Brier, Esq.

22 Kasdan Simonds Weber & Vaughan, LLP

23 3200 North Central Avenue, Suite 2100

24 Phoenix AZ 85012

25 Attorneys for Plaintiffs

 By: /s/ Collette Wade

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12 *Attorneys for Defendants Beazer Homes*

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARYANN DELAURENTIS, et al.

Plaintiffs,

v.

BEAZER HOME SALES, INC. f/k/a
BEAZER HOMES SALES ARIZONA, INC.
a Delaware Corporation; BEAZER HOMES
HOLDINGS CORP., d/b/a BEAZER
HOMES, a Delaware corporation; and
DOES 1-100 inclusive,

Defendants.

CASE NO. CV2013-016948

BEAZER HOMES'
CERTIFICATE REGARDING
EXPERT TESTIMONY

(Honorable Robert Oberbillig)

1 **BEAZER HOMES HOLDINGS CORP.**
2 **d/b/a BEAZER HOMES, a Delaware**
3 **corporation; and BEAZER HOMES SALES,**
4 **INC. f/k/a BEAZER HOMES SALES**
5 **ARIZONA, INC. , a Delaware corporation;**

6 **Third-Party Plaintiffs,**

7 **v.**

8 **AARO DOOR & TRIM INC., et al.**

9 **Third-Party Defendants.**

10 Defendants BEAZER HOME SALES, INC. f/k/a BEAZER HOME SALES
11 ARIZONA, INC. and BEAZER HOMES HOLDINGS CORP. d/b/a BEAZER HOMES
12 (hereinafter collectively, "Third-Party Plaintiffs"), through undersigned counsel, hereby
13 certify that they will use expert testimony to present their case. An expert affidavit or
14 equivalent will be served with Third-Party Plaintiff's Disclosure Statement or as
15 otherwise directed by the Court in a scheduling order.
16

17
18 DATED this 21st day of February, 2014.

19 **KOELLER, NEBEKER, CARLSON**
20 **& HALUCK, LLP**

21
22 By /s/ Zahnie L. Soe Myint

23 William A. Nebeker

24 Zahnie L. Soe Myint

25 Judith A. Downs

Attorneys for Beazer Homes

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10 Phoenix AZ 85012

11 *Attorneys for Plaintiffs*

12 By: /s/ Collette Wade

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9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **MARYANN DELAURENTIS, et al.**

13 **Plaintiffs,**

14 **v.**

15
16 **BEAZER HOME SALES, INC. f/k/a**
17 **BEAZER HOMES SALES ARIZONA, INC.**
18 **a Delaware Corporation; BEAZER HOMES**
19 **HOLDINGS CORP., d/b/a BEAZER**
20 **HOMES, a Delaware corporation; and**
21 **DOES 1-100 inclusive,**

22 **Defendants.**

CASE NO. CV2013-016948

**BEAZER HOMES' DEMAND
FOR JURY TRIAL**

(Honorable Robert Oberbillig)

1 **BEAZER HOMES HOLDINGS CORP.**
2 **d/b/a BEAZER HOMES, a Delaware**
3 **corporation; and BEAZER HOMES SALES,**
4 **INC. f/k/a BEAZER HOMES SALES**
5 **ARIZONA, INC. , a Delaware corporation;**

6 **Third-Party Plaintiffs,**

7 **v.**

8 **AARO DOOR & TRIM INC., et al.**

9 **Third-Party Defendants.**

10 Defendants BEAZER HOME SALES, INC. f/k/a BEAZER HOME SALES
11 ARIZONA, INC. and BEAZER HOMES HOLDINGS CORP. d/b/a BEAZER HOMES
12 (hereinafter collectively, "Third-Party Plaintiffs"), through undersigned counsel, and
13 pursuant to Rule 38(b) of the *Arizona Rules of Civil Procedure*, hereby demands a trial
14 by jury of all issues and claims.
15

16 DATED this 21st day of February, 2014.

17 **KOELLER, NEBEKER, CARLSON**
18 **& HALUCK, LLP**

19
20 By /s/ Zahnie L. Soe Myint

21 William A. Nebeker

22 Zahnie L. Soe Myint

Judith A. Downs

Attorneys for Beazer Homes

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8 *Attorneys for Plaintiffs*

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By: /s/ Collette Wade

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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 **MARYANN DELAURENTIS, et al.**

13 **Plaintiffs,**

14 **v.**

15
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17 **BEAZER HOMES SALES ARIZONA, INC.**
18 **a Delaware Corporation; BEAZER HOMES**
19 **HOLDINGS CORP., d/b/a BEAZER**
20 **HOMES, a Delaware corporation; and**
21 **DOES 1-100 inclusive,**

22 **Defendants.**

CASE NO. CV2013-016948

BEAZER HOMES'
CERTIFICATE OF
COMPULSORY ARBITRATION

(Honorable Robert Oberbillig)

1 **BEAZER HOMES HOLDINGS CORP.**
2 **d/b/a BEAZER HOMES, a Delaware**
3 **corporation; and BEAZER HOMES SALES,**
4 **INC. f/k/a BEAZER HOMES SALES**
5 **ARIZONA, INC. , a Delaware corporation;**

6 **Third-Party Plaintiffs,**

7 **v.**

8 **AARO DOOR & TRIM INC., et al.**

9 **Third-Party Defendants.**

10 Defendants BEAZER HOME SALES, INC. f/k/a BEAZER HOME SALES
11 ARIZONA, INC. and BEAZER HOMES HOLDINGS CORP. d/b/a BEAZER HOMES
12 (hereinafter collectively, "Third-Party Plaintiffs"), through undersigned counsel, certifies
13 that he knows the dollar limits and any other limitations set forth by the local rules of
14 practice for the applicable Superior Court, and further certifies that it appears that this
15 case is not subject to compulsory arbitration, as provided by Rules 72 through 77 of the
16 Arizona Rules of Civil Procedure. Third-Party Plaintiffs reserve the right to amend this
17 Certificate should subsequently learned facts or information indicate that the matter is
18 subject to compulsory arbitration.
19

20 DATED this 21st day of February, 2014.

21
22 **KOELLER, NEBEKER, CARLSON**
23 **& HALUCK, LLP**

24 By /s/ Zahnie L. Soe Myint

25 William A. Nebeker

Zahnie L. Soe Myint

Judith A. Downs

Attorneys for Beazer Homes

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3 Honorable Robert Oberbillig

4 Copy of the foregoing mailed this same day to:

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6 Scott A. Booth, Esq.

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9 *Attorneys for Plaintiffs*

10
11 By: /s/ Collette Wade
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SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARYANN DELAURENTIS; et al.,

Plaintiffs,

v.

BEAZER HOMES SALES, INC. f/k/a
BEAZER HOMES SALES, ARIZONA,
INC., et al,

Defendants.

Case No. CV2013-016948

**ORDER RE: JOINT MOTION
TO DISMISS PLAINTIFFS
PHILIP AND CAROL FINNEGAN
ONLY**

(Assigned to the Hon. Robert Oberbillig)

AND ALL RELATED THIRD-PARTY
CLAIMS.

Having considered the parties' Joint Motion to Dismiss Plaintiffs Philip and Carol Finnegan only, and good cause appearing therefor,

IT IS ORDERED granting the Joint Motion and dismissing the claims and allegations of Plaintiffs Philip and Carol Finnegan with prejudice.

IT IS FURTHER ORDERED that each party shall bear its own attorneys' fees, experts' fees, and costs associated with the claims and allegations of the dismissed Plaintiffs.

DATED this _____ day of _____, 2014.

HON. ROBERT OBERBILLIG

eSignature Page 1 of 1

Filing ID: 5782788 Case Number: CV2013-016948
Original Filing ID: 5775595

Granted as Submitted



/S/ Robert Oberbillig Date: 3/26/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2013-016948

SIGNATURE DATE: 3/26/2014

E-FILING ID #: 5782788

FILED DATE: 3/27/2014 8:00:00 AM

WILLIAM H BREIER

**B / H DRYWALL STUCCO & PAINTING CO INC
NO ADDRESS ON RECORD**

ZAHNIE L SOE MYINT

**BRENDA SHARP
NO ADDRESS ON RECORD**

**A & M CONCRETE INC
NO ADDRESS ON RECORD**

**BUILDER SERVICES GROUP INC
NO ADDRESS ON RECORD**

**AARO DOOR & TRIM INC
NO ADDRESS ON RECORD**

**C & C ROOFING & SUPPLY INC
NO ADDRESS ON RECORD**

**ADAMS BROS INTERIORS & CABINETS INC
NO ADDRESS ON RECORD**

**CANYON STATE DRYWALL INC
NO ADDRESS ON RECORD**

**AMERICAN WOODMARK CORPORATION
NO ADDRESS ON RECORD**

**CATALINA ROOFING AND SUPPLY INC
NO ADDRESS ON RECORD**

**AMPAM RIGGS PLUMBING INC
NO ADDRESS ON RECORD**

**CHAS ROBERTS AIR CONDITIONING INC
NO ADDRESS ON RECORD**

**ARIZONA DRYWALL CO INC
NO ADDRESS ON RECORD**

**COHACO BUILDING SPECIALTIES INC
NO ADDRESS ON RECORD**

**ARIZONA SUN ELECTRICAL CONTRACTORS INC
NO ADDRESS ON RECORD**

**D V C CONSTRUCTION COMPANY INC
NO ADDRESS ON RECORD**

**ASHLEY M MARCHESE
NO ADDRESS ON RECORD**

**DIAMOND GLASS & MIRROR INC
NO ADDRESS ON RECORD**

FLYNNS FLOOR COVERING INC
NO ADDRESS ON RECORD

MONTE VISTA CONSTRUCTION L L C
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GOTHIC LANDSCAPING INC
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OSBORNE STUCCO INC
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HASKINS ELECTRIC L L C
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PACIFIC STUCCO OF ARIZONA INC
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HERITAGE INTERIORS INC
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INTERIOR LOGIC INC
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PAUL JOHNSON DRYWALL INC
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J M R PAINTING INC
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ROCK ISLAND CORPORATION
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SEXTON EXTERMINATING INC
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SONORAN AIR INC
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STONE NET INC
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WESTERN STATES GLASS AND BUILDING PRODUCTS
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YOUNGER BROTHERS DOOR & TRIM L L C
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SUNRISE STUCCO INC
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DOCKET-CIVIL-CCC

TRIPLE S FENCE COMPANY
NO ADDRESS ON RECORD

U S A PLUMBING INC
NO ADDRESS ON RECORD

SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARYANN DELAURENTIS; et al.,

Plaintiffs,

v.

BEAZER HOMES SALES, INC. f/k/a
BEAZER HOMES SALES, ARIZONA,
INC., et al,

Defendants.

Case No. CV2013-016948

**ORDER RE: JOINT MOTION
TO DISMISS PLAINTIFF
STEPHANIE R. HUGILL ONLY**

(Assigned to the Hon. Robert Oberbillig)

AND ALL RELATED THIRD-PARTY
CLAIMS.

Having considered the parties' Joint Motion to Dismiss Plaintiff Stephanie Hugill only, and good cause appearing therefor,

IT IS ORDERED granting the Joint Motion and dismissing the claims and allegations of Plaintiff Stephanie Hugill with prejudice.

IT IS FURTHER ORDERED that each party shall bear its own attorneys' fees, experts' fees, and costs associated with the claims of the dismissed Plaintiffs.

DATED this _____ day of _____, 2014.

HON. ROBERT OBERBILLIG

eSignature Page 1 of 1

Filing ID: 5782825 Case Number: CV2013-016948
Original Filing ID: 5773453

Granted as Submitted



/S/ Robert Oberbillig Date: 3/26/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2013-016948

E-FILING ID #: 5782825

SIGNATURE DATE: 3/26/2014

FILED DATE: 3/28/2014 8:00:00 AM

WILLIAM H BREIER

**B / H DRYWALL STUCCO & PAINTING CO INC
NO ADDRESS ON RECORD**

ZAHNIE L SOE MYINT

**BRENDA SHARP
NO ADDRESS ON RECORD**

**A & M CONCRETE INC
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U S A PLUMBING INC
NO ADDRESS ON RECORD

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
5 3200 N. Central Avenue, Ste. 2100
6 Phoenix, Arizona 85012
7 (602) 224-7800
8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

11
12 **SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 MARYANN DELAURENTIS; et al.,)
15)
16 Plaintiffs,)
17)
18 v.)
19)
20 BEAZER HOMES SALES, INC. f/k/a)
21 BEAZER HOMES SALES, ARIZONA,)
22 INC., et al,)
23)
24 Defendants.)
25)
26)
27)
28)

Case No. CV2013-016948

**JOINT MOTION TO
SUBSTITUTE REAL PARTIES
IN INTEREST**

(Assigned to the Hon. Robert Oberbillig)

AND ALL RELATED THIRD-PARTY
CLAIMS.

The parties hereby jointly submit this motion to substitute the real parties in interest pursuant Rules 17(a) and 25(d) of the Arizona Rules of Civil Procedure.

Based upon an assignment of claims, the parties request the Court to substitute Aaron and Patricia Welch in place of Plaintiffs Michael and Brenda Sharp as named plaintiffs and owners of the home at 18256 W. Banff Lane, Surprise, Arizona, 85388, as all claims and rights associated with the home have been assigned to them. Mr. and Mrs. Sharp shall remain named plaintiffs in the case and will continue to pursue claims as owners of the home at 18271 W. Banff Lane, Surprise, Arizona, 85388 against Defendants.

The parties agree that, by stipulating to this substitution, Defendants are not waiving

Service List

Sierra Montana

DeLaurentis et al v. Beazer Homes Sales, Inc. f/k/a/ Beazer Homes Sales of Arizona, Inc., et al.
CV2013-016948

William A. Nebeker, Esq. Zahnie L. Soe Myint, Esq. Judith Downs, Esq. Koeller Nebeker Carlson Haluck LLP 3200 N Central Ave., Ste 2250 Phoenix, Arizona 85012	<i>Beazer Homes Sales, Inc. f/k/a Beazer Homes Sales Arizona, Inc., Beazer Homes Holdings Corp d/b/a Beazer Homes</i>	P: 602-256-0000 F: 602-256-2488 zahnie.soemyint@knchlaw.com judith.downs@knchlaw.com
John J. Belanger, Esq. Paul O. Mittelstadt, Esq. Bremer Whyte Brown & O'Meara, LLP 3200 N Central Ave., Ste 2450 Phoenix, AZ 85012	<i>Heritage Interiors, Inc. (Courtesy Copy)</i>	P: 602-274-1204 F: 602-274-1205 jbelanger@bremerwhyte.com pmittelstadt@bremerwhyte.com

1
2
3
4 **SUPERIOR COURT OF THE STATE OF ARIZONA**
5 **IN AND FOR THE COUNTY OF MARICOPA**

6 MARYANN DELAURENTIS; et al.,)

7 Plaintiffs,)

8 v.)

9
10 BEAZER HOMES SALES, INC. f/k/a)
11 BEAZER HOMES SALES, ARIZONA,)
12 INC., et al,)

13 Defendants.)

14 AND ALL RELATED THIRD-PARTY)
15 CLAIMS.)
16

Case No. CV2013-016948

**ORDER RE: JOINT MOTION TO
SUBSTITUTE REAL PARTIES
IN INTEREST**

(Assigned to the Hon. Robert Oberbillig)

17 The parties having jointly submitted their motion to substitute the real parties in
18 interest pursuant Rules 17(a) and 25(d) of the Arizona Rule of Civil Procedure and good
19 cause appearing,

20 **IT IS HEREBY ORDERED:**

21 1. Aaron and Patricia Welch shall be substituted in place of plaintiffs Michael
22 and Brenda Sharp as named plaintiffs and owners of the home at 18256 W. Banff Lane,
23 Surprise, Arizona, 85388, as all claims and rights associated with the home have been
24 assigned to them. Mr. and Mrs. Sharp shall remain named plaintiffs in the case and will
25 continue to pursue claims against Defendants as owners of the home at 18271 W. Banff
26 Lane, Surprise, Arizona, 85388.

27 ///

28 ///

2. No defenses to the claims or alleged damages are waived by Defendants, including any relating to the assignment of claims and/or rights.

DATED: _____, 2014

By: The Honorable Robert Oberbillig
Maricopa County Superior Court of Arizona

SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARYANN DELAURENTIS; et al.,

Plaintiffs,

v.

BEAZER HOMES SALES, INC. f/k/a
BEAZER HOMES SALES, ARIZONA,
INC., et al,

Defendants.

Case No. CV2013-016948

**ORDER RE: JOINT MOTION
TO DISMISS PLAINTIFFS BRIAN
M. AND TRISHA L. BUZARD
ONLY**

(Assigned to the Hon. Robert Oberbillig)

AND ALL RELATED THIRD-PARTY
CLAIMS.

Having considered the parties' Joint Motion to Dismiss Plaintiffs Brian M. and Trisha L. Buzard only, and good cause appearing therefor,

IT IS ORDERED granting the Joint Motion and dismissing the claims and allegations of Plaintiffs Brian M. and Trisha L. Buzard with prejudice.

IT IS FURTHER ORDERED that each party shall bear its own attorneys' fees, experts' fees, and costs associated with the claims and allegations of the dismissed Plaintiffs.

DATED this _____ day of _____, 2014.

HON. ROBERT OBERBILLIG

eSignature Page 1 of 1

Filing ID: 5799224 Case Number: CV2013-016948
Original Filing ID: 5790854

Granted as Submitted



/s/ Robert Oberbillig Date: 4/3/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2013-016948

E-FILING ID #: 5799224

SIGNATURE DATE: 4/3/2014

FILED DATE: 4/7/2014 8:00:00 AM

WILLIAM H BREIER

**B / H DRYWALL STUCCO & PAINTING CO INC
NO ADDRESS ON RECORD**

ZAHNIE L SOE MYINT

**BRENDA SHARP
NO ADDRESS ON RECORD**

**A & M CONCRETE INC
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SELECTBUILD NEVADA L L C
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SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARYANN DELAURENTIS; et al.,)

Plaintiffs,)

v.)

BEAZER HOMES SALES, INC. f/k/a)

BEAZER HOMES SALES, ARIZONA,)

INC., et al,)

Defendants.)

AND ALL RELATED THIRD-PARTY)
CLAIMS.)

Case No. CV2013-016948

**ORDER RE: JOINT MOTION TO
SUBSTITUTE REAL PARTIES
IN INTEREST**

(Assigned to the Hon. Robert Oberbillig)

The parties having jointly submitted their motion to substitute the real parties in interest pursuant Rules 17(a) and 25(d) of the Arizona Rule of Civil Procedure and good cause appearing,

IT IS HEREBY ORDERED:

1. Aaron and Patricia Welch shall be substituted in place of plaintiffs Michael and Brenda Sharp as named plaintiffs and owners of the home at 18256 W. Banff Lane, Surprise, Arizona, 85388, as all claims and rights associated with the home have been assigned to them. Mr. and Mrs. Sharp shall remain named plaintiffs in the case and will continue to pursue claims against Defendants as owners of the home at 18271 W. Banff Lane, Surprise, Arizona, 85388.

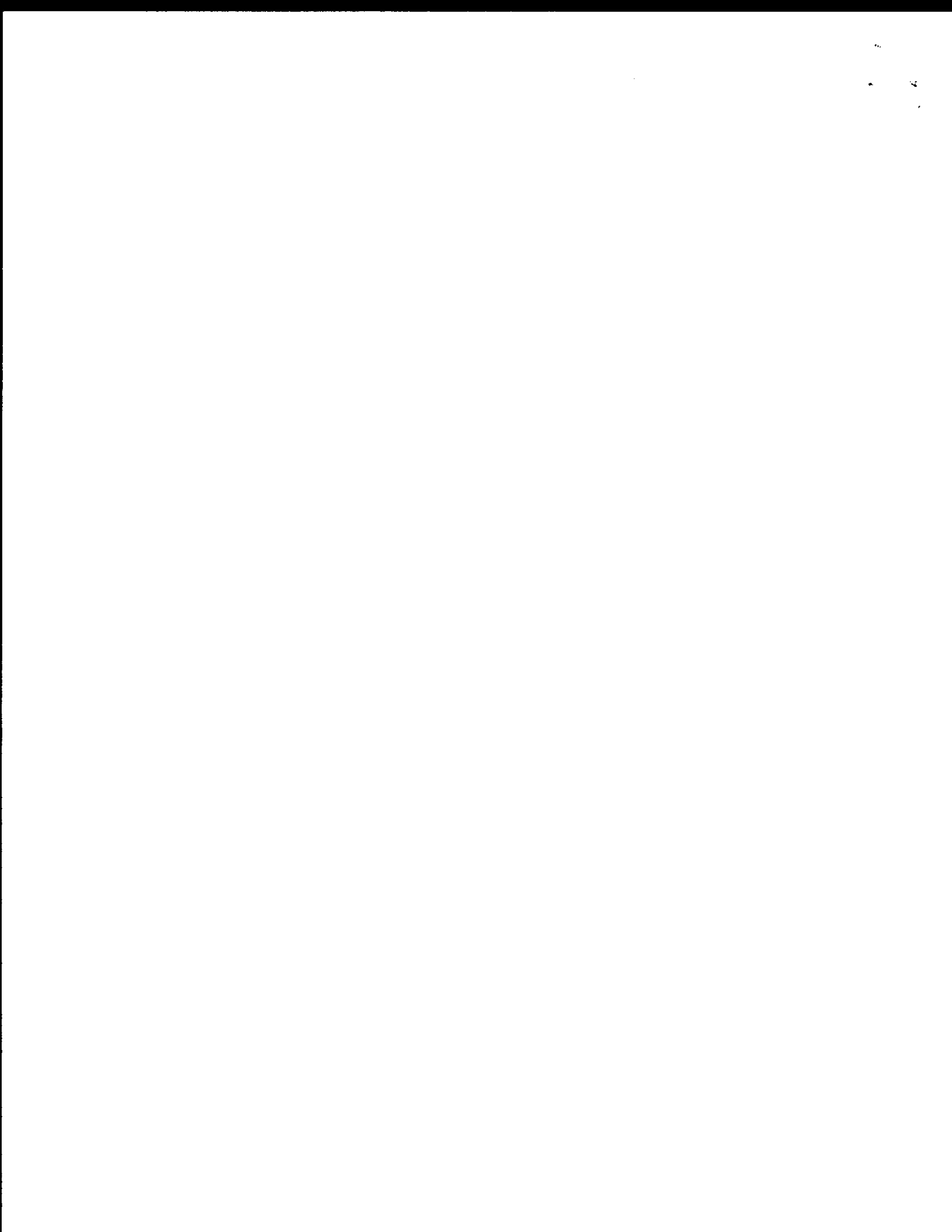
///

///

2. No defenses to the claims or alleged damages are waived by Defendants, including any relating to the assignment of claims and/or rights.

DATED: _____, 2014

By: _____
The Honorable Robert Oberbillig
Maricopa County Superior Court of Arizona



eSignature Page 1 of 1

Filing ID: 5807127 Case Number: CV2013-016948
Original Filing ID: 5802280

Granted as Submitted



/S/ Robert Oberbillig Date: 4/8/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2013-016948

E-FILING ID #: 5807127

SIGNATURE DATE: 4/8/2014

FILED DATE: 4/9/2014 8:00:00 AM

WILLIAM H BREIER

**B / H DRYWALL STUCCO & PAINTING CO INC
NO ADDRESS ON RECORD**

ZAHNIE L SOE MYINT

**BRENDA SHARP
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**A & M CONCRETE INC
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1 Stephen L. Weber #022751
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4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
5 3200 N. Central Avenue, Ste. 2100
6 Phoenix, Arizona 85012
7 (602) 224-7800
8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 Attorneys for Plaintiffs

7 **SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 MARYANN DELAURENTIS; et al.,

10 Plaintiffs,

11 v.

12 BEAZER HOMES SALES, INC. f/k/a
13 BEAZER HOMES SALES, ARIZONA,
14 INC., et al,

15 Defendants.

Case No. CV2013-016948

SCHEDULING ORDER

(Assigned to the Hon. Robert
Oberbillig)

16 AND ALL RELATED THIRD-PARTY
17 CLAIMS.

18 The Court having received and considered the parties' Joint Pretrial Memorandum,
19 **IT IS ORDERED AS FOLLOWS:**

20 **1.0 Purpose:**

21 **1.1 Purpose.** This Scheduling Order (herein after "Order") is entered to provide
22 for the "just, speedy, and inexpensive determination" of this case.
23 (*Ariz.R.Civ.P.*, Rule 1).

24 **2.0 General Business:**

25 **2.1 Rules Applicable.** Except as specifically set forth herein, all provisions of
26 the Arizona Rules of Civil Procedure and the Local Rules of Practice for the
27 Superior Court of Maricopa County will apply to this case. Disclosure
28 obligations under Rule 26.1 will remain as contained in that rule, including

the parties' duties to seasonably make, update and supplement their disclosures, including expert disclosures, on an ongoing basis as information is known or becomes available to them. This obligation will be in addition to the final disclosure deadlines as set forth in the pretrial litigation schedule attached as Exhibit "A," **as modified by the Court.**

2.2 Amendment of Order. This Order may be changed, altered or amended by stipulation or agreement of the parties adopted by Court Order, or upon motion granted by the Court.

2.3 Case Schedule. This case shall proceed in accordance with the pretrial litigation schedule attached as Exhibit "A," **as modified by the Court.**

2.4 Rule 38.1 Requirements. The provisions of subsections (a) through (g) of Rule 38.1, *Ariz.R.Civ.P.* shall not apply to this proceeding.

2.5 Electronic Service. The parties may effectuate service of all pleadings via AZTurboCourt's E-Service (where applicable) pursuant to the Supreme Court of Arizona's Administrative Order No. 2014-23 or by U.S. Postal Service to the involved party or parties (i.e. propounding party and moving or responding party). Service of all discovery and disclosure shall be effectuated through U.S. Postal Service (electronic service is to be considered only as a courtesy). Electronic service of all other parties shall be made by e-mail to each party's attorney and/or their assistant as set forth below:

Party	Recipient(s)	E-mail Address
Plaintiffs – Homeowners	Stephen L. Weber, Esq. Scott A. Booth, Esq. William H. Breier, Esq. Mary Dodd (Assistant)	kasdancourt@kasdansimonds.com (for AZTurbo Court use only) sweber@kasdansimonds.com sbooth@kasdansimonds.com wbreier@kasdansimonds.com mdodd@kasdansimonds.com
Defendants – Beazer Entities	Zahnie L. Soe Myint, Esq. Judith A. Downs, Esq. Collette Wade (Assistant)	zahnie.soemyint@knchlaw.com judith.downs@knchlaw.com collette.wade@knchlaw.com

1 It shall be the obligation of each party to provide notification to all parties of
2 all changes and or modifications to the above electronic service list.

3 **2.6 Document Depository.** Esquire Solutions, 3800 N. Central Ave. Suite 1700,
4 Phoenix, AZ 85012 (602) 266-2221 is designated as the document depository
5 for this case. All documents disclosed or otherwise produced shall be
6 provided to the document depository only, with a notice of deposit sent to all
7 parties. Each document deposited should be identified with a separate, Bates
8 stamp unique to the depositing party.

9 **3.0 Mediation:**

10 **3.1 Purpose and Intent.** The Court intends that all parties in this case will
11 participate in good faith in a meaningful mediation and/or settlement
12 conference before this case is set for trial.

13 **3.2 Procedures.** Except as otherwise provided in this Order, all mediation and
14 settlement conferences conducted in this case will be subject to *Ariz.R.Civ.P.*
15 16.1, the provisions of A.R.S. §12-2238, and *Ariz.R.Evid.* Rule 408, regarding
16 the confidentiality and non-admissibility of information exchanged in
17 mediation and settlement conferences. The mediator may enter supplemental
18 order(s) in furtherance of this paragraph.

19 **3.3 Mediator.** The parties agree on Larry Fleischman to serve as mediator and
20 participate in a private mediation in accordance with the pretrial litigation
21 schedule attached as Exhibit "A," **as modified by the Court.** The mediator's
22 compensation shall be paid one-third (1/3) by Plaintiffs, one-third (1/3) by
23 Defendants and one-third (1/3) among the participating Third-Party
24 Defendants (divided pro-rata). The mediator shall have the power to
25 recommend a different allocation, depending on the nature and purpose of the
26 particular mediation before him.

27 **3.4 Attendance.** The mediator may order the personal appearance of any or all
28 parties and their insurance representatives who have full settlement authority.

1 The mediator has the discretion to allow attendance by telephone.

2 **3.5 Demands.** Unless modified by the mediator, at least sixty (60) days before
3 mediation, Plaintiffs shall forward a settlement demand to counsel for
4 Defendants. At least thirty (30) days before mediation, Defendants shall
5 forward settlement demands to counsel for the respective Third-Party
6 Defendants.

7 **4.0 Disclosures:**

8 **4.1 Disclosure Deadlines:** All information required by Rule 26.1 of the
9 Arizona Rules of Civil Procedure will be disclosed seasonably, but in no
10 event more than thirty (30) days after the information is revealed to or
11 discovered by the disclosing party. All expert disclosures shall comply with
12 Rule 26.1(a)(6) and shall set forth the facts and opinions to which the expert is
13 expected to testify. The grounds for each opinion, including all documents
14 upon which the expert relies, shall also be disclosed seasonably, but in no
15 event more than thirty (30) days after the information is revealed to the
16 disclosing party.

17 It is the intent of this Order that the expert and percipient disclosures
18 listed in Exhibit "A," as modified by the Court, be comprehensive and
19 complete by the deadline. This includes all opinions, documents,
20 photographs, job file materials and billing records. The only additional
21 experts, expert opinions or expert documents that may be disclosed beyond
22 this date will be in rebuttal. Rebuttal designation and disclosure is in response
23 to prior designations by adverse parties (Plaintiff to Defendants and Third-
24 Party Defendants, and Defendants to Third-Party Defendants). The rebuttal
25 designation shall not be construed as a deadline to submit new opinions or
26 designate new experts for affirmative defenses or other matters which should
27 have been raised prior to final expert designation and disclosure.
28

1 **4.2 Expert Witnesses.**

2 **4.2.1 Number.** The Arizona Rules of Civil Procedure shall apply.

3 **4.2.2 Schedule for Disclosure.** The identity of expert witnesses shall be
4 disclosed in accordance with Rule 26.1 and expert reports, opinions,
5 and job files shall be disclosed in accordance with the litigation
6 schedule attached as Exhibit "A," **as modified by the Court.**

7 **5.0 Testing and Inspections.**

8 **5.1 Coordination.** Defendants' and Third-Party Defendants shall use their best
9 efforts to coordinate among the parties any visual inspections or invasive
10 testing to limit the disruption to the homeowners.

11 **5.2 Communication.** In accordance with E.R. 4.2, the parties, their lawyers and
12 experts are prohibited from initiating or continuing direct communications
13 with the homeowners (or their representatives) during visual inspections or
14 invasive testing absent prior consent of counsel or the site representative.

15 **5.3 Visual Inspections.** Defense visual inspections, including inspections by
16 Third-Party Defendants, will be coordinated and occur pursuant to the pretrial
17 litigation schedule attached as Exhibit "A," **as modified by the Court.**
18 Absent party agreement or good cause shown, each home shall be coordinated
19 among the parties and be made available one time (in addition to any
20 inspections made by Plaintiffs' experts) for a visual inspection by the
21 Defendants and Third-Party Defendants. The parties shall be entitled to
22 inspect, photograph, videotape, and measure the homes; however, there shall
23 be no sampling, testing, or markings made during these inspections unless
24 agreed by the parties before commencement of the inspections.

25 **5.4 Invasive Testing.** Any party shall be permitted to observe, photograph, video
26 tape, record or attend the testing without charge, so long as they do not delay,
27 interfere with or increase the cost of testing. Participating includes extracting,
28 sampling, dismantling, moving and/or directing the testing, which

1 participation requires a pro-rata sharing of the testing costs by participating
2 parties, unless a prior cost sharing agreement is reached.

3 Unless performed in conjunction with Plaintiffs' testing, Defense
4 invasive testing, including testing by Third-Party Defendants, will be
5 coordinated and occur pursuant to the pretrial litigation schedule attached as
6 Exhibit "A," **as modified by the Court.** Absent party agreement or good
7 cause shown, each home shall be coordinated among the parties and be made
8 available one time (in addition to any testing performed by Plaintiffs' experts)
9 for invasive testing by the Defendants and Third-Party Defendants.

10 Testing and any repair work shall be performed by a qualified,
11 licensed, insured and bonded contractor with proof being submitted to the
12 homeowners upon request. Test locations shall be returned to their pretest
13 condition, painting corner to corner as necessary.

14 **6.0 Depositions:**

15 **6.1 Expert Depositions.** All parties will meet and confer to develop an expert
16 deposition schedule. Expert depositions will proceed by field of expertise and
17 in accordance with the burden of proof, i.e., Plaintiff, Defendant and Third-
18 Party Defendant experts in that order. Deposition of the Defendants' experts
19 for any given area of expertise may commence after Plaintiffs expert in the
20 same area of expertise has been deposed. All expert depositions will proceed
21 near the respective experts' principal place of business.

22 **6.2 Other Depositions.** Depositions of party representatives and other non-party
23 witnesses may begin at any time. All non-expert depositions shall be
24 completed by the discovery deadline in the pretrial litigation schedule
25 attached as Exhibit "A," **as modified by the Court.** Homeowner and
26 percipient depositions shall be coordinated so the deponent only needs to
27 appear once, absent agreement of the parties. Homeowner depositions are
28 limited to four (4) hours per home and percipient witness depositions are

1 limited to four (4) hours each.

2 **7.0 Motions:**

3 **7.1 Dispositive Motions.** Dispositive motions may be filed at any time prior to
4 the deadline in the pretrial litigation schedule attached as Exhibit "A," **as**
5 **modified by the Court**, except motions based on expert opinions are stayed
6 until after the expert disclosure deadline for the party the motion is against.

7 **8.0 Interim Case Management Conferences:**

8 **8.1 Dates.** A **Telephonic Pretrial Status/Scheduling Conference** is set for
9 **Monday, November 24, 2014 at 8:45 a.m.** for the purpose of assigning a trial
10 **date if the case has not settled. Counsel shall have their trial calendars**
11 **available.** Counsel for Plaintiff shall initiate the telephonic conference by first
12 arranging the presence of all other counsel on the conference call and by
13 calling this division at: **(602) 506-2194 promptly** at the scheduled time. All
14 persons appearing shall **appear on land lines** and not on cellular phones, and
15 shall not use the speakerphone features of their telephones, in order to
16 maximize all participants' ability to hear and be heard. **NOTE: This Court**
17 **utilizes FTR for an electronic record of the proceedings. However, any**
18 **party may request the presence of a court reporter by contacting the**
19 **division three (3) court business days before the scheduled hearing.**

20 **8.2 Requirement to Meet and Confer.** No less than five (5) days prior to the
21 status conference set herein, the parties shall submit a joint status report to the
22 court regarding the history and status of the case and efforts at alternative
23 dispute resolution pursuant to Rule 16(g), *Ariz.R.Civ.P.*

24 **9.0 Trial:**

25 **9.1 Trial Setting.** This matter will be set for trial at the discretion of the Court.
26 ORDERED this ___ day of _____, 2014.

27
28

The Honorable Robert H. Oberbillig
Judge of the Superior Court

EXHIBIT "A"

Pretrial Litigation Schedule

Description	Deadline
Deadline to serve Initial Rule 26.1 Disclosure Statements, including the identification of expert witnesses, and disclosure of relevant documents.	April 11, 2014 ✓
The parties remaining in this action shall participate in private mediation by this date.	November 14, 2014 @
Plaintiffs shall disclose their final expert disclosures, job files, and cost of repair.	September 5, 2014 @
Deadline for Defendants to request inspections and invasive testing of Plaintiffs' homes.	September 19, 2014 @
Defendants shall disclose their final expert disclosures, job files, and cost of repair.	January 15, 2015 @
Third-Party Defendants shall disclose their final expert disclosures, job files, and cost of repair.	March 16, 2015 @
Deadline to disclose rebuttal experts and reports. Rebuttals are limited to adverse parties (Plaintiffs may issue rebuttal reports as to Defendants and Third-Party Defendants and Defendants may issue rebuttal reports to Third-Party Defendants).	April 15, 2015 @
Deadline to disclose all percipient witnesses.	April 15, 2015 @
Deadline to propound written discovery.	May 15, 2015 @
Discovery cut-off.	July 15, 2015 @
Deadline to file dispositive motions.	August 14, 2015 @

eSignature Page 1 of 1

Filing ID: 5810699 Case Number: CV2013-016948
Original Filing ID: 5802087

Granted with Modifications



/S/ Robert Oberbillig Date: 4/9/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2013-016948

E-FILING ID #: 5810699

SIGNATURE DATE: 4/9/2014

FILED DATE: 4/11/2014 8:00:00 AM

WILLIAM H BREIER

**ASHLEY M MARCHESE
NO ADDRESS ON RECORD**

ZAHNIE L SOE MYINT

**B / H DRYWALL STUCCO & PAINTING CO INC
NO ADDRESS ON RECORD**

**A & M CONCRETE INC
NO ADDRESS ON RECORD**

**BRENDA SHARP
NO ADDRESS ON RECORD**

**AARO DOOR & TRIM INC
NO ADDRESS ON RECORD**

**BUILDER SERVICES GROUP INC
NO ADDRESS ON RECORD**

**AARON WELCH
NO ADDRESS ON RECORD**

**C & C ROOFING & SUPPLY INC
NO ADDRESS ON RECORD**

**ADAMS BROS INTERIORS & CABINETS INC
NO ADDRESS ON RECORD**

**CANYON STATE DRYWALL INC
NO ADDRESS ON RECORD**

**AMERICAN WOODMARK CORPORATION
NO ADDRESS ON RECORD**

**CATALINA ROOFING AND SUPPLY INC
NO ADDRESS ON RECORD**

**AMPAM RIGGS PLUMBING INC
NO ADDRESS ON RECORD**

**CHAS ROBERTS AIR CONDITIONING INC
NO ADDRESS ON RECORD**

**ARIZONA DRYWALL CO INC
NO ADDRESS ON RECORD**

**COHACO BUILDING SPECIALTIES INC
NO ADDRESS ON RECORD**

**ARIZONA SUN ELECTRICAL CONTRACTORS INC
NO ADDRESS ON RECORD**

**D V C CONSTRUCTION COMPANY INC
NO ADDRESS ON RECORD**

DIAMOND GLASS & MIRROR INC
NO ADDRESS ON RECORD

MITCHELL ELECTRIC COMPANY INC
NO ADDRESS ON RECORD

FLYNNS FLOOR COVERING INC
NO ADDRESS ON RECORD

MONTE VISTA CONSTRUCTION L L C
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NO ADDRESS ON RECORD

OSBORNE STUCCO INC
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HASKINS ELECTRIC L L C
NO ADDRESS ON RECORD

PACIFIC STUCCO OF ARIZONA INC
NO ADDRESS ON RECORD

HERITAGE INTERIORS INC
NO ADDRESS ON RECORD

PARAMOUNT WINDOWS L L C
NO ADDRESS ON RECORD

INTERIOR LOGIC INC
NO ADDRESS ON RECORD

PATRICIA WELCH
NO ADDRESS ON RECORD

J M R PAINTING INC
NO ADDRESS ON RECORD

PAUL JOHNSON DRYWALL INC
NO ADDRESS ON RECORD

LOFTCO INC
NO ADDRESS ON RECORD

RIGGS PLUMBING L L C
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MESA FULLY FORMED INC
NO ADDRESS ON RECORD

ROADRUNNER DRYWALL CORP
NO ADDRESS ON RECORD

MILGARD MANUFACTURING INCORPORATED
NO ADDRESS ON RECORD

ROCK ISLAND CORPORATION
NO ADDRESS ON RECORD

SCP CONSTRUCTION L L C
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TRIPLE S FENCE COMPANY
NO ADDRESS ON RECORD

SELECTBUILD NEVADA L L C
NO ADDRESS ON RECORD

U S A PLUMBING INC
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SEXTON EXTERMINATING INC
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V W DIG L L C
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SONORAN AIR INC
NO ADDRESS ON RECORD

VALLEY LANDSCAPING L L C
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SPECIALTY ROOFING INC
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WESTERN SHOWER DOOR INC
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STONE NET INC
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WESTERN STATES GLASS AND BUILDING PRODUCTS
INC
NO ADDRESS ON RECORD

STONECRAFTERS OF ARIZONA INC
NO ADDRESS ON RECORD

WESTSIDE DRYWALL INC
NO ADDRESS ON RECORD

SUN MASTER MASONRY INC
NO ADDRESS ON RECORD

WHITTON PLUMBING INC
NO ADDRESS ON RECORD

SUNDANCE CARPENTRY INC
NO ADDRESS ON RECORD

YOUNGER BROTHERS DOOR & TRIM L L C
NO ADDRESS ON RECORD

SUNRISE STUCCO INC
NO ADDRESS ON RECORD

1 Peter C. Kelly, II (014503) (pkelly@hoklaw.com)
Caleb Lihn (021895) (clihn@hoklaw.com)

2 **HOLLOWAY ODEGARD & KELLY, P.C.**

3 3101 North Central Avenue, Suite 1200

Phoenix, Arizona 85012

141.538

Phone: (602) 240-6670

4 Facsimile: (602) 240-6677

5 Attorneys for Third-Party Defendant Cohaco Building Specialties, Inc.

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8
9 MARYANN DELAURENTIS, et al.

Case No: CV2013-016948

10 Plaintiffs,

NOTICE OF APPEARANCE

(Assigned to the Honorable Robert
Oberbillig)

11 v.

12
13 BEAZER HOME SALES, INC. f/k/a
14 BEAZER HOMES SALES ARIZONA,
15 INC. a Delaware Corporation; BEAZER
16 HOMES HOLDINGS CORP., d/b/a
BEAZER HOMES, a Delaware
corporation; and DOES 1-100 inclusive,

17 Defendants.

18 BEAZER HOMES HOLDINGS CORP.
19 d/b/a BEAZER HOMES, a Delaware
corporation; and BEAZER HOMES
20 SALES, INC. f/k/a BEAZER HOMES
21 SALES ARIZONA, INC. , a Delaware
corporation;

22 Third-Party Plaintiffs,

23 v.

24
25 AARO DOOR & TRIM INC., an Arizona
26 corporation; A & M CONCRETE, INC., an
Arizona corporation; ADAMS BROS
27 INTERIORS & CABINETS, INC., an
Arizona corporation; AMERICAN
28 WOODMARK CORPORATION, a foreign

4/17/14

1 corporation; AMPAM RIGGS
2 PLUMBING, INC., an Arizona
3 corporation; ARIZONA DRYWALL CO.,
4 INC., an Arizona corporation; ARIZONA
5 SUN ELECTRICAL CONTRACTORS,
6 INC., an Arizona corporation; B/H
7 DRYWALL, STUCCO & PAINTING CO.
8 INC., an Arizona corporation; CANYON
9 STATE DRYWALL, INC., an Arizona
10 corporation; CATALINA ROOFING AND
11 SUPPLY, INC., an Arizona corporation; C
12 & C ROOFING & SUPPLY, INC., an
13 Arizona corporation; CHAS ROBERTS
14 AIR CONDITIONING, INC., an Arizona
15 corporation; COHACO BUILDING
16 SPECIALTIES, INC., an Arizona
17 corporation; D.V.C. CONSTRUCTION
18 COMPANY, INC., an Arizona corporation;
19 DIAMOND GLASS & MIRROR, INC., an
20 Arizona corporation; FLYNN'S FLOOR
21 COVERING, INC., an Arizona
22 corporation; BUILDER SERVICES
23 GROUP, INC. d/b/a/ GALE
24 INSULATION, a foreign corporation;
25 GOTHIC LANDSCAPING, INC., a
26 foreign corporation; HASKINS
27 ELECTRIC, LLC, a foreign limited
28 liability company; HERITAGE
INTERIORS, INC. n/k/a HERITAGE
INTERIORS ISI, LLC, an Arizona limited
liability company; INTERIOR LOGIC,
INC., an Arizona corporation; J.M.R.
PAINTING, INC., an Arizona corporation;
ROCK ISLAND CORPORATION d/b/a
THE JORDAN COMPANY, a foreign
corporation; SELECTBUILD NEVADA,
LLC f/k/a KBI CONSTRUCTION, L.L.C.,
a foreign limited liability company;
LOFTCO, INC., an Arizona corporation;
MESA FULLY FORMED, INC. n/k/a
MFF, INC., an Arizona corporation;
MILGARD MANUFACTURING
INCORPORATED, a foreign corporation;
MITCHELL ELECTRIC COMPANY,

1 INC., an Arizona corporation; MONTE
2 VISTA CONSTRUCTION, LLC, an
3 Arizona limited liability company;
4 OSBORNE STUCCO, INC., an Arizona
5 corporation; PACIFIC STUCCO OF
6 ARIZONA, INC., an Arizona Corporation;
7 PARAMOUNT WINDOWS, LLC, an
8 Arizona limited liability company; PAUL
9 JOHNSON DRYWALL, INC., an Arizona
10 corporation; RIGGS PLUMBING, LLC.,
11 an Arizona limited liability company;
12 ROADRUNNER DRYWALL CORP., an
13 Arizona corporation; SCP
14 CONSTRUCTION, L.L.C., an Arizona
15 limited liability company; SEXTON
16 EXTERMINATING, INC., an Arizona
17 corporation; SONORAN AIR INC., an
18 Arizona corporation; SPECIALTY
19 ROOFING, INC., an Arizona corporation;
20 STONECRAFTERS OF ARIZONA, INC.,
21 an Arizona corporation; STONE NET,
22 INC., a foreign corporation; SUNDANCE
23 CARPENTRY, INC., an Arizona
24 corporation; SUN MASTER MASONRY,
25 INC., an Arizona corporation; SUNRISE
26 STUCCO, INC., an Arizona corporation;
27 TRIPLE S FENCE COMPANY, an
28 Arizona corporation; U.S.A. PLUMBING,
INC., an Arizona corporation; VALLEY
LANDSCAPING, L.L.C., an Arizona
limited liability company; VW DIG, LLC,
an Arizona limited liability company;
WESTERN SHOWER DOOR, INC., a
foreign corporation; WESTERN STATES
GLASS AND BUILDING PRODUCTS,
INC., an Arizona corporation; WESTSIDE
DRYWALL, INC., an Arizona corporation;
WHITTON PLUMBING, INC., an Arizona
corporation; YOUNGER BROTHERS
DOOR & TRIM, LLC, an Arizona limited
liability company;

Third-Party Defendants.

1 NOTICE IS HEREBY GIVEN that the law firm of Holloway Odegard & Kelly,
2 P.C., by and through Peter C. Kelly, II and Caleb Lihn, hereby enters their appearance for
3 third-party defendant Cohaco Building Specialties, Inc. in the above-entitled cause of
4 action.

5 DATED this 17th day of April, 2014.

6 HOLLOWAY ODEGARD & KELLY, P.C.

7 

8 By _____

9 Peter C. Kelly
10 Caleb Lihn
11 3101 N. Central Avenue, Suite 1200
12 Phoenix, Arizona 85012
13 **Attorneys for Third-Party Defendant Cohaco**
14 **Building Specialties, Inc.**

15 **ORIGINAL** of the foregoing e-filed
16 this 17th day of April, 2014.

17 **COPY** delivered via the e-filing
18 system this same date, to:

19 The Honorable Robert Oberbillig
20 Maricopa County Superior Court
21 125 W. Washington
22 Phoenix, AZ 85003

23 **COPY** of the foregoing mailed
24 this same date, to:

25 Stephen L. Weber, Esq.
26 Scott A. Booth, Esq.
27 William H. Brier, Esq.
28 KASDAN SIMONDS WEBER & VAUGHAN, LLP
3200 North Central Ave., Suite 2100
Phoenix, AZ 85012
Attorney for Plaintiffs

1 Zahnie Soe Myint, Esq.
2 KOELLER NEBEKER CARLSON
3 & HALUCK, LLP
4 3200 N. Central Avenue
5 Suite 2250
6 Phoenix, Arizona 85012
7 *Attorneys for defendant/third-party plaintiff*
8 *Beazer Homes*

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27
28
/s/Tracy L. Raymond

1 Peter C. Kelly, II (014503) (pkelly@hoklaw.com)

2 Caleb Lihn (021895) (clihn@hoklaw.com)

3 **HOLLOWAY ODEGARD & KELLY, P.C.**

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Phone: (602) 240-6670

4 Facsimile: (602) 240-6677

5 Attorneys for Third-Party Defendant Whitton Plumbing, Inc.

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8
9 MARYANN DELAURENTIS, et al.

Case No: CV2013-016948

10 Plaintiffs,

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14 BEAZER HOMES SALES ARIZONA,
15 INC. a Delaware Corporation; BEAZER
16 HOMES HOLDINGS CORP., d/b/a
17 BEAZER HOMES, a Delaware
18 corporation; and DOES 1-100 inclusive,

19 Defendants.

20 BEAZER HOMES HOLDINGS CORP.
21 d/b/a BEAZER HOMES, a Delaware
22 corporation; and BEAZER HOMES
23 SALES, INC. f/k/a BEAZER HOMES
24 SALES ARIZONA, INC. , a Delaware
25 corporation;

26 Third-Party Plaintiffs,

27 v.

28 AARO DOOR & TRIM INC., an Arizona
corporation; A & M CONCRETE, INC., an
Arizona corporation; ADAMS BROS
INTERIORS & CABINETS, INC., an
Arizona corporation; AMERICAN
WOODMARK CORPORATION, a foreign

4/17/14

1 corporation; AMPAM RIGGS
2 PLUMBING, INC., an Arizona
3 corporation; ARIZONA DRYWALL CO.,
4 INC., an Arizona corporation; ARIZONA
5 SUN ELECTRICAL CONTRACTORS,
6 INC., an Arizona corporation; B/H
7 DRYWALL, STUCCO & PAINTING CO.
8 INC., an Arizona corporation; CANYON
9 STATE DRYWALL, INC., an Arizona
10 corporation; CATALINA ROOFING AND
11 SUPPLY, INC., an Arizona corporation; C
12 & C ROOFING & SUPPLY, INC., an
13 Arizona corporation; CHAS ROBERTS
14 AIR CONDITIONING, INC., an Arizona
15 corporation; COHACO BUILDING
16 SPECIALTIES, INC., an Arizona
17 corporation; D.V.C. CONSTRUCTION
18 COMPANY, INC., an Arizona corporation;
19 DIAMOND GLASS & MIRROR, INC., an
20 Arizona corporation; FLYNN'S FLOOR
21 COVERING, INC., an Arizona
22 corporation; BUILDER SERVICES
23 GROUP, INC. d/b/a/ GALE
24 INSULATION, a foreign corporation;
25 GOTHIC LANDSCAPING, INC., a
26 foreign corporation; HASKINS
27 ELECTRIC, LLC, a foreign limited
28 liability company; HERITAGE
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INTERIORS ISI, LLC, an Arizona limited
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PAINTING, INC., an Arizona corporation;
ROCK ISLAND CORPORATION d/b/a
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4 OSBORNE STUCCO, INC., an Arizona
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9 JOHNSON DRYWALL, INC., an Arizona
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DOOR & TRIM, LLC, an Arizona limited
liability company;

Third-Party Defendants.

1 NOTICE IS HEREBY GIVEN that the law firm of Holloway Odegard & Kelly,
2 P.C., by and through Peter C. Kelly, II and Caleb Lihn, hereby enters their appearance for
3 third-party defendant Whitton Plumbing, Inc. in the above-entitled cause of action.

4 DATED this 17th day of April, 2014.

5 **HOLLOWAY ODEGARD & KELLY, P.C.**

6
7
8 By



Peter C. Kelly
Caleb Lihn
3101 N. Central Avenue, Suite 1200
Phoenix, Arizona 85012
**Attorneys for Third-Party Defendant Whitton
Plumbing, Inc.**

9
10
11
12 **ORIGINAL** of the foregoing e-filed
this 17th day of April, 2014.

13 **COPY** delivered via the e-filing
14 system this same date, to:

15 The Honorable Robert Oberbillig
16 Maricopa County Superior Court
125 W. Washington
Phoenix, AZ 85003

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3200 North Central Ave., Suite 2100
Phoenix, AZ 85012
Attorney for Plaintiffs

23 Zahnie Soe Myint, Esq.
24 KOELLER NEBEKER CARLSON
& HALUCK, LLP
3200 N. Central Avenue
Suite 2250
Phoenix, Arizona 85012
26 **Attorneys for defendant/third-party plaintiff**
27 **Beazer Homes**

28 /s/Tracy L. Raymond

Tracy Raymond

From: TurboCourt Customer Service [CustomerService@TurboCourt.com]
Sent: Thursday, April 17, 2014 3:48 PM
To: Tracy Raymond; Edie Webb
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #1111178 has been DELIVERED to Maricopa County Superior Court.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: CV2013-016948 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Case Title: Delaurentis, Et.Al. Vs. Beazer Homes Sales Inc, Et

Filed By: Peter C Kelly II

AZTurboCourt Form Set: #1111178

Keyword/Matter #:

Delivery Date and Time: Apr 17, 2014 3:48 PM MST

Forms:

Summary Sheet (This summary sheet will not be filed with the court. This sheet is for your personal records only.)

Attached Documents:

Notice of Appearance: Notice of Appearance

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
5 3200 N. Central Avenue, Ste. 2100
6 Phoenix, Arizona 85012
7 (602) 224-7800
8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

7 **SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 MARYANN DELAURENTIS; et al.,

10 Plaintiffs,

11 v.

12 BEAZER HOMES SALES, INC. f/k/a
13 BEAZER HOMES SALES, ARIZONA,
14 INC., et al,

15 Defendants.

16 AND ALL RELATED THIRD-PARTY
17 CLAIMS.

Case No. CV2013-016948

**JOINT PRETRIAL
MEMORANDUM**

(Assigned to the Hon. Robert
Oberbillig)

18 Pursuant to the Court's March 3, 2014 Minute Entry, through undersigned counsel,
19 the parties submit this Joint Pretrial Memorandum.

20 **I. Brief Summary of Case**

21 This construction defect action involves the owners of seventy eight (78) homes,
22 located within the Sierra Montana community developed and sold by the defendant Beazer
23 entities. On December 19, 2013, Plaintiffs filed their Complaint. On February 13, 2014,
24 Defendants filed their Answer. On February 21, 2014, Defendants filed a Third-Party
25 Complaint naming fifty two (52) Third-Party Defendants. To date, Defendants have not
26 served the Third-Party Complaint on any Third-Party Defendants.

27 **II. Proposed Scheduling Order**

28 On March 27, 2014, the parties met and conferred to discuss setting scheduling

1 deadlines in accordance with Rule 16(b), *Ariz.R.Civ.P.* The parties were unable to agree on
2 all scheduling deadlines and submit the Proposed Scheduling Order with the parties'
3 proposed deadlines attached hereto as Exhibit 1.

4 RESPECTFULLY SUBMITTED this 31st day of March, 2014.

5 **KASDAN SIMONDS WEBER & VAUGHAN, LLP**

6
7 By: /s/ William H. Breier

8 Stephen L. Weber

9 Scott A. Booth

10 William H. Breier

11 *Attorneys for Plaintiffs*

12 **KOELLER NEBEKER CARLSON HALLUCK, LLP**

13 By: /s/ William H. Breier (w/permission for)

14 Zahnie L. Soe Myint

15 Judith A. Downs

16 *Attorneys for Defendants*

17 Original e-filed and e-served
18 per attached Service List via
19 AZTurbo Court on March 31, 2014.

20 /s/ M. Dodd

Service List
Sierra Montana

DeLaurentis et al v. Beazer Homes Sales, Inc. f/k/a/ Beazer Homes Sales of Arizona, Inc., et al.
CV2013-016948

Zahnie L. Soe Myint, Esq. Judith Downs, Esq. Koeller Nebeker Carlson Haluck LLP 3200 N Central Ave., Ste 2250 Phoenix, Arizona 85012	<i>Beazer Homes Sales, Inc.</i> <i>f/k/a Beazer Homes Sales</i> <i>Arizona, Inc., Beazer Homes</i> <i>Holdings Corp d/b/a Beazer</i> <i>Homes</i>	P: 602-256-0000 F: 602-256-2488 zahnie.soemyint@knchlaw.com judith.downs@knchlaw.com
John J. Belanger, Esq. Paul O. Mittelstadt, Esq. Bremer Whyte Brown & O'Meara, LLP 3200 N Central Ave., Ste 2450 Phoenix, AZ 85012	<i>Heritage Interiors, Inc.</i> <i>(Courtesy Copy)</i>	P: 602-274-1204 F: 602-274-1205 jbelanger@bremerwhyte.com pmittelstadt@bremerwhyte.com

Exhibit 1

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
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6 Phoenix, Arizona 85012
7 (602) 224-7800
8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

7 **SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 MARYANN DELAURENTIS; et al.,

10 Plaintiffs,

11 v.

12 BEAZER HOMES SALES, INC. f/k/a
13 BEAZER HOMES SALES, ARIZONA,
14 INC., et al,

15 Defendants.

16 AND ALL RELATED THIRD-PARTY
17 CLAIMS.

Case No. CV2013-016948

SCHEDULING ORDER

(Assigned to the Hon. Robert
Oberbillig)

18 The Court having received and considered the parties' Joint Pretrial Memorandum,
19 **IT IS ORDERED AS FOLLOWS:**

20 **1.0 Purpose:**

21 **1.1 Purpose.** This Scheduling Order (herein after "Order") is entered to provide
22 for the "just, speedy, and inexpensive determination" of this case.
23 (*Ariz.R.Civ.P.*, Rule 1).

24 **2.0 General Business:**

25 **2.1 Rules Applicable.** Except as specifically set forth herein, all provisions of
26 the Arizona Rules of Civil Procedure and the Local Rules of Practice for the
27 Superior Court of Maricopa County will apply to this case. Disclosure
28 obligations under Rule 26.1 will remain as contained in that rule, including

the parties' duties to seasonably make, update and supplement their disclosures, including expert disclosures, on an ongoing basis as information is known or becomes available to them. This obligation will be in addition to the final disclosure deadlines as set forth in the pretrial litigation schedule attached as Exhibit "A."

2.2 Amendment of Order. This Order may be changed, altered or amended by stipulation or agreement of the parties adopted by Court Order, or upon motion granted by the Court.

2.3 Case Schedule. This case shall proceed in accordance with the pretrial litigation schedule attached as Exhibit "A."

2.4 Rule 38.1 Requirements. The provisions of subsections (a) through (g) of Rule 38.1, *Ariz.R.Civ.P.* shall not apply to this proceeding.

2.5 Electronic Service. The parties may effectuate service of all pleadings via AZTurboCourt's E-Service (where applicable) pursuant to the Supreme Court of Arizona's Administrative Order No. 2014-23 or by U.S. Postal Service to the involved party or parties (i.e. propounding party and moving or responding party). Service of all discovery and disclosure shall be effectuated through U.S. Postal Service (electronic service is to be considered only as a courtesy). Electronic service of all other parties shall be made by e-mail to each party's attorney and/or their assistant as set forth below:

Party	Recipient(s)	E-mail Address
Plaintiffs – Homeowners	Stephen L. Weber, Esq. Scott A. Booth, Esq. William H. Breier, Esq. Mary Dodd (Assistant)	kasdancourt@kasdansimonds.com (for AZTurbo Court use only) sweber@kasdansimonds.com sbooth@kasdansimonds.com wbreier@kasdansimonds.com mdodd@kasdansimonds.com
Defendants – Beazer Entities	Zahnie L. Soe Myint, Esq. Judith A. Downs, Esq. Collette Wade (Assistant)	zahnie.soemyint@knchlaw.com judith.downs@knchlaw.com collette.wade@knchlaw.com

1 It shall be the obligation of each party to provide notification to all parties of
2 all changes and or modifications to the above electronic service list.

3 **2.6 Document Depository.** Esquire Solutions, 3800 N. Central Ave. Suite 1700,
4 Phoenix, AZ 85012 (602) 266-2221 is designated as the document depository
5 for this case. All documents disclosed or otherwise produced shall be
6 provided to the document depository only, with a notice of deposit sent to all
7 parties. Each document deposited should be identified with a separate, Bates
8 stamp unique to the depositing party.

9 **3.0 Mediation:**

10 **3.1 Purpose and Intent.** The Court intends that all parties in this case will
11 participate in good faith in a meaningful mediation and/or settlement
12 conference before this case is set for trial.

13 **3.2 Procedures.** Except as otherwise provided in this Order, all mediation and
14 settlement conferences conducted in this case will be subject to *Ariz.R.Civ.P.*
15 16.1, the provisions of A.R.S. §12-2238, and *Ariz.R.Evid.* Rule 408, regarding
16 the confidentiality and non-admissibility of information exchanged in
17 mediation and settlement conferences. The mediator may enter supplemental
18 order(s) in furtherance of this paragraph.

19 **3.3 Mediator.** The parties agree on Larry Fleischman to serve as mediator and
20 participate in a private mediation in accordance with the pretrial litigation
21 schedule attached as Exhibit "A." The mediator's compensation shall be paid
22 one-third (1/3) by Plaintiffs, one-third (1/3) by Defendants and one-third (1/3)
23 among the participating Third-Party Defendants (divided pro-rata). The
24 mediator shall have the power to recommend a different allocation, depending
25 on the nature and purpose of the particular mediation before him.

26 **3.4 Attendance.** The mediator may order the personal appearance of any or all
27 parties and their insurance representatives who have full settlement authority.
28 The mediator has the discretion to allow attendance by telephone.

1 **3.5 Demands.** Unless modified by the mediator, at least sixty (60) days before
2 mediation, Plaintiffs shall forward a settlement demand to counsel for
3 Defendants. At least thirty (30) days before mediation, Defendants shall
4 forward settlement demands to counsel for the respective Third-Party
5 Defendants.

6 **4.0 Disclosures:**

7 **4.1 Disclosure Deadlines:** All information required by Rule 26.1 of the
8 Arizona Rules of Civil Procedure will be disclosed seasonably, but in no
9 event more than thirty (30) days after the information is revealed to or
10 discovered by the disclosing party. All expert disclosures shall comply with
11 Rule 26.1(a)(6) and shall set forth the facts and opinions to which the expert is
12 expected to testify. The grounds for each opinion, including all documents
13 upon which the expert relies, shall also be disclosed seasonably, but in no
14 event more than thirty (30) days after the information is revealed to the
15 disclosing party.

16 It is the intent of this Order that the expert and percipient disclosures
17 listed in Exhibit "A" be comprehensive and complete by the deadline. This
18 includes all opinions, documents, photographs, job file materials and billing
19 records. The only additional experts, expert opinions or expert documents
20 that may be disclosed beyond this date will be in rebuttal. Rebuttal
21 designation and disclosure is in response to prior designations by adverse
22 parties (Plaintiff to Defendants and Third-Party Defendants, and Defendants
23 to Third-Party Defendants). The rebuttal designation shall not be construed as
24 a deadline to submit new opinions or designate new experts for affirmative
25 defenses or other matters which should have been raised prior to final expert
26 designation and disclosure.

27 **4.2 Expert Witnesses.**

28 **4.2.1 Number.** The Arizona Rules of Civil Procedure shall apply.

1 **4.2.2 Schedule for Disclosure.** The identity of expert witnesses shall be
2 disclosed in accordance with Rule 26.1 and expert reports, opinions,
3 and job files shall be disclosed in accordance with the litigation
4 schedule attached as Exhibit "A."

5 **5.0 Testing and Inspections.**

6 **5.1 Coordination.** Defendants' and Third-Party Defendants shall use their best
7 efforts to coordinate among the parties any visual inspections or invasive
8 testing to limit the disruption to the homeowners.

9 **5.2 Communication.** In accordance with E.R. 4.2, the parties, their lawyers and
10 experts are prohibited from initiating or continuing direct communications
11 with the homeowners (or their representatives) during visual inspections or
12 invasive testing absent prior consent of counsel or the site representative.

13 **5.3 Visual Inspections.** Defense visual inspections, including inspections by
14 Third-Party Defendants, will be coordinated and occur pursuant to the pretrial
15 litigation schedule attached as Exhibit "A." Absent party agreement or good
16 cause shown, each home shall be coordinated among the parties and be made
17 available one time (in addition to any inspections made by Plaintiffs' experts)
18 for a visual inspection by the Defendants and Third-Party Defendants. The
19 parties shall be entitled to inspect, photograph, videotape, and measure the
20 homes; however, there shall be no sampling, testing, or markings made during
21 these inspections unless agreed by the parties before commencement of the
22 inspections.

23 **5.4 Invasive Testing.** Any party shall be permitted to observe, photograph, video
24 tape, record or attend the testing without charge, so long as they do not delay,
25 interfere with or increase the cost of testing. Participating includes extracting,
26 sampling, dismantling, moving and/or directing the testing, which
27 participation requires a pro-rata sharing of the testing costs by participating
28 parties, unless a prior cost sharing agreement is reached.

1 Unless performed in conjunction with Plaintiffs' testing, Defense
2 invasive testing, including testing by Third-Party Defendants, will be
3 coordinated and occur pursuant to the pretrial litigation schedule attached as
4 Exhibit "A." Absent party agreement or good cause shown, each home shall
5 be coordinated among the parties and be made available one time (in addition
6 to any testing performed by Plaintiffs' experts) for invasive testing by the
7 Defendants and Third-Party Defendants.

8 Testing and any repair work shall be performed by a qualified,
9 licensed, insured and bonded contractor with proof being submitted to the
10 homeowners upon request. Test locations shall be returned to their pretest
11 condition, painting corner to corner as necessary.

12 **6.0 Depositions:**

13 **6.1 Expert Depositions.** All parties will meet and confer to develop an expert
14 deposition schedule. Expert depositions will proceed by field of expertise and
15 in accordance with the burden of proof, i.e., Plaintiff, Defendant and Third-
16 Party Defendant experts in that order. Deposition of the Defendants' experts
17 for any given area of expertise may commence after Plaintiffs expert in the
18 same area of expertise has been deposed. All expert depositions will proceed
19 near the respective experts' principal place of business.

20 **6.2 Other Depositions.** Depositions of party representatives and other non-party
21 witnesses may begin at any time. All non-expert depositions shall be
22 completed by the discovery deadline in the pretrial litigation schedule
23 attached as Exhibit "A." Homeowner and percipient depositions shall be
24 coordinated so the deponent only needs to appear once, absent agreement of
25 the parties. Homeowner depositions are limited to four (4) hours per home
26 and percipient witness depositions are limited to four (4) hours each.

27 **7.0 Motions:**

28 **7.1 Dispositive Motions.** Dispositive motions may be filed at any time prior to

1 the deadline in the pretrial litigation schedule attached as Exhibit "A," except
2 motions based on expert opinions are stayed until after the expert disclosure
3 deadline for the party the motion is against.

4 **8.0 Interim Case Management Conferences:**

5 **8.1 Dates.** The Court intends to set periodic status conferences that will be
6 scheduled and determined by the Court. The first telephonic status conference
7 is set for _____ at ____:____ am/pm. Plaintiffs' counsel
8 shall initiate the conference call to this division at _____. All persons
9 appearing shall **appear on land lines** and not on cellular phones, and shall not
10 use the speakerphone features of their telephones, in order to maximize all
11 participants' ability to hear and be heard. Additionally, **counsel shall have**
12 **their calendars available for this proceeding.**

13 **8.2 Requirement to Meet and Confer.** No less than five (5) days prior to the
14 status conference set herein, the parties shall submit a joint status report to the
15 court regarding the history and status of the case and efforts at alternative
16 dispute resolution pursuant to Rule 16(g), *Ariz.R.Civ.P.*

17 **9.0 Trial:**

18 **9.1 Trial Setting.** This matter will be set for trial at the discretion of the Court.
19 ORDERED this ____ day of _____, 2014.

20
21
22 _____
23 The Honorable Robert H. Oberbillig
24 Judge of the Superior Court
25
26
27
28

Exhibit A

EXHIBIT "A"

Pretrial Litigation Schedule

Description	Plaintiffs' Deadline	Defendants' Deadline
Deadline to serve Initial Rule 26.1 Disclosure Statements, including the identification of expert witnesses, and disclosure of relevant documents.	April 11, 2014	April 11, 2014
The parties remaining in this action shall participate in private mediation by this date.	August 8, 2014	November 14, 2014
Plaintiffs shall disclose their final expert disclosures, job files, and cost of repair.	September 5, 2014	September 5, 2014
Deadline for Defendants to request inspections and invasive testing of Plaintiffs' homes.	September 19, 2014	December 12, 2014
Defendants shall disclose their final expert disclosures, job files, and cost of repair.	November 7, 2014	March 31, 2015
Third-Party Defendants shall disclose their final expert disclosures, job files, and cost of repair.	December 12, 2014	April 17, 2015
Deadline to disclose rebuttal experts and reports. Rebuttals are limited to adverse parties (Plaintiffs may issue rebuttal reports as to Defendants and Third-Party Defendants and Defendants may issues rebuttal reports to Third-Party Defendants).	January 9, 2015	May 15, 2015
Deadline to disclose all percipient witnesses.	January 30, 2015	May 29, 2015
Deadline to propound written discovery.	January 30, 2015	June 30, 2015
Discovery cut-off.	March 31, 2015	September 30, 2015
Deadline to file dispositive motions.	April 30, 2015	October 16, 2015

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
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8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

11
12 **SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 MARYANN DELAURENTIS; et al.,

15 Plaintiffs,

16 v.

17 BEAZER HOMES SALES, INC. f/k/a
18 BEAZER HOMES SALES, ARIZONA,
19 INC., et al,

20 Defendants.

Case No. CV2013-016948

**JOINT MOTION TO DISMISS
PLAINTIFFS PHILIP AND
CAROL FINNEGAN ONLY**

(Assigned to the Hon. Robert Oberbillig)

21 AND ALL RELATED THIRD-PARTY
22 CLAIMS.

23 Pursuant to Rule 41(a)(1)(B) of the Arizona Rules of Civil Procedure Plaintiffs and
24 Defendants jointly move the Court for the dismissal with prejudice of the claims and
25 allegations of Plaintiffs Philip and Carol Finnegan (14773 N. 182nd Avenue, Surprise,
26 Arizona, 85388). The parties further agree that each party shall bear its own attorneys' fees,
27 experts' fees, and costs associated with the dismissed claims and allegations. A form of
28 Order is being lodged concurrently herewith.

///

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///

///

///

1 RESPECTFULLY SUBMITTED this 21st day of March, 2014.

2 **KASDAN SIMONDS WEBER & VAUGHAN LLP**

3 By: /s/ William H. Breier

4 Stephen L. Weber

5 Scott A. Booth

6 William H. Breier

Attorneys for Plaintiffs

7 **KOELLER NEBEKER CARLSON HALUCK LLP**

8 By: /s/ William H. Breier (w/permission for)

9 William A. Nebeker

10 Zahnie L. Soe Myint

11 *Attorneys for Defendants*

12
13
14 Original e-filed and e-served
15 per attached Service List via
16 AZTurbo Court on March 21, 2014,

17 By: /s/ Mary Dodd

Service List
Sierra Montana

DeLaurentis et al v. Beazer Homes Sales, Inc. f/k/a/ Beazer Homes Sales of Arizona, Inc., et al.
CV2013-016948

William A. Nebeker, Esq. Zahnie L. Soe Myint, Esq. Koeller Nebeker Carlson Haluck LLP 3200 N Central Ave., Ste 2250 Phoenix, Arizona 85012	<i>Beazer Homes Sales, Inc.</i> <i>f/k/a Beazer Homes Sales</i> <i>Arizona, Inc., Beazer Homes</i> <i>Holdings Corp d/b/a Beazer</i> <i>Homes</i>	P: 602-256-0000 F: 602-256-2488 Nebeker@knschlaw.com Zahnie.soemyint@knchlaw.com
John J. Belanger, Esq. Bremer Whyte Brown & O'Meara, LLP 3200 N Central Ave., Ste 2450 Phoenix, AZ 85012	<i>Heritage Interiors, Inc.</i> <i>(Courtesy Copy)</i>	P: 602-274-1204 F: 602-274-1205 jbelanger@bremerwhyte.com

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2
3
4
5 **SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 MARYANN DELAURENTIS; et al.,

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9 v.

10 BEAZER HOMES SALES, INC. f/k/a
11 BEAZER HOMES SALES, ARIZONA,
INC., et al,

12 Defendants.

13
14 AND ALL RELATED THIRD-PARTY
15 CLAIMS.

Case No. CV2013-016948

**ORDER RE: JOINT MOTION
TO DISMISS PLAINTIFFS
PHILIP AND CAROL FINNEGAN
ONLY**

(Assigned to the Hon. Robert Oberbillig)

16 Having considered the parties' Joint Motion to Dismiss Plaintiffs Philip and Carol
17 Finnegan only, and good cause appearing therefor,

18 IT IS ORDERED granting the Joint Motion and dismissing the claims and
19 allegations of Plaintiffs Philip and Carol Finnegan with prejudice.

20 IT IS FURTHER ORDERED that each party shall bear its own attorneys' fees,
21 experts' fees, and costs associated with the claims and allegations of the dismissed
22 Plaintiffs.

23 DATED this _____ day of _____, 2014.

24
25
26 HON. ROBERT OBERBILLIG
27
28

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
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6 Phoenix, Arizona 85012
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9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

11 **SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 MARYANN DELAURENTIS; et al.,

14 Plaintiffs,

15 v.

16 BEAZER HOMES SALES, INC. f/k/a
17 BEAZER HOMES SALES, ARIZONA,
18 INC., et al,

19 Defendants.

Case No. CV2013-016948

**PLAINTIFFS' REQUEST
FOR RULE 16 SCHEDULING
CONFERENCE**

(Assigned to the Hon. Robert Oberbillig)

20 AND ALL RELATED THIRD-PARTY
21 CLAIMS.

22 To avoid unnecessary delays and to assist in case management, Plaintiffs Maryann
23 Delaurentis, *et al.* ("Plaintiffs"), request the Court set a Scheduling Conference pursuant to
24 Rule 16(b), *Ariz.R.Civ.P.*, as soon as practicable. Plaintiffs believe that the parties and the
25 Court would benefit from a comprehensive schedule that sets forth a road map of events and
26 activities in the case.

27 This construction defect action involves the owners of seventy nine (79) homes,
28 developed and sold by Defendants located within the Sierra Montana community in
Surprise, Arizona. On December 19, 2013, Plaintiffs filed their Complaint. On February 13,
2014, Defendants filed their Answer. On February 21, 2014, Defendants filed a Third-Party
Complaint naming approximately fifty three (53) Third-Party Defendants. To date, none of

1 the Third-Party Defendants have appeared, but their appearance is imminent. To move the
2 case forward, the Court's management is essential. For the above reasons, Plaintiffs
3 respectfully request the Court to set a Rule 16 Scheduling Conference at the Court's earliest
4 convenience.

5 RESPECTFULLY submitted this 26th day of February, 2014.

6 **KASDAN SIMONDS WEBER & VAUGHAN LLP**

7 By: /s/ William H. Breier

8 Stephen L. Weber

9 Scott A. Booth

10 William H. Breier

Attorneys for Plaintiffs

11 ORIGINAL electronically filed
12 with the Clerk of Court this 26th day
13 of February, 2014.

14 COPY of the foregoing e-mailed and
15 mailed this 26th day of February, 2014 to:

16 William A. Nebeker

17 Zahnie L. Soe Myint

18 Koeller Nebeker Carlson Haluck LLP

19 3200 N. Central Ave., Suite 2250

20 Phoenix, AZ 85012

Attorneys for Defendants

21 /s/ Mary Dodd

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-016948

02/27/2014

HON. ROBERT H. OBERBILLIG

CLERK OF THE COURT
T. Nosker
Deputy

SM

MARYANN DELAURENTIS, et al.

WILLIAM H BREIER

v.


BEAZER HOMES SALES INC, et al.

ZAHNIE L SOE MYINT

ORDER TO FILE JOINT PROPOSED SCHEDULING ORDER

The Court has read Plaintiff's *Request for Rule 16 Scheduling Conference* electronically filed on February 26, 2014.

IT IS ORDERED as follows:

Counsel and/or the parties are to meet personally to discuss all of the matters set forth in Rule 16(b), Ariz. R. Civ. P. Counsel and/or the parties shall prepare and file with the Court, no later than **5:00 p.m. on March 31, 2014**, a Joint proposed Scheduling Order, for discovery, motion and disclosure deadlines. 

If the parties agree to the dates, they should prepare an Order **in the form attached hereto**, containing the provisions which are applicable to their case. For example, paragraph one of the Order set forth below need not be included in the parties' proposed Order if the parties intend to disclose their experts' identity and opinions at the same time they disclose their experts' areas of testimony. Similarly, if the parties agree to simultaneously disclose the identity and opinions of their expert witnesses, they need not include in their proposed Order the language set forth in paragraph 2a. and b., below.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-016948

02/27/2014

The proposed Order shall include specific dates (06/05/2013 rather than 45 days from close of discovery). Do not incorporate a firm trial date in the proposed Order.

If counsel are unable to agree on any of the items that are to be included in the Order, the reasons for their inability to agree shall be set forth in their proposed Order.

The Court will review the proposed Scheduling Order. If all is in order, the Court will set a status conference close to the discovery cutoff date. At the status conference, if the parties have completed discovery and are ready for trial, the Court will set firm dates for the final pretrial management conference and the trial. If the parties are not ready for trial, the matter will be placed on the Inactive Calendar for dismissal within 60 days.

If counsel feel a pretrial conference is still necessary at this stage of the litigation, they should address the reasons why in the first paragraph of the proposed Scheduling Order.

If a Joint proposed Scheduling Order is not timely submitted, the Court will place the matter back on the Inactive Calendar for dismissal.

NOTE: COUNSEL SHALL UPLOAD AND E-FILE ALL PROPOSED ORDERS IN WORD FORMAT ONLY TO ALLOW FOR POSSIBLE MODIFICATIONS BY THE COURT.

Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-016948

02/27/2014

[PROPOSED] SCHEDULING ORDER

The Court has reviewed the parties' Joint Proposed Scheduling Order and adopts and/or modifies the days as follows:

IT IS ORDERED as follows:

1. The parties shall mutually and simultaneously disclose areas of expert testimony by 5:00 p.m. on _____, 2014/2015. [or]
 - a. Plaintiffs shall disclose areas of expert testimony by 5:00 p.m. on _____, 2014/2015.
 - b. Defendants shall disclose areas of expert testimony by 5:00 p.m. on _____, 2014/2015.
2. The parties shall mutually and simultaneously disclose the identity and opinions of their expert witnesses by 5:00 p.m. on _____, 2014/2015. [or]
 - a. Plaintiffs shall disclose the identity and opinions of their expert witnesses by 5:00 p.m. on _____, 2014/2015.
 - b. Defendants shall disclose the identity and opinions of their expert witnesses by 5:00 p.m. on _____, 2014/2015.
3. Any and all discovery requests shall be served by 5:00 p.m. on _____, 2014/2015.
4. The parties shall disclose all non-expert witnesses by 5:00 p.m. on _____, 2014/2015. [or]
 - a. Plaintiffs shall disclose areas of non-expert testimony by 5:00 p.m. on _____, 2014/2015.
 - b. Defendants shall disclose areas of non-expert testimony by 5:00 p.m. on _____, 2014/2015.
5. The parties shall mutually and simultaneously disclose their rebuttal expert witnesses and opinions by 5:00 p.m. on _____, 2014/2015.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-016948

02/27/2014

6. All discovery shall be concluded by 5:00 p.m. on _____, 2014/2015.
7. The parties shall have exchanged up-to-date final Rule 26.1 Supplemental Disclosure Statements by 5:00 p.m. on _____, 2014/2015. This Order does not replace the parties' obligation to seasonably disclose on an on-going basis under Rule 26.1 as information becomes available.
8. Settlement conference (choose one):

The parties shall participate in private mediation by 5:00 p.m. on _____, 2014/2015;

OR

The parties shall participate in a mandatory Settlement Conference. This case is referred to the Court's Alternative Dispute Resolution for the appointment of a judge *pro tempore* to conduct a settlement conference. Counsel and/or the parties will receive a minute entry from ADR appointing the judge *pro tempore*. Counsel and any "pro per" parties will contact the appointed judge *pro tempore* to arrange the date, time, and location for the settlement conference. The judge *pro tempore* is requested to conduct a settlement conference not later than (at least 105 days out), 2014/2015. The Office of Alternative Dispute Resolution will not do the scheduling of the settlement conference so please do not contact that office. If counsel prefer to use a private mediator to conduct the Settlement Conference, a Stipulation and Order re: Alternative to ADR must be presented to the Court by 5:00 p.m. on _____, 2014/2015.

All counsel and their clients, or non-lawyer representatives who have full and complete authority to settle the case, shall personally appear and participate in good faith in the Settlement Conference. Sanctions may be imposed for failure to participate.

9. No expert witnesses, expert opinions, lay witnesses, or exhibits shall be used at trial other than those disclosed in a timely manner, except for good cause shown or written agreement of the parties.
10. All pretrial motions, other than motions *in limine*, must be filed by 5:00 p.m. on _____, 2014/2015.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-016948

02/27/2014

11. A **Telephonic Pretrial Status/Scheduling Conference** is set for _____, **2014/2015** at ____ a.m./p.m. for the purpose of assigning a trial date if the case has not settled. **Counsel shall have their trial calendars available.** Counsel for Plaintiff shall initiate the telephonic conference by first arranging the presence of all other counsel on the conference call and by calling this division at: **(602) 506-2194 promptly** at the scheduled time.

NOTE: This Court utilizes FTR for an electronic record of the proceedings. However, any party may request the presence of a court reporter by contacting the division three (3) court business days before the scheduled hearing.

12. Should any discovery disputes arise, counsel, prior to filing discovery motions, shall meet and confer pursuant to Rule 37, Ariz.R.Civ.P.
13. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.
14. This case is removed from the Inactive Calendar and all requirements of Rule 38.1, Ariz.R.Civ.P., are waived unless and until otherwise ordered by the Court.

Dated: _____

HONORABLE ROBERT H. OBERBILLIG
JUDICIAL OFFICER OF THE SUPERIOR COURT

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-016948

03/20/2014

HON. ROBERT H. OBERBILLIG

CLERK OF THE COURT
T. Nosker
Deputy

MARYANN DELAURENTIS, et al.

WILLIAM H BREIER

v.

BEAZER HOMES SALES INC, et al.

ZAHNIE L SOE MYINT

MINUTE ENTRY

The Court has read Plaintiff's *Notice of Withdrawal of Joint Motion to Substitute Real Parties in Interest* electronically filed on March 17, 2014.

In light of this Notice,

IT IS ORDERED vacating the Order Re: Joint Motion to Substitute Real Parties in Interest electronically signed by the Court on March 17, 2014 and filed by the clerk on March 18, 2014.

Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.

SM

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
5 3200 N. Central Avenue, Ste. 2100
6 Phoenix, Arizona 85012
7 (602) 224-7800
8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

11 **SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 MARYANN DELAURENTIS; et al.,

14 Plaintiffs,

15 v.

16 BEAZER HOMES SALES, INC. f/k/a
17 BEAZER HOMES SALES, ARIZONA,
18 INC., et al,

19 Defendants.

Case No. CV2013-016948

**NOTICE OF WITHDRAWAL OF
JOINT MOTION TO
SUBSTITUTE REAL PARTIES
IN INTEREST**

(Assigned to the Hon. Robert Oberbillig)

20 **AND ALL RELATED THIRD-PARTY**
21 **CLAIMS.**

22 The parties hereby give notice that they are withdrawing their Joint Motion to
23 Substitute Real Parties in Interest which was filed on March 3, 2014 to add Ray Jussila as a
24 named plaintiff in place of Plaintiffs Brian and Trisha Buzard as the owner of the home
25 located at 14912 N. 183rd Drive, Surprise, Arizona, 85388.

26 RESPECTFULLY SUBMITTED this 17th day of March, 2014.

27 **KASDAN SIMONDS WEBER & VAUGHAN, LLP**

28 By: /s/ William H. Breier

Stephen L. Weber

Scott A. Booth

William H. Breier

Attorneys for Plaintiffs

3/17/14

1 **KOELLER NEBEKER CARLSON HALUCK LLP**

2
3 By: /s/ William H. Breier for
4 William A. Nebeker
5 Zahnie L. Soe Myint
6 *Attorneys for Defendants*
7
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25 Original e-filed and e-served
26 per attached Service List via
27 AZTurbo Court on March 17, 2014,

28 By: /s/ Mary Dodd

Service List
Sierra Montana

DeLaurentis et al v. Beazer Homes Sales, Inc. f/k/a/ Beazer Homes Sales of Arizona, Inc., et al.
CV2013-016948

William A. Nebeker, Esq. Zahnie L. Soe Myint, Esq. Koeller Nebeker Carlson Haluck LLP 3200 N Central Ave., Ste 2250 Phoenix, Arizona 85012	<i>Beazer Homes Sales, Inc.</i> <i>f/k/a Beazer Homes Sales</i> <i>Arizona, Inc., Beazer Homes</i> <i>Holdings Corp d/b/a Beazer</i> <i>Homes</i>	P: 602-256-0000 F: 602-256-2488 Nebeker@knschlaw.com Zahnie.soemyint@knchlaw.com
John J. Belanger, Esq. Bremer Whyte Brown & O'Meara, LLP 3200 N Central Ave., Ste 2450 Phoenix, AZ 85012	<i>Heritage Interiors, Inc.</i> <i>(Courtesy Copy)</i>	P: 602-274-1204 F: 602-274-1205 ibelanger@bremerwhyte.com

SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARYANN DELAURENTIS; et al.,

Plaintiffs,

v.

BEAZER HOME SALES, INC. f/k/a
BEAZER HOME SALES, ARIZONA,
INC., et. al,

Defendants.

Case No. CV2013-016948

**ORDER RE: JOINT MOTION TO
MOTION TO SUBSTITUTE
REAL PARTIES IN INTEREST**

(Assigned to the Hon. Robert Oberbillig)

The parties having jointly submitted their motion to substitute the real parties in interest pursuant Rules 17(a) and 25(d) of the Arizona Rule of Civil Procedure and good cause appearing,

IT IS HEREBY ORDERED:

1. Ray Jussila will be added to the caption as a named plaintiff and owner of the home at 14912 N. 183rd Drive, Surprise, Arizona, 85388.

2. Trisha and Brian Buzard will be removed from the caption as named plaintiffs and owners of the home at 14912 N. 183rd Drive, Surprise, Arizona, 85388, as they have assigned all claims and/or rights, if any, arising out of the home at issue to Mr. Jussila, and will no longer be pursuing claims on their behalf.

3. No defenses to the claims or alleged damages are waived by Defendants, including any relating to the assignment of claims and/or rights.

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DATED: _____, 2014

By: _____
The Honorable Robert Oberbillig
Maricopa County Superior Court of Arizona

eSignature Page 1 of 1

Filing ID: 5763936 Case Number: CV2013-016948
Original Filing ID: 5738975

Granted as Submitted



/S/ Robert Oberbillig Date: 3/17/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2013-016948

SIGNATURE DATE: 3/17/2014

E-FILING ID #: 5763936

FILED DATE: 3/18/2014 8:00:00 AM

WILLIAM H BREIER

**B / H DRYWALL STUCCO & PAINTING CO INC
NO ADDRESS ON RECORD**

ZAHNIE L SOE MYINT

**BRENDA SHARP
NO ADDRESS ON RECORD**

**A & M CONCRETE INC
NO ADDRESS ON RECORD**

**BUILDER SERVICES GROUP INC
NO ADDRESS ON RECORD**

**AARO DOOR & TRIM INC
NO ADDRESS ON RECORD**

**C & C ROOFING & SUPPLY INC
NO ADDRESS ON RECORD**

**ADAMS BROS INTERIORS & CABINETS INC
NO ADDRESS ON RECORD**

**CANYON STATE DRYWALL INC
NO ADDRESS ON RECORD**

**AMERICAN WOODMARK CORPORATION
NO ADDRESS ON RECORD**

**CATALINA ROOFING AND SUPPLY INC
NO ADDRESS ON RECORD**

**AMPAM RIGGS PLUMBING INC
NO ADDRESS ON RECORD**

**CHAS ROBERTS AIR CONDITIONING INC
NO ADDRESS ON RECORD**

**ARIZONA DRYWALL CO INC
NO ADDRESS ON RECORD**

**COHACO BUILDING SPECIALTIES INC
NO ADDRESS ON RECORD**

**ARIZONA SUN ELECTRICAL CONTRACTORS INC
NO ADDRESS ON RECORD**

**D V C CONSTRUCTION COMPANY INC
NO ADDRESS ON RECORD**

**ASHLEY M MARCHESE
NO ADDRESS ON RECORD**

**DIAMOND GLASS & MIRROR INC
NO ADDRESS ON RECORD**

FLYNN'S FLOOR COVERING INC
NO ADDRESS ON RECORD

MONTE VISTA CONSTRUCTION L L C
NO ADDRESS ON RECORD

GOTHIC LANDSCAPING INC
NO ADDRESS ON RECORD

OSBORNE STUCCO INC
NO ADDRESS ON RECORD

HASKINS ELECTRIC L L C
NO ADDRESS ON RECORD

PACIFIC STUCCO OF ARIZONA INC
NO ADDRESS ON RECORD

HERITAGE INTERIORS INC
NO ADDRESS ON RECORD

PARAMOUNT WINDOWS L L C
NO ADDRESS ON RECORD

INTERIOR LOGIC INC
NO ADDRESS ON RECORD

PAUL JOHNSON DRYWALL INC
NO ADDRESS ON RECORD

J M R PAINTING INC
NO ADDRESS ON RECORD

RIGGS PLUMBING L L C
NO ADDRESS ON RECORD

LOFTCO INC
NO ADDRESS ON RECORD

ROADRUNNER DRYWALL CORP
NO ADDRESS ON RECORD

MESA FULLY FORMED INC
NO ADDRESS ON RECORD

ROCK ISLAND CORPORATION
NO ADDRESS ON RECORD

MILGARD MANUFACTURING INCORPORATED
NO ADDRESS ON RECORD

S C P CONSTRUCTION L L C
NO ADDRESS ON RECORD

MITCHELL ELECTRIC COMPANY INC
NO ADDRESS ON RECORD

SELECTBUILD NEVADA L L C
NO ADDRESS ON RECORD

SEXTON EXTERMINATING INC
NO ADDRESS ON RECORD

V W DIG L L C
NO ADDRESS ON RECORD

SONORAN AIR INC
NO ADDRESS ON RECORD

VALLEY LANDSCAPING L L C
NO ADDRESS ON RECORD

SPECIALTY ROOFING INC
NO ADDRESS ON RECORD

WESTERN SHOWER DOOR INC
NO ADDRESS ON RECORD

STONE NET INC
NO ADDRESS ON RECORD

WESTERN STATES GLASS AND BUILDING PRODUCTS
INC
NO ADDRESS ON RECORD

STONECRAFTERS OF ARIZONA INC
NO ADDRESS ON RECORD

WESTSIDE DRYWALL INC
NO ADDRESS ON RECORD

SUN MASTER MASONRY INC
NO ADDRESS ON RECORD

WHITTON PLUMBING INC
NO ADDRESS ON RECORD

SUNDANCE CARPENTRY INC
NO ADDRESS ON RECORD

YOUNGER BROTHERS DOOR & TRIM L L C
NO ADDRESS ON RECORD

SUNRISE STUCCO INC
NO ADDRESS ON RECORD

TRIPLE S FENCE COMPANY
NO ADDRESS ON RECORD

U S A PLUMBING INC
NO ADDRESS ON RECORD

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
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10 *Attorneys for Plaintiffs*

11
12 **SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 MARYANN DELAURENTIS; et al.,

15 Plaintiffs,

16 v.

17 BEAZER HOMES SALES, INC. f/k/a
18 BEAZER HOMES SALES, ARIZONA,
19 INC., et al,

20 Defendants.

21
22 AND ALL RELATED THIRD-PARTY
23 CLAIMS.

Case No. CV2013-016948

**JOINT MOTION TO DISMISS
PLAINTIFF STEPHANIE R.
HUGILL ONLY**

(Assigned to the Hon. Robert Oberbillig)

24 Pursuant to Rule 41(a)(1)(B) of the Arizona Rules of Civil Procedure Plaintiffs and
25 Defendants jointly move the Court for the dismissal with prejudice of the claims of Plaintiff
26 Stephanie R. Hugill (17412 W. Mandalay Lane, Surprise, Arizona, 85388). The parties further
27 agree that each party shall bear its own attorneys' fees, experts' fees, and costs associated
28 with the dismissed claims and allegations. A form of Order is being lodged concurrently
herewith.

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1 RESPECTFULLY SUBMITTED this 20th day of March, 2014.

2 **KASDAN SIMONDS WEBER & VAUGHAN LLP**

3 By: /s/ William H. Breier

4 Stephen L. Weber

5 Scott A. Booth

6 William H. Breier

Attorneys for Plaintiffs

7 **KOELLER NEBEKER CARLSON HALUCK LLP**

8 By: /s/ William H. Breier (w/permission for)

9 William A. Nebeker

10 Zahnie L. Soe Myint

11 *Attorneys for Defendants*

12
13
14 Original e-filed and e-served
15 per attached Service List via
16 AZTurbo Court on March 20, 2014,

17 By: /s/ Mary Dodd

Service List
Sierra Montana

DeLaurentis et al v. Beazer Homes Sales, Inc. f/k/a/ Beazer Homes Sales of Arizona, Inc., et al.
CV2013-016948

William A. Nebeker, Esq. Zahnie L. Soe Myint, Esq. Koeller Nebeker Carlson Haluck LLP 3200 N Central Ave., Ste 2250 Phoenix, Arizona 85012	<i>Beazer Homes Sales, Inc.</i> <i>f/k/a Beazer Homes Sales</i> <i>Arizona, Inc., Beazer Homes</i> <i>Holdings Corp d/b/a Beazer</i> <i>Homes</i>	P: 602-256-0000 F: 602-256-2488 Nebeker@knschlaw.com Zahnie.soemyint@knchlaw.com
John J. Belanger, Esq. Bremer Whyte Brown & O'Meara, LLP 3200 N Central Ave., Ste 2450 Phoenix, AZ 85012	<i>Heritage Interiors, Inc.</i> <i>(Courtesy Copy)</i>	P: 602-274-1204 F: 602-274-1205 jbelanger@bremerwhyte.com

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2
3
4
5 **SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 MARYANN DELAURENTIS; et al.,

8 Plaintiffs,

9 v.

10 BEAZER HOMES SALES, INC. f/k/a)
11 BEAZER HOMES SALES, ARIZONA,
INC., et al,

12 Defendants.

13
14 AND ALL RELATED THIRD-PARTY
15 CLAIMS.

Case No. CV2013-016948

**ORDER RE: JOINT MOTION
TO DISMISS PLAINTIFF
STEPHANIE R. HUGILL ONLY**

(Assigned to the Hon. Robert Oberbillig)

16 Having considered the parties' Joint Motion to Dismiss Plaintiff Stephanie Hugill
17 only, and good cause appearing therefor,

18 IT IS ORDERED granting the Joint Motion and dismissing the claims and
19 allegations of Plaintiff Stephanie Hugill with prejudice.

20 IT IS FURTHER ORDERED that each party shall bear its own attorneys' fees,
21 experts' fees, and costs associated with the claims of the dismissed Plaintiffs.

22 DATED this _____ day of _____, 2014.

23
24
25 HON. ROBERT OBERBILLIG
26
27
28

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1 William A. Nebeker, Esq., State Bar No. 004919
2 Zahnie L. Soe Myint, Esq., State Bar No. 020010
3 **KOELLER NEBEKER CARLSON & HALUCK, LLP**
4 3200 North Central Avenue, Ste. 2250
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8 nebeker@knchlaw.com
9 zahnie.soemyint@knchlaw.com
10 *Attorneys for Defendants Beazer Homes*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 **MARYANN DELAURENTIS, et al.**

14 **Plaintiffs,**

15 **v.**

16 **BEAZER HOME SALES, INC. f/k/a**
17 **BEAZER HOMES SALES ARIZONA, INC.**
18 **a Delaware Corporation; BEAZER HOMES**
19 **HOLDINGS CORP., d/b/a BEAZER**
20 **HOMES, a Delaware corporation; and**
21 **DOES 1-100 inclusive,**

22 **Defendants.**

CASE NO. CV2013-016948

**DEFENDANTS' NOTICE OF
APPEARANCE**

(Honorable Robert Oberbillig)

23 NOTICE IS HEREBY GIVEN of the appearance of William A. Nebeker and
24 Zahnie L. Soe Myint of the law firm of Koeller Nebeker Carlson & Haluck, LLP as
25 counsel of record for Defendants BEAZER HOME SALES, INC. f/k/a BEAZER HOME
SALES ARIZONA, INC. and BEAZER HOMES HOLDINGS CORP. d/b/a BEAZER

1 HOMES ("BEAZER HOMES") in the above-entitled action. All future notices,
2 pleadings, correspondence, etc. should be served upon and/or delivered to same.

3
4 RESPECTFULLY submitted this 3rd day of February, 2014.

5 **KOELLER, NEBEKER, CARLSON**
6 **& HALUCK, LLP**

7 By /s/ Zahnie L. Soe Myint

8 William A. Nebeker

9 Zahnie L. Soe Myint

Attorneys for Beazer Homes

10 ORIGINAL e-filed this 3rd day of February, 2014 via AZ Turbo Court,
11 with a COPY of the foregoing e-served upon:

12 Honorable Robert Oberbillig

13 Copy of the foregoing mailed this same day to:

14 Stephen L. Weber, Esq.

15 Scott A. Booth, Esq.

16 William H. Brier, Esq.

17 Kasdan Simonds Weber & Vaughan, LLP

3200 North Central Avenue, Suite 2100

Phoenix, Arizona 85012

18 *Attorneys for Plaintiffs*

19
20 By: /s/ Collette Wade

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
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6 Phoenix, Arizona 85012
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8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com

10 Attorneys for Plaintiffs.

11 **SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 MARYANN DELAURENTIS, et al.)	Case No. CV2013-016948
)	
14 Plaintiffs,)	
)	ACCEPTANCE OF SERVICE
15 v.)	
)	
16 BEAZER HOMES SALES, INC. f/k/a))	(Assigned to the Honorable
17 BEAZER HOMES SALES OF ARIZONA,))	Robert Oberbilling)
18 INC., et al.,)	
)	
19 Defendants.)	

20 Zahnle Soe Myint, counsel for Defendants, hereby accepts service of process on
21 behalf of Defendants Beazer Homes Sales, Inc. f/k/a Beazer Homes Sales of Arizona, Inc.
22 and Beazer Homes Holdings, Corp. d/b/a Beazer Homes (collectively, "Defendants").
23 Counsel for Defendants acknowledges receipt of conformed copies of the Complaint,
24 Summons for Beazer Homes Sales, Inc. f/k/a Beazer Homes Sales of Arizona, Inc. and
25 Beazer Homes Holdings, Corp. d/b/a Beazer Homes, Demand for Jury Trial, Certificate
26 Regarding Compulsory Arbitration, and Certificate of Counsel as though these documents
27 had been served by the Sheriff or other person duly appointed or authorized by law to serve
28 process. He represents that he is authorized to and accepts service. Service shall be

1 effective on the date which this Acceptance of Service is executed.

2 RESPECTFULLY SUBMITTED this 13th day of January, 2014.

3 **KOELLER NEBEKER CARLSON HALUCK LLP**

4
5 By: 

6 Zahnie Soe Myint, Esq.
7 *Attorneys for Defendants*
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Service List
Sierra Montana

DeLaurentis et al v. Beazer Homes Sales, Inc. f/k/a/ Beazer Homes Sales of Arizona, Inc., et al
CV2013-016948

Zahnie L. Soe Myint, Esq. Koeller Nebeker Carlson Haluck LLP 3200 N Central Ave., Ste 2100 Phoenix, Arizona 85012	<i>Beazer Homes</i>	P: 602-256-000 F: 602-256-2488 <u>Zahnie.soemyint@knchlaw.com</u>
John J. Belanger, Esq. Bremer Whyte Brown & O'Meara, LLP 3200 N Central Ave., Ste 2450 Phoenix, AZ 85012	<i>Heritage Interiors, Inc.</i> <i>(Courtesy Copy)</i>	P: 602-274-1204 F: 602-274-1205 <u>jbelanger@bremerwhyte.com</u>

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DEC 19 2013



YVONNE K. JEANES, CLERK
DEPUTY CLERK

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
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9 E-Mail: kasdancourt@kasdansimonds.com
10 Attorneys for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 MARYANN DELAURENTIS; et. al.,)

Case No. CV2013-016948

11 Plaintiffs,)

CERTIFICATE OF COUNSEL

12 v.)

13 BEAZER HOMES SALES, INC. f/k/a)
14 BEAZER HOMES SALES, ARIZONA,)
15 INC., et. al.,)

Defendants.)

16 I, William H. Breier, certify as follows:

17 1. I am an attorney at law licensed to practice in Arizona, and one of the attorneys of
18 the record for the Plaintiffs in this action.

19 2. This action involves claims against, among others, licensed professionals as
20 that term is used in A.R.S. §§ 12-2601 and 12-2602.

21 3. Expert testimony will be necessary to prove the standard of care or liability
22 for Plaintiffs' claims alleged against the licensed professionals named as Defendants in this
23 action. Plaintiffs make this obligatory certification without prejudice to their ability to
24 assert later that Plaintiffs need not establish proof of any standard of care in this action.
25 Plaintiffs allege breach of the implied warranty of workmanship and habitability, breach of
26 express warranty and breach of contract claims. *Woodward v. Chirco Constr. Co., Inc.*, 141
27 Ariz. 514, 516, 687 P.2d 1269, 1271 (1984) (implied warranty sounds in contract); *Lofts at*
28 *Fillmore Condominium Assoc. v. Reliance Comm'l Constr., Inc.*, 218 Ariz. 574, 575 ¶¶ 11

1 and 13, 190 P.3d 733, 734 (2008) (implied warranty arises from construction of home);
2 *Colberg v. Rellinger*, 160 Ariz. 42, 51, 770 P.2d 346, 355 (App. 1988) (duty in express
3 warranty is contractual); *Savoca Masonry Co., Inc. v. Homes and Son Constr. Co., Inc.*, 112
4 Ariz. 392, 394, 542 P.2d 817, 819 (1975) (breach of contract elements). As to their implied
5 warranty claim, Plaintiffs need only prove that a defect exists "due to improper
6 construction, design or preparation to establish the liability" of Defendants. *Woodward*,
7 141 Ariz. at 516, 687 P.2d at 1271. Plaintiffs' claims do not include fault or negligence
8 theories in any manner. Arizona's Uniform Contribution Among Tortfeasors Act, A.R.S.
9 §§12-2501 through 12-2509, by its very terms, is restricted specifically to causes of action
10 where fault is actually an element of the cause of action. A.R.S. §12-2506; *Fidelity &*
11 *Deposit Co. of Md. v. Bondwriter Southwest, Inc.*, 2011 Ariz. App. LEXIS 135, ** 11-16,
12 ¶¶ 20-26, 263 P.3d 633, 637-38 (App. 2011) (comparative fault principles of A.R.S. § 12-
13 2506 do not apply to breach of contract claim); *Pooley v. National Hole-in-One*
14 *Association*, 89 F.Supp.2d 1108, 1114 (D. Arizona 2000) ("by its very language, Arizona's
15 comparative fault statute is restricted to certain types of cases where fault is an element of
16 the action"). Plaintiffs thus do not need to prove breach of a standard of care to maintain
17 their implied warranty damage claims or other contract-based claims, as those claims do not
18 involve fault or negligence concepts.

19 4. Preliminary expert opinion affidavits shall be served with the initial disclosure
20 statements to be served in this action pursuant to Rule 26.1, Arizona Rules of Civil
21 Procedure.

22 EXECUTED this 19th day of December, 2013.

23 KASDAN SIMONDS WEBER & VAUGHAN, LLP

24 By: 

25 Stephen L. Weber

26 Scott A. Booth

27 William H. Breier

28 Attorneys for Plaintiffs

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 KASDAN SIMONDS WEBER & VAUGHAN LLP
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8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

COPY

DEC 19 2013



MARK K. JEANES, CLERK
DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

10 MARYANN DELAURENTIS; et al.,)
11)
12 Plaintiffs,)

Case No. CV2013-016948

13 v.)

**CERTIFICATE REGARDING
COMPULSORY ARBITRATION**

14 BEAZER HOMES SALES, INC. f/k/a)
15 BEAZER HOMES SALES, ARIZONA,)
16 INC., et al,)

17 Defendants.)

18 The undersigned certifies that he knows the dollar limits and any other limitations set
19 forth by the local rules of practice for the applicable superior court, and further certifies that
20 this case is not subject to compulsory arbitration, as provided by Rules 72 through 77 of the
21 Arizona Rules of Civil Procedure.

22 RESPECTFULLY SUBMITTED this 19th day of December, 2013.

23
24 KASDAN SIMONDS WEBER & VAUGHAN, LLP

25 By: 

26 Stephen L. Weber

27 Scott A. Booth

28 William H. Breier

Attorneys for Plaintiffs

COPY

DEC 19 2013

MICHAEL K. JEANES, CLERK
DEPUTY CLERK



Stephen L. Weber #022751
Scott A. Booth #024170
William H. Breier #029626
KASDAN SIMONDS WEBER & VAUGHAN LLP
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Fax (602) 224-7801
E-Mail: kasdancourt@kasdansimonds.com
Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

MARYANN DELAURENTIS; et. al.,)	Case No.	CV2013-016948
Plaintiffs,)		
v.)	DEMAND FOR JURY TRIAL	
BEAZER HOMES SALES, INC. f/k/a))		
BEAZER HOMES SALES, ARIZONA,)		
INC., et. al,)		
Defendants.)		

Pursuant to Rule 38(b), Arizona Rules of Civil Procedure, Plaintiffs demand trial by jury of all issues in the above-entitled action.

RESPECTFULLY SUBMITTED this 19th day of December, 2013.

KASDAN SIMONDS WEBER & VAUGHAN, LLP

By: 

Stephen L. Weber
Scott A. Booth
William H. Breier
Attorneys for Plaintiffs

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 KASDAN SIMONDS WEBER & VAUGHAN LLP
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6 Phoenix, Arizona 85012
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COPY

DEC 19 2013



MICHAEL K. JEANES, CLERK
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

11 MARYANN DELAURENTIS; RICHARD)
12 and JANIS ALDRICH; MARIA A.)
13 ARGUMEDO; BERTA ARGUMEDO and)
14 ANA FIGUEROA; LISA BENNER;)
15 IWONA Z. BERK; KRISTA)
16 BIDDLEMEIER; PAUL and TERI)
17 BOMAN; DAVID A and KUM A.)
18 BOWEN; SIMON and OFRA BURSZTYN;)
19 BRIAN M. and TRISHA L. BUZARD;)
20 TRAVIS R. and ALICIA M. CAMPBELL;)
21 JAMES and RAQUEL CARROLL; ERIC)
22 CHAILLOT; RAUL CISNEROS;)
23 ANTONIO and JANET CORREA; PAUL)
24 and KARRI DE SANTI; YURIY and)
25 NIEMIEC EWA DENYSENKO; ROGER)
26 M. and TOYOKO DINGER; BOB G.)
27 ENGLER; STAN and BARBARA J.)
28 ETIENNE; JOHN W. and MAUREEN M.)
FALKENBERG; MONA FIEBELKORN-
GAULRAPP; PHILIP and CAROL)
FINNEGAN; DALE E. FREDEKIND;)
ALLAN and MARY A. GERVAIS;)
BRUCE W. and WENDY S. GILSON;)
ROBERT D. and DEBORAH J. GOOD;)
BARBARA HARRIS-WARD; PATRICK J.)
and VICKIE HERTEL; EDWARD)
HOLMES and LINDA PARENTI; NANCY)
HOOVER; STEPHANIE R. HUGILL;)
TESSA S. IWAN; JERRY L. and KERRY)
A. JASMIN; RONALD and JANE)
JOHNSTON; ROBERT and CHRISTIE)
JOHNSTON; DAVE and SUSAN C.)
LAFFERTY; NICHOLAS LEONE; JERRY)
M. LEYVA; ROBERT W. LOWMAN;)
THOMAS R. and IRENE L. MACIAS;)
CHRISTOPHER V. and ASHLEY M.)
MARCHESE; RYAN A. MARCINIAK;)
NICOLE A. MARKS; MICHAEL and

Case No. **CV2013-016948**

CIVIL COMPLAINT FOR:

1. Breach of Implied Warranty of Workmanship and Habitability;
2. Breach of Express Warranty; and
3. Breach of Contract

1 CONSTANCE MARTZ; KENNETH and)
TRESSCELLA MCCOY; ILIANA)
2 MENDOZA; TITO A. and ELIZABETH)
MERCADO; MATTHEW and SHARETT)
3 MILLER; MONITA MILLER; BARBARA)
R. NATION; TORE NORUM; WILMER J.)
4 and CATHERINE F. OSTERMEIER;)
STEVE and PATTY PAUR; JOHN R. JR.)
5 and LYNN M. PEARSON; VENANSIO M.)
and ROBYN L. PEREZ; JANICE L.)
6 PHILLIPS; KENNETH and JUDY POTTS;)
MICHAEL D. and KELLY S. PRICE;)
7 MICHAEL RAINS; EARL and JANICE)
RASMUSSEN; PETER REPTON; JOHN L.)
8 and CINDY L. RIDNOUR; KEVIN and)
LAURIE RINGGER; CARLOS RIVERA;)
9 JOSE E. RODRIGUEZ; WAISSUDDIN)
and SAJIA SAMIM; STEVEN E. and)
10 MAREBETH E. SCHERMERHORN;)
KEVIN and MONIKA SCHULDT;)
11 QUINTUS A. and MANDY L.)
SCHULZKE; MICHAEL and BRENDA)
12 SHARP; WILLIAM G. and MAGGIE)
STRINE; HILARY and THOMAS)
13 THOMAS; ADOLFO O. JR. and)
KIMBERLY J. VARGAS; MARTY)
14 VILLALPANDO; PETE and TAMLYN)
VILLALPANDO; ROBERT G. and BETTY)
15 J. WARD; CATHERINE WHITE; MARTY)
D. and KATRINA B. WHITEHEAD; ELI)
16 and DOREEN M. YOHANANOV;)

17 Plaintiffs,)

18 v.)

19 BEAZER HOMES SALES, INC. f/k/a)
20 BEAZER HOMES SALES ARIZONA,)
INC., a Delaware corporation; BEAZER)
21 HOMES HOLDINGS, CORP., d/b/a)
22 BEAZER HOMES, a Delaware corporation;)
and DOES 1-100 inclusive,)

23 Defendants.)
24)

25
26 Plaintiffs, by and through their undersigned counsel, complain as follows:

27 THE PLAINTIFFS

28 1. Plaintiffs are the owners of single family homes located in the Sierra Montana

1 subdivision located in Surprise, Arizona (the "Project"). Plaintiffs consist of two groups:

2 A. Original Purchaser Plaintiffs, who bought their home directly from
3 Defendants; and

4 B. Subsequent Purchaser Plaintiffs, who did not buy their home directly from
5 Defendants.

6 A list of Original Purchaser Plaintiffs and Subsequent Purchaser Plaintiffs is attached as
7 Exhibit 1. Original Purchaser Plaintiffs and Subsequent Purchaser Plaintiffs are collectively
8 referred to as "Plaintiffs" unless otherwise specified.

9 2. Plaintiffs seek damages from Defendants, and each of them, for defects in the
10 planning, design, development, construction and sale of the homes in the Project.

11 THE DEFENDANTS

12 3. Plaintiffs are informed and believe, and based thereon allege, that Defendant
13 Beazer Homes Sales, Inc., formerly known as Beazer Homes Sales Arizona, Inc., a
14 Delaware corporation, authorized and doing business in Maricopa County, Arizona,
15 participated in one or more of the following tasks: the planning, design, development,
16 construction, and/or sale of the homes in the Project.

17 4. Plaintiffs are informed and believe, and based thereon allege, that Defendant
18 Beazer Homes Holdings Corp., Inc., doing business as Beazer Homes, a Delaware corporation,
19 authorized and doing business in Maricopa County, Arizona, participated in one or more of the
20 following tasks: the planning, design, development, construction, and/or sale of the homes in
21 the Project.

22 FICTITIOUSLY NAMED DEFENDANTS

23 5. Plaintiffs are ignorant of the true names and capacities of the parties sued as
24 Does 1-100, inclusive, and therefore sue them under fictitious names. Upon learning their
25 true names and capacities, Plaintiffs will amend this Complaint to reflect the same.
26 Plaintiffs allege that Does 1-100, inclusive, are responsible in some manner for the
27 occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately
28 caused by such occurrences.

6. Plaintiffs allege that Defendants, including Does 1-100, were engaged, and did engage, in the planning, design, development, construction, and/or sale of the homes in the Project and were responsible under the law of contract to comply with minimum building standards, including the provisions of the adopted building code and manufacturers' installation specifications, and were responsible to exercise direct supervision and control over the operations necessary to secure full compliance with all building, safety and health laws, rules and regulations.

AGENCY

7. Plaintiffs allege that, at all relevant times, each and every Defendant was acting as the duly authorized agent of each and every other Defendant, and that each Defendant is liable for each and every wrong committed by each and every other Defendant.

SUCCESSORS-IN-INTEREST

8. Plaintiffs allege that Does 1-100 are successors in interest to the residential development business of named Defendants. As successors in interest, Does 1-100 are liable for the occurrences, damages and injuries alleged herein to the same extent as the named Defendants are liable for the alleged occurrences, damages and injuries.

JURISDICTION AND VENUE

9. Plaintiffs allege that they have fully complied with the jurisdictional requirements of the Purchaser Dwelling Act, A.R.S. §12-1361, *et seq.*

10. Prior to filing this matter, Plaintiffs and Defendants agreed to waive any and all arbitration rights and submit their claims to Superior Court.

11. Venue is proper in this Court because the events giving rise to the claim asserted herein occurred in the county where this Court is situated, and all of the real property that is the subject of this action is situated in the county where this Court is situated, and also because the injuries complained of in this Complaint were injuries arising from a breach of a contract that was entered into and was to be performed in the county where this Court is situated.

STATUTES OF LIMITATION AND REPOSE

12. Prior to filing this matter, Plaintiffs and Defendants entered into a written agreement in which the parties agreed to toll all applicable statutes of limitation and repose.

13. Plaintiffs bring this matter within the time limits of all applicable statutes of limitation and repose, including statutory extensions and tolling.

DEFECT CLAIMS

14. Defendants placed the homes in the project in the stream of commerce for sale to members of the public after planning, designing, developing and constructing the project with the following defects, deficiencies and failures, including, but not limited to:

- A. Failure to adequately design and construct site and retaining walls that are prone to corroding, cracking and/or displacement;
- B. Flatwork, CMU walls and other appurtenances are not adequate in design and construction to accommodate the site geotechnical conditions. Concrete is prone to corroding, cracking and/or displacement;
- C. Failure to provide adequately durable, low-permeable concrete for flatwork and other appurtenances meeting the requirements for resistance against transmission of moisture and resistance to the corrosive effects of the soil. Concrete is prone to etching, spalling, deterioration and/or desert weathering;
- D. Failure to provide concrete flatwork to accommodate site geotechnical conditions and known climate influences;
- E. Failure to provide adequate surface drainage;
- F. Failure to adequately provide fill placement and/or compaction;
- G. Failure to design and/or construct garage slabs to properly drain;
- H. Failure to provide adequately durable, low-permeable concrete for slab foundations meeting the requirements for resistance against the transmission of moisture and resistance to the corrosive effects of the soil resulting in etching, spalling, deterioration and/or desert weathering;
- I. Failure to adequately design and/or construct the slabs on grade which are

- deteriorated, cracked, improperly sloped and/or corroded;
- J. Defectively installed stucco systems that are prone to crack, deteriorate and leak;
- K. Defectively installed and/or integrated stucco penetrations (doors, windows, vents, plumbing & fascia penetrations) that are prone to leak;
- L. Defectively designed and/or constructed parapet walls that are prone to crack, deteriorate and leak;
- M. Baseboards separated from walls, floors and/or have separated joints;
- N. Cabinets, counter-tops and trim carpentry separated from walls and adjacent surfaces;
- O. Defectively installed floor tiles that are cracked and have grout joints that have failed;
- P. Defectively installed drywall systems that are prone to crack;
- Q. Drywall has cracked, separated corner beads, nails popped, and/or is separating from stucco.
- R. Drywall is stained;
- S. Defectively installed exterior door systems that are prone to leak;
- T. Defectively installed door systems that are difficult to operate (frames racked and/or doors bind);
- U. Defectively installed weather stops on garage doors that is prone to become loose;
- V. Defectively designed and/or installed water heater pans that are inadequate and/or omitted;
- W. Installation of inherently defective yellow brass plumbing fittings that are subject to premature deterioration, corrosion and/or failure;
- X. Defectively installed window and door assemblies that are prone to leak; and
- Y. Defectively installed roofing assemblies (tile and low slope roofs) that are prone to leak and deteriorate.

1 15. Plaintiffs are informed and believe, and based thereon allege, that during the
2 course of the planning, design, development and construction of the homes in the Project,
3 Defendants, and each of them, failed to follow acceptable design and/or building practices.
4 Defendants' failure to follow acceptable design and/or building practices include, but are
5 not limited to: (a) violations of applicable building codes; (b) failure to follow
6 manufacturers' installation instructions; (c) failure to follow the acceptable custom and
7 practice for planners, designers, developers, merchants, sellers, vendors and contractors in
8 the community in which the homes in the Project were built; (d) failure to follow industry
9 standards; (e) failure to follow the minimum workmanship standards of the Arizona
10 Registrar of Contractors, and/or (f) failure to follow contract documents and agreed upon
11 construction standards.

12 16. The construction elements set forth herein continue to fail, deteriorate,
13 degrade and cause damage, and the failures, deterioration, degradation, and damage will
14 continue to occur over the expected useful life of each home in the Project.

15 17. Plaintiffs allege that, as a direct or indirect result of the defective planning,
16 design, development, workmanship and construction performed by the Defendants,
17 including Does 1-100, and each of them, the homes in the Project were not constructed in a
18 habitable and workmanlike manner and are defective, effectively denying Plaintiffs the
19 benefit of their bargain. Further, the defective planning, design, development,
20 workmanship, and construction has caused, and continues to cause, resultant damage to
21 building components, both interior and exterior, personal property, fixtures and surrounding
22 structures, which may continue to occur over the expected useful life of each home in the
23 Project.

24 18. As a direct and proximate result of Defendants' actions, and the defects and
25 deficiencies herein described, Plaintiffs have been damaged in that they have been, and will
26 be, required to incur expenses to investigate, correct, replace and reconstruct defects to the
27 homes, as well as the damage to property resulting there from, and related costs such as
28 relocation, loss of use, substitute housing and mitigation expenses, at a cost which is

1 presently unknown, but believed to exceed the jurisdictional minimum established for this
2 Court. Plaintiffs were also required to retain the services of attorneys, experts and
3 consultants to investigate the nature and extent of the alleged defective conditions and
4 resulting damages and formulate repair recommendations and prosecute their claims. When
5 the precise amount of such damages and investigations are ascertained, Plaintiffs will
6 disclose the full amount of the damages sought in accordance with their obligations under
7 Rule 26.1.

8
9 **FIRST CAUSE OF ACTION**
(Breach of Implied Warranty of Workmanship and Habitability)
(By All Plaintiffs)

10 19. Plaintiffs re-allege paragraphs 1-18 above and incorporate them by reference
11 as if fully set forth herein.

12 20. Defendants, including Does 1-100, and each of them, knew, or had reason to
13 know, that Plaintiffs would rely upon the skill, judgment and experience of Defendants in
14 the planning, design, development, construction, manufacture, transfer and sale of the
15 homes in the Project. Defendants, at the time of the planning, design, development,
16 construction and sale of the homes in the Project, impliedly warranted that the homes in the
17 Project were of habitable quality and constructed in a good and workmanlike manner.

18 21. The homes in the Project were not of habitable quality and not constructed in
19 a good and workmanlike manner as alleged herein.

20 22. The failures and deficiencies described herein were not apparent by
21 reasonable inspection at the time of purchase. The failures, deficiencies and resultant
22 damages there from, as discovered from time to time, would not have put a reasonable
23 person on notice of the nature, extent and permanence of the failures, deficiencies and
24 resultant damages.

25 23. As a result of Defendants' breaches of the implied warranty, Plaintiffs have
26 been damaged, including the cost of repair, loss of use and enjoyment, attorneys' fees,
27 expert fees and other costs.

28 24. The full extent and measure of the failures, deficiencies and resultant damages

1 are still unknown to Plaintiffs. When the precise amounts of damages are ascertained,
2 Plaintiffs will disclose the full amount of the damages sought in accordance with their
3 obligations under Rule 26.1.

4 **SECOND CAUSE OF ACTION**
5 **(Breach of Express Warranty)**
6 **(By All Original Purchaser Plaintiffs)**

7 25. Plaintiffs re-allege paragraphs 1-24 above and incorporate them by reference
8 as if fully set forth herein.

9 26. As a material part of the purchase and sale of the homes in the project,
10 Defendants, including Does 1-100, and each of them, made express warranties, affirmations
11 of fact, and/or promises ("warranties") that became the basis of the bargain in the purchase
12 of the homes in the project. Plaintiffs are informed and believe that these warranties were
13 given to each original purchaser.

14 27. Among other things, Defendants warranted that the homes were designed and
15 constructed in compliance with the plans, the soils report recommendations by a licensed
16 engineer, applicable building codes and ordinances, and would be of a quality that is
17 consistent with good construction and development practices. Implied in every contract is a
18 covenant of good faith and fair dealing requiring Defendants to comply with industry
19 standards and manufacturers' installation instructions to preserve warranties.

20 28. Defendants breached the warranties in that the homes were not designed and/or
21 constructed pursuant to Arizona Registrar of Contractor's standards, applicable building codes,
22 and industry standards, but contained defects as described herein.

23 29. Within a reasonable time after discovery of Defendants' breach of the warranties,
24 Plaintiffs gave Defendants notice of such breach.

25 30. As a result of Defendants' breaches of the express warranty, Plaintiffs have been
26 damaged, including the cost of repair, loss of use and enjoyment, attorneys' fees, expert fees
27 and other costs.

28 31. The full extent and measure of the failures, deficiencies and resultant damages
are still unknown to Plaintiffs. When the precise amounts of damages are ascertained,

1 Plaintiffs will disclose the full amount of the damages sought in accordance with their
2 obligations under Rule 26.1.

3 **THIRD CAUSE OF ACTION**
4 **(Breach of Contract)**
5 **(By All Original Purchaser Plaintiffs)**

6 32. Plaintiffs re-allege paragraphs 1-31 above and incorporate them by reference
7 as if fully set forth herein.

8 33. As a material part of the purchase and sale of Plaintiffs' homes, Defendants,
9 including Does 1-100, and each of them, promised to construct the homes in compliance
10 with the plans, the soils report recommendations by a licensed engineer, applicable building
11 codes and ordinances and would be of a quality that is consistent with good construction
12 and development practices. Implied in every contract is a covenant of good faith and fair
13 dealing requiring Defendants to comply with industry standards and manufacturer's
14 installation instructions to preserve warranties.

15 34. Plaintiffs have performed all of their obligations under the purchase
16 agreements.

17 35. Defendants breached the respective purchase agreements in that the homes
18 were not constructed in compliance with applicable building codes and Arizona Registrar of
19 Contractors guidelines, among others, but contained defects as described herein.

20 36. As a result of Defendants' breaches of the contract, Plaintiffs have been
21 damaged, including the cost of repair, loss of use and enjoyment, attorneys' fees, expert fees
22 and other costs.

23 37. The full extent and measure of the failures, deficiencies and resultant damages
24 are still unknown to Plaintiffs. When the precise amounts of damages are ascertained,
25 Plaintiffs will disclose the full amount of the damages sought in accordance with their
26 obligations under Rule 26.1.

27 **PRAYER FOR RELIEF**

28 **THEREFORE**, Plaintiffs pray for judgment against Defendants, including Does 1-
100, and each of them as follows:

1. For general and special damages according to proof at the time of trial as provided by law;
2. For costs and expenses incurred herein;
3. For experts' fees and investigative costs incurred herein pursuant to A.R.S. §12-1364, any applicable contract provision, and other applicable law;
4. For attorneys' fees and costs pursuant to A.R.S. §§12-341.01(A) and 12-1364, any applicable contractual provisions, and other applicable law; and
5. For such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 19th day of December, 2013.

KASDAN SIMONDS WEBER & VAUGHAN, LLP

By: 

Stephen L. Weber

Scott A. Booth

William H. Breier

Attorneys for Plaintiffs

Exhibit 1

Name	Address	Purchaser Status
Aldrich, Richard & Janis	18334 W Lisbon Lane, Surprise, AZ 85379	Original
Argumedo, Maria	18456 W. Port Royale Ln, Surprise, AZ 85379	Original
Argumedo, Berta & Figueroa, Ana	18439 W. Port Royale Ln, Surprise, AZ 85379	Original
Becker, Lisa	18206 W Lisbon Lane, Surprise, AZ 85379	Subsequent
Berk, Ivona	18213 W. Woodrow Ln, Surprise, AZ 85379	Original
Biddlingmeier, Krista Ann	14879 N. 174 th Ave, Surprise, AZ 85379	Subsequent
Boman, Paul & Teri	17926 W. Banff Ln, Surprise, AZ 85379	Subsequent
Bowen, David & Kum	18479 W. Port Royale Ln, Surprise, AZ 85379	Subsequent
Bursztyn, Simon & Ofra	17914 W Banff Lane, Surprise, AZ 85379	Original
Buzard, Brian & Trisha	14912 N. 183 rd Dr, Surprise, AZ 85379	Original
Campbell, Travis and Alicia	18426 W Lisbon Lane, Surprise, AZ 85379	Original
Carroll, James & Raquel	18310 W Lisbon Lane, Surprise, AZ 85379	Subsequent
Chaillot, Eric	18367 W. Port Royale Lane, Surprise, AZ 85379	Subsequent
Cisneros, Raul	14710 N. 183 rd Dr, Surprise, AZ 85379	Original
Correa, Antonio & Janet	18078 W. Lisbon Ln, Surprise, AZ 85379	Subsequent
DeLaurentis, Maryann	18342 W. Lisbon Ln, Surprise, AZ 85379	Subsequent
De Santi, Paul and Karri	18484 W Banff Lane, Surprise, AZ 85379	Original
Denysenko, Yuriy & Niemiec Ewa	18017 W. Banff Ln, Surprise, AZ 85379	Original
Dinger, Roger & Toyoko	18455 W. Port Royale Ln., Surprise, AZ 85379	Subsequent
Engler, Bob	18218 W Mauna Loa Lane, Surprise, AZ 85379	Original
Etienne, Stan & Barbara	17938 W. Banff Ln., Surprise, AZ 85379	Subsequent
Falkenberg, John & Maureen	18264 W. Banff Ln, Surprise, AZ 85379	Original
Fiebelkorn-Gaulrapp, Mona	17369 W. Holland Ln. Surprise, AZ 85379	Subsequent
Finnegan, Philip & Carol	14773 N. 182nd Ave, Surprise, AZ 85379	Subsequent
Frederkind, Dale	14722 N 183 rd Ln., Surprise, AZ 85379	Subsequent
Gervais, Allan & Mary	18314 W. Woodrow Ln., Surprise, AZ 85379	Subsequent
Gilson, Bruce and Wendy	18182 W Banff Lane, Surprise, AZ 85379	Subsequent
Good, Robert & Debra	18320 W Mauna Loa Ln, Surprise, AZ 85379	Original
Harris-Ward, Barbara	18202 W. Mauna Loa Ln, Surprise, AZ 85379	Subsequent
Hertel, Patrick & Vickie	14951 N 174 th Ave, Surprise, AZ 85379	Subsequent
Holmes, Edward & Parenti, Linda	18440 W. Port Royale Ln, Surprise, AZ 85379	Subsequent
Hoover, Nancy	18478 W. Mauna Loa Ln, Surprise, AZ 85379	Subsequent
Hugill, Stephanie	17412 W Mandalay Lane, Surprise, AZ 85379	Subsequent
Iwan, Tessa	17658 W. Mandalay Ln, Surprise, AZ 85379	Subsequent
Jasmin, Jerry and Kerry	17505 W. Banff Lane, Surprise, AZ 85379	Original
Johnston, Ronald & Jane, & Johnston, Robert & Christie	18313 W. Lisbon Ln., Surprise, AZ 85379	Subsequent
Lafferty, David & Susan	18248 W Banff Lane, Surprise, AZ 85379	Original
Leone, Nicholas	14867 N 174th Ave, Surprise, AZ 85379	Subsequent
Leyva, Jerry	18339 W Woodrow Lane, Surprise, AZ 85379	Subsequent
Lowman, Robert W	17936 W Mauna Loa Lane, Surprise, AZ 85379	Subsequent
Macias, Thomas & Irene	17999 W Banff Lane, Surprise, AZ 85379	Subsequent
Marchese, Christopher & Ashley	14967 N. 174 th Ln, Surprise, AZ 85379	Subsequent
Marciniak, Ryan	18447 W. Port Royale Ln, Surprise, AZ 85379	Original
Marks, Nicole	17426 W. Lisbon Ln, Surprise, AZ 85379	Original
Martz, Michael and Constance	18238 W Lisbon, Surprise, AZ 85379	Subsequent

Name	Address	Purchaser Status
McCoy, Kenneth & Tresscella	17900 W. Mauna Loa Ln, Surprise, AZ 85379	Original
Mendoza, Iliana	17625 W Mandalay Ln, Surprise, AZ 85379	Subsequent
Mercado, Tito and Elizabeth	17552 W Banff Lane, Surprise, AZ 85379	Subsequent
Miller, Matthew & Sharett and Monita Miller	18015 W Lisbon Lane, Surprise, AZ 85379	Subsequent
Nation, Barbara	18198 W. Banff Ln, Surprise, AZ 85379	Original
Norum, Tore	17385 W. Holland Ln, Surprise, AZ 85379	Subsequent
Ostermeier, Wilmer & Catherine	18328 W Banff Lane, Surprise, AZ 85379	Original
Paur, Steven & Patty	18461 W. Mauna Loa Lane, Surprise, AZ 85379	Original
Pearson, Jr., John & Lynn	18483 W Banff Lane, Surprise, AZ 85379	Original
Perez, Venansio & Robyn	17913 W. Mauna Loa Ln, Surprise, AZ 85379	Original
Phillips, Janice	17560 W Banff Lane, Surprise, AZ 85379	Subsequent
Potts, Kenneth and Judy	14839 N 184 th Drive, Surprise, AZ 85379	Original
Price, Michael & Kelly	18330 W. Woodrow Ln, Surprise, AZ 85379	Original
Rains, Michael	17657 W. Banff Ln, Surprise, AZ 85379	Subsequent
Rasmussen, Earl & Janice	18458 W. Lisbon Ln, Surprise, AZ 85379	Original
Repton, Peter	17551 W Woodrow Lane, Surprise, AZ 85379	Subsequent
Ridnour, John & Cindy	18445 W Mauna Loa Ln, Surprise, AZ 85379	Original
Ringger, Kevin & Laurie	17903 W Banff Ln, Surprise, AZ 85379	Original
Rivera, Carlos	18210 W. Mauna Loa Ln, Surprise, AZ 85379	Subsequent
Rodriguez, Jose	14831 N 174 th Avenue, Surprise, AZ 85379	Original
Schermerhorn, Seven & Marebeth	18467 W Banff Ln, Surprise, AZ 85379	Original
Schuldt, Kevin & Monika	18448 W. Port Royale Ln, Surprise, AZ 85379	Subsequent
Schulzke, Quintus & Mandy	18263 W. Banff Ln, Surprise, AZ 85379	Subsequent
Sharp, Michael & Brenda	18271 W. Banff Ln, Surprise, AZ 85379	Subsequent
Sharp, Michael & Brenda	18256 W. Banff Ln, Surprise, AZ 85379	Original
Strine, William & Maggie	18079 W. Lisbon Lane, Surprise, AZ 85379	Subsequent
Thomas, Janice & Thomas, Hilary	18471 W Port Royale Lane, Surprise, AZ 85379	Subsequent
Vargas, Adolfo & Kimberly	18063 W. Mauna Loa Ln, Surprise, AZ 85379	Original
Villapando, Marty & Pete & Tamlyn	17410 W Holland Lane, Surprise, AZ 85379	Original
Ward, Robert & Betty	18422 W Mauna Loa Lane, Surprise, AZ 85379	Subsequent
White, Catherine	14963 N 174 th Ave., Surprise, AZ 85379	Subsequent
Whitehead, Marty & Katrina	14863 N 184 th Drive, Surprise, AZ 85379	Subsequent
Yohanonov, Eli & Doréen	18464 W. Port Royale Ln, Surprise, AZ 85379	Original

1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
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10 *Attorneys for Plaintiffs*

ORIGINAL

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 MARYANN DELAURENTIS, et al.

11 Plaintiffs,

12 v.

13 BEAZER HOMES SALES, INC. f/k/a BEAZER)
14 HOMES SALES ARIZONA, INC., et al,

15 Defendants.

) Case No. CV2013-016248

) **SUMMONS**

) If you would like legal advice from a lawyer,
) contact the Lawyer Referral Service at

602-257-4434

or

www.maricopalawyers.org

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17 **THE STATE OF ARIZONA TO:**

Beazer Homes Sales, Inc. f/k/a
Beazer Homes Sales Arizona, Inc.
c/o Zahnie L. Soe Myint, Esq.
Koeller Nebeker Carlson Haluck LLP
3200 N. Central Avenue, Suite 2250
Phoenix, Arizona 85012

22 **YOU ARE HEREBY SUMMONED** and required to appear and defend, within the
23 time applicable, in this action, in this Court. If served within the State of Arizona, you shall
24 appear and defend within twenty (20) days after the service of this Summons and Complaint
25 upon you, exclusive of the day of service. If served outside of the State of Arizona, whether
26 by direct service, by certified or registered mail service or by publication, you shall appear
27 and defend within thirty (30) days after the service of this Summons and Complaint upon
28 you is complete, exclusive of the day of service. Where process is served upon the Arizona

1 Director of Insurance as an insurer's attorney to receive service of legal process against it in
2 this state, the insurer shall not be required to appear, answer or plead until expiration of
3 forty (40) days after the date of such service upon Director. Service by registered or
4 certified mail without the State of Arizona is complete thirty (30) days after the date of
5 filing the receipt and affidavit of service with the Court. Service by publication is complete
6 thirty (30) days after the date of first publication. Direct service is complete when made.
7 When service is made on the Arizona Corporation Commission, the corporation served shall
8 have fifty (50) days, exclusive of the day of service, to appear and defend.

9 **YOU ARE HEREBY NOTIFIED** that in order to appear and defend, you must file
10 an answer or proper response in writing with the Clerk of this Court, accompanied by the
11 necessary filing fee within the time required and you are required to serve a copy of any
12 answer to response upon the Plaintiff's attorneys.

13 **The name and address of Plaintiffs' attorneys are:**

14 Stephen L. Weber
15 Scott A. Booth
16 William H. Breier
17 KASDAN SIMONDS WEBER & VAUGHAN LLP
18 3200 N. Central Avenue, Ste. 2100
19 Phoenix, Arizona 85012
20 602-224-7800

21 Requests for reasonable accommodation for persons with disabilities must be made
22 to the division assigned to the case by the parties at least three (3) judicial days in advance
23 of a scheduled court proceeding.

24 SIGNED AND SEALED, this date DEC 19 2013

25 MICHAEL K. JEANES, CLERK

26 Clerk

27 By:



1 Stephen L. Weber #022751
2 Scott A. Booth #024170
3 William H. Breier #029626
4 **KASDAN SIMONDS WEBER & VAUGHAN LLP**
5 3200 N. Central Avenue, Ste. 2100
6 Phoenix, Arizona 85012
7 (602) 224-7800
8 Fax (602) 224-7801
9 E-Mail: kasdancourt@kasdansimonds.com
10 *Attorneys for Plaintiffs*

ORIGINAL

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 MARYANN DELAURENTIS, et al.

11 Plaintiffs,

12 v.

13
14 BEAZER HOMES SALES, INC. f/k/a BEAZER)
15 HOME SALES ARIZONA, INC., et al,

16 Defendants.

Case No. CV2013-016948

SUMMONS

If you would like legal advice from a lawyer,
contact the Lawyer Referral Service at
602-257-4434

or
www.maricopalawyers.org

Sponsored by the

Maricopa County Bar Association

17 **THE STATE OF ARIZONA TO:**

18 Beazer Homes Holdings, Corp. d/b/a
19 Beazer Homes
20 c/o Zahnie L. Soe Myint, Esq.
21 Koeller Nebeker Carlson Haluck LLP
22 3200 N. Central Avenue, Suite 2250
23 Phoenix, Arizona 85012

24 **YOU ARE HEREBY SUMMONED** and required to appear and defend, within the
25 time applicable, in this action, in this Court. If served within the State of Arizona, you shall
26 appear and defend within twenty (20) days after the service of this Summons and Complaint
27 upon you, exclusive of the day of service. If served outside of the State of Arizona, whether
28 by direct service, by certified or registered mail service or by publication, you shall appear
and defend within thirty (30) days after the service of this Summons and Complaint upon
you is complete, exclusive of the day of service. Where process is served upon the Arizona

1 Director of Insurance as an insurer's attorney to receive service of legal process against it in
2 this state, the insurer shall not be required to appear, answer or plead until expiration of
3 forty (40) days after the date of such service upon Director. Service by registered or
4 certified mail without the State of Arizona is complete thirty (30) days after the date of
5 filing the receipt and affidavit of service with the Court. Service by publication is complete
6 thirty (30) days after the date of first publication. Direct service is complete when made.
7 When service is made on the Arizona Corporation Commission, the corporation served shall
8 have fifty (50) days, exclusive of the day of service, to appear and defend.

9 **YOU ARE HEREBY NOTIFIED** that in order to appear and defend, you must file
10 an answer or proper response in writing with the Clerk of this Court, accompanied by the
11 necessary filing fee within the time required and you are required to serve a copy of any
12 answer to response upon the Plaintiff's attorneys.

13 **The name and address of Plaintiffs' attorneys are:**

14 Stephen L. Weber
15 Scott A. Booth
16 William H. Breier
17 KASDAN SIMONDS WEBER & VAUGHAN LLP
18 3200 N. Central Avenue, Ste. 2100
19 Phoenix, Arizona 85012
20 602-224-7800

21 Requests for reasonable accommodation for persons with disabilities must be made
22 to the division assigned to the case by the parties at least three (3) judicial days in advance
23 of a scheduled court proceeding.

24 DEC 19 2013

25 SIGNED AND SEALED, this date _____

26 MICHAEL K. JEANES, CLERK

27 Clerk

28 By: _____



Day	Date	Time	Location	Results
Sat	04/26/14	1:54pm	Home	SPOKE WITH GEORGE HENRY OVER THE INTERCOM, HE STATED THAT THEY ARE HOME BUT DID NOT OPEN THE GATE AND HE HUNG UP. NO ANSWER AT THE DOOR. CALLED PAULINE WITH NO ANSWER Attempt made by: RUBEN HERRERA. Attempt at: 17936 W SOLONO DR LITCHFIELD PARK AZ 85340.
Sun	04/27/14	2:17pm	Home	NO ANSWER Attempt made by: RUBEN HERRERA. Attempt at: 17936 W SOLONO DR LITCHFIELD PARK AZ 85340.
Mon	04/28/14	11:16am	Business	ATTEMPTED TO SERVE STATUTORY AGENT, ROBERT RIOS, AND IS A BAD ADDRESS. PER CARRIE, DVC HAS BEEN GONE SINCE JANUARY OF THIS YEAR. Attempt made by: RUBEN HERRERA. Attempt at: 12475 W ALICE AVE EL MIRAGE AZ 85335.
?	?		Home	* Not on file * on: D.V.C. CONSTRUCTION COMPANY, INC Home - 17936 W SOLONO DR LITCHFIELD PARK, AZ 85340. Served by: RUBEN HERRERA

452658.26023.612082

Attorney or Party without Attorney: KOELLER NEBEKER CARLSON & HALUCK, LLP 3200 N. CENTRAL AVE SUITE 2250 PHOENIX, AZ 85012 Telephone No: 602-256-0000 FAX: No: 602-256-2488				For Court Use Only	
Attorney for: Plaintiff					
Ref. No or File No.:					
Insert name of Court, and Judicial District and Branch Court: In The Superior Court Of The State Of Arizona In And For The County Of Maricopa					
Plaintiff: MARYANN DELAURENTIS, et al					
Defendant: Beazer Home Sales, Inc F/k/a Beazer Homes Sales Arizona, Inc A Delaware Corporation,					
AFFIDAVIT OF REASONABLE DILIGENCE		Hearing Date:	Time:	Dept/Div:	Case Number: CV2013-016948

1. I, RUBEN HERRERA, and any employee or independent contractors retained by FIRST LEGAL SUPPORT SERVICES are and were on the dates mentioned herein over the age of eighteen years and not a party to this action. Personal service was attempted on Defendant D.V.C. CONSTRUCTION COMPANY, INC as follows:

2. **Documents:** Summons; Beazer Homes' Third Party Complaint; Beazer Homes' Certificate Regarding Expert Testimony; Beazer Homes' Demand For Jury Trial; Order Re: Joint Motion To Dismiss Plaintiff Stephanie R Hugill Only; Joint Motion To Substitute Real Parties In Interest; Order Re: Joint Motion To Dismiss Plaintiffs Brian M And Trisha L Buzard Only; Order Re: Joint Motion To Substitute Real Parties In Interest; Scheduling Order; Notice Of Appearance; Joint Pretrial Memorandum; Joint Motion To Dismiss Plaintiffs Philip And Carol Finnegan Only; Plaintiffs' Request For Rule 16 Scheduling Conference; Order To File Joint Proposed Scheduling Order; Notice Of Withdrawal Of Joint Motion To Substitute Real Parties In Interest; Order Re: Joint Motion To Motion To Substitute Real Parties In Interest; Joint Motion To Dismiss Plaintiff Stephanie R Hugill Only; Defendants' Notice Of Appearance; Acceptance Of Service; Certificate Of Counsel; Demand For Jury Trial; Certificate Regarding Compulsory Arbitration; Civil Complaint For 1. Breach Of Implied Warranty Of Workmanship And Habitability, 2. Breach Of Express Warranty And 3. Breach Of Contract.

Day	Date	Time	Location	Results
Wed	04/23/14	5:25pm	Home	SERVER SPOKE WITH GEORGE HENRY, VICE PRESIDENT, OVER THE INTERCOM AT THE GATE AND WAS HUNG UP ON. NO ANSWER AT THE DOOR. CALLED AND SPOKE TO PAULINE HENRY, STATED TO CALL HER ON FRIDAY AND SHE WILL LET US KNOW WHERE SHE IS OR WHEN SHE WILL BE HOME Attempt made by: RUBEN HERRERA. Attempt at: 17936 W SOLONO DR LITCHFIELD PARK AZ 85340.
Fri	04/25/14	4:47pm	Home	SERVER SPOKE WITH PAULINE HENRY, STATED THAT SHE IS NOT HOME AND WAS NOT SURE WHEN SHE WOULD BE THERE AND SAID TO CALL TOMORROW Attempt made by: RUBEN HERRERA. Attempt at: 17936 W SOLONO DR LITCHFIELD PARK AZ 85340.

Corporate Maintenance

04/29/2014

State of Arizona Public Access System

2:14 PM

File Number: -0162479-2

Corp. Name: D.V.C. CONSTRUCTION COMPANY, INC.

Domestic Address
12475 W. ALICE AVENUE

EL MIRAGE, AZ 85335

Second Address

Agent: ROBERT RIOS
Status: APPOINTED 09/17/2002
Mailing Address:
12475 W. ALICE AVENUE

EL MIRAGE, AZ 85335

Agent Last Updated:

Business Type: CONSTRUCTION

Domicile: ARIZONA
County: MARICOPA
Corporation Type: PROFIT
Life Period: PERPETUAL
Incorporation Date: 01/25/1984
Approval Date: 02/01/1984
Last A/R Received: 10 / 2013
Date A/R Entered: 01/08/2014
Next Report Due: 10/25/2014



CORPORATIONS DIVISION
RECORDS SECTION
1300 West Washington
Phoenix, Arizona 85007-2929

User Id: LGRIFFIN
Invoice No.: 4469712

Check Batch:
Invoice Date: 04/29/2014
Date Received: 04/29/2014
Customer No.:

ATTN:
(CASH CUSTOMER)

Quantity	Description	Amount
1	SERVICE OF PROCESS -0162479-2 D.V.C. CONSTRUCTION COMPANY, INC.	\$25.00
Total Documents: \$		25.00
	CHECK 58685	\$25.00
PAYMENT		
Balance Due: \$		0.00

