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15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 EDITH A. JOHNSTON and LOREN E.  
18 JOHNSTON, individually; and the same on  
19 behalf of themselves and on behalf of others  
20 similarly situated, and ROES 1-600, inclusive  
21 Plaintiffs,

22 v.

23 DEL WEBB'S COVENTRY HOMES OF  
24 NEVADA, an Arizona Corporation; and DOES 1  
25 through 500, inclusive,  
26 Defendants.

CASE NO. *A 581561*

DEPT. NO. *XXII*

**ARBITRATION EXEMPTION CLAIMED:**  
Action seeking Extraordinary Relief

**CONSTRUCTION DEFECT  
CLASS ACTION COMPLAINT**

27 **COMPLAINT FOR DAMAGES**

28 Come Now Plaintiffs, EDITH A. JOHNSTON and LOREN E. JOHNSTON, individually; and  
29 the same on behalf of themselves and on behalf of others similarly situated (hereinafter "Plaintiffs"), by  
30 and through their attorneys, Duane E. Shinnick, Esq., and Eric Ransavage, Esq. of the law firm of  
31 SHINNICK, RYAN & RANSAVAGE P.C., and for causes of action against Defendants, and each of  
32 them, allege and complain as follows:

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**GENERAL ALLEGATIONS**

1. Plaintiffs are owners of individual residences within the housing development known as THE HUNTINGTON in Clark County (Enterprise), Nevada, more specifically described as residences in the subdivisions of HUNTINGTON-UNIT 1 and HUNTINGTON-UNIT 2 as recorded with the Clark County Recorder in Plat Book 82, page 23 and Plat Book 83, page 44 and the materials and workmanship of their residences are substantially the same as the other 242 residences at THE HUNTINGTON.

2. Pursuant to NRS 40.600 through 40.695 inclusive, Plaintiffs seek recovery for damages suffered by each unit owner as to their separate interests as delineated by law.

2a. Pursuant to NRS 40.645 Plaintiffs have in good faith attempted to serve written notice on all defendants by certified mail at the addresses listed on the Nevada State Contractors Board records, or at their last known addresses. Plaintiffs have substantially complied with the notice and pre-filing requirements of NRS 40.645.

3. The property and buildings thereupon will hereinafter sometimes be referred to as the "subject property."

4. A class action is alleged pursuant to Nevada Rules of Civil Procedure Rule 23. The class consists of all owners of the subject property. Class Representative Plaintiffs bring this action as a class action, as representatives of all individuals who own one or more single family homes at the subject property in Clark County, Nevada.

a) Plaintiffs allege that the class, consisting of the owners of approximately 242 units, is so numerous that joinder of all homeowners individually would be impractical and that disposition of their claims in a representative suit is a benefit to the court.

- 1           b)       Plaintiffs have a well defined community of interest or questions of fact and law  
2 common to each member of the class in that all members of the class have suffered  
3 injuries due to construction defects, the related stigma, diminution in value, lost rents,  
4 and personal property damage, as a result of expansive soils and other defects, relevant  
5 causes, and the claims herein alleged by Plaintiffs are representative of those claims  
6 which could be alleged by such members of the class.  
7
- 8           c)       Plaintiffs allege that the relief herein sought is typical of the relief which could be  
9 sought by each of the class members.  
10
- 11          d)       Plaintiffs allege that questions of law and fact common to the class predominate over  
12 questions affecting the individual class members, and that the interest of justice and  
13 efficiency will be best served by bringing this action as a class action with regard to  
14 the aforementioned interests.  
15
- 16          e)       Plaintiffs allege that the prosecution of separate actions by individual members of the  
17 class would create a risk of inconsistent or varying adjudications with respect to the  
18 individual members of the class which would establish incompatible standards of  
19 conduct by the parties opposing the class, and adjudication with respect to individual  
20 members of the class would be dispositive of the interest of other members not parties  
21 to the adjudication, or would substantially impair or impeded their ability to protect  
22 their interests.  
23
- 24          f)       The Class Representative Plaintiffs have typical claims as the members of the class  
25 and were damaged by the acts and practices of the Defendants. They will fairly and  
26 adequately protect the interest of the class, as each is an owner of real property within  
27 the affected area identified below, and each was damaged by the acts and practices of  
28

1 Defendants, and each of them. Class Representative Plaintiffs have no conflicts with  
2 the other homeowners of the subject property single family homes, with respect to the  
3 claims alleged and have retained competent and experienced counsel to represent  
4 them.  
5

6 g) The members of the class are easily located and identified as all individual  
7 homeowners at the subject property. The names and addresses of the individuals who  
8 own single family homes at the subject property are maintained as public records.

9 There is no plain, speedy, or adequate remedy other than maintenance of this class  
10 action. Consequently, there would be a failure of justice and efficiency, but for the  
11 maintenance of this class action.  
12

13 5. The Defendants are identified as follows: Plaintiffs allege that Defendant DEL WEBB'S  
14 COVENTRY HOMES OF NEVADA, INC., an Arizona Corporation, authorized to do business in the  
15 State of Nevada and has conducted and/or now does conduct business within the County of Clark,  
16 State of Nevada, including but not limited to development, construction, improvement, conversion  
17 and/or sale of the subject property.  
18

19 6. Plaintiffs allege that at all times herein mentioned, Defendants, and each of them, were the  
20 agents, servants and employees of each other and were acting in the course and scope of their agency  
21 or employment in doing the acts herein alleged.  
22

23 7. Plaintiffs do not know the true names and capacities of defendants sued herein as Does 1 to  
24 500, including, and therefore sue these defendants by such fictitious names. Plaintiffs are informed  
25 and believe, and thereon allege, that each of the said fictitiously named defendants are responsible in  
26 some manner for the defective and negligent engineering, architecture, construction, supply of  
27 improper materials, and inspection of the subject property single family homes, or in some other  
28

1 actionable manner were an integral part of the chain of development, construction and marketing of  
2 the subject property single family homes, and that Plaintiffs damages as herein alleged were  
3 proximately caused by their conduct. Plaintiffs pray for leave to amend this Complaint when the true  
4 names and capacities of such defendants are ascertained.  
5

6 8. Defendants Does 1 through 500, inclusive, whether individual, corporate, associate or  
7 otherwise are fictitious names of defendants whose true names and capacities, at this time, are  
8 unknown to Plaintiffs. Plaintiffs are informed and believe and thereupon allege that at all times  
9 herein mentioned each of the defendants sued herein as Does 1 through 500 was the agent, servant  
10 and employee of his or her co-defendants, and in doing the things hereinafter mentioned was acting in  
11 the scope of his or her authority as such agent, servant and employee, and with the permission and  
12 consent of his or her co-defendants; and that each of said fictitiously named defendants, whether an  
13 agent, corporation, association, or otherwise, is in some way liable or responsible to the Plaintiffs on  
14 the facts hereinafter alleged, and caused injuries and damages proximately thereby as hereinafter  
15 alleged. At such time as defendant's true names become known to Plaintiffs, Plaintiffs will ask leave  
16 of this Court to amend this Complaint to insert said true names and capacities.  
17  
18

19 9. Plaintiffs have discovered defects and damages within the periods of the applicable statutes  
20 of limitations that the subject property has and is experiencing defective conditions, in particular,  
21 there are damages stemming from, among other items, defectively built roofs, leaking windows, dirt  
22 coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect  
23 intrusion through foundation slabs, and other poor workmanship.  
24

25 It was the result of the representations by Defendants that they would repair the defects and  
26 their conduct in so performing some works of repair, as well their proposals for correcting the defects  
27 that induced Plaintiffs to withhold conducting their own independent investigation and/or filing suit  
28

1 against said Defendants. By virtue of the fact that Defendants were the developers, contractors and  
2 sellers of the subject property and aware of the particular nature of the project, including its design,  
3 composition, and component parts, and when said Defendants represented that Defendants would  
4 repair the defects and, in fact, some works of repair were commenced, Plaintiffs were justified in  
5 relying on said representations and conduct by said Defendants in permitting them to investigate and  
6 repair the defects. As a result of Defendants' conduct, Plaintiffs' obligation to commence an action  
7 against Defendants for the defects and/or damages set forth above was tolled pursuant to NRS 11.190.  
8

9  
10 On numerous occasions Defendants represented to Plaintiffs that the defective systems and  
11 materials were not inadequate, and that repairs had been successfully performed thereby inducing  
12 reasonable reliance thereupon by Plaintiffs that conditions were not in need of repairs, therefore,  
13 Defendants are estopped from asserting any potentially applicable statutes of limitations. Damage  
14 has also occurred at various times in the past, including progressive damage.  
15

16 10. Within the last year, Plaintiffs have discovered that the subject property has and is  
17 experiencing additional defective conditions, in particular, there are damages stemming from, among  
18 other items, defectively built roofs, leaking windows, dirt coming through windows, drywall  
19 cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and  
20 other poor workmanship.  
21

22 **FIRST CAUSE OF ACTION**

23 **(Breach of Contract and Breach of Express Warranties as Against**

24 **All Defendants and Does 1 through 400)**

25 11. Plaintiffs reallege and incorporate by reference paragraphs 1 through 10 of the Complaint  
26 as though fully set forth herein.  
27  
28

1           12. On or about various dates commencing in 1999, and continuing thereafter in the County  
2 of Clark, State of Nevada, the Plaintiffs and each of them or their predecessors in interest, entered  
3 into contracts in writing with Defendants for the purchase from said Defendants of one or more of the  
4 units in the subject property.  
5

6           13. At the time of negotiations of said contracts, but before said contracts were executed  
7 between the Plaintiffs and/or their predecessors in interest and said Defendants, as an inducement to  
8 the Plaintiffs and/or their predecessors in interest to purchase said units, and as a part of the basis of  
9 the bargain of the parties that culminated in the making of the contracts, said Defendants expressly  
10 warranted to Plaintiffs and/or their predecessors in interest that said units were constructed in  
11 conformity with the applicable building codes and the specific codes and regulations of Clark County,  
12 the approved plans and specifications, and that said structures were and are sound and safe, and  
13 would remain so.  
14

15           14. The Plaintiffs purchased said homes in reliance on the express warranties, affirmations of  
16 fact, and promises made by Defendants. Plaintiffs, and each of them, have duly performed all the  
17 conditions and covenants of said contracts on their part to be performed.  
18

19           15. Certain Plaintiffs and/or homeowners of the subject property, notified Defendants of said  
20 breach of contract and breach of warranties, and said Defendants have refused, and continue to refuse,  
21 to remedy these defects.  
22

23           16. As a direct and proximate result of the breach of the express warranties (written and oral)  
24 by Defendants, and each of them, as herein above alleged, Plaintiffs suffered damages stemming  
25 from, among other items, defectively built roofs, leaking windows, dirt coming through windows,  
26 drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation  
27 slabs, and other poor workmanship.  
28

1 17. Plaintiffs have suffered damages in an amount not fully known, but believed to be within  
2 the jurisdiction of this Court in that they have been and will hereafter be required to perform works of  
3 repair, restoration, and construction to portions of the structures to prevent further damage and to  
4 restore the structures to their proper condition. Plaintiffs will establish the precise amount of such  
5 damages at trial, according to proof.  
6

7 18. Plaintiffs are entitled to all damages set forth at NRS 40.655.  
8

9 **SECOND CAUSE OF ACTION**

10 **(Breach of Implied Warranties-Third Party Beneficiary**

11 **as against Does 1 through 400)**

12 19. Plaintiffs reallege and incorporate by reference paragraphs 1 through 18 of the Complaint  
13 as though fully set forth herein.  
14

15 20. Plaintiffs are informed and believe and on that basis allege that Defendants and Doe  
16 defendants other than DEL WEBB'S COVENTRY HOMES OF NEVADA, INC. entered into  
17 contracts with these entities to perform certain services or work with regard to the design,  
18 construction and inspection of construction of the residences at the subject property. Plaintiffs and/or  
19 their predecessors in interest were third party beneficiaries of each and every such contract.  
20

21 21. Further, said Doe defendants by entering into said contracts with DEL WEBB'S  
22 COVENTRY HOMES OF NEVADA, INC. and/or Plaintiffs and/or their predecessors in interest,  
23 impliedly warranted that said homes would be of good and merchantable quality and would be at  
24 least a quality as would be fit for the ordinary purpose for which such homes were to be used and  
25 would be habitable. Further, said Doe defendants impliedly warranted the quality of construction of  
26 the homes and common areas as provided in NRS 116.4114.  
27  
28



1           22. The Plaintiffs purchased their homes in reliance on the implied warranties and promises  
2 made by Doe defendants, and each of them. Plaintiffs have duly performed all of the covenants and  
3 conditions of said contracts on their part to be performed.  
4

5           23. Certain Plaintiffs and/or Homeowners at the subject property have notified Doe  
6 defendants of said breach of implied warranties and said Doe defendants have refused and continue to  
7 refuse to remedy these defects.  
8

9           24. As a direct and proximate result of the breach of the implied warranties by Doe  
10 defendants and each of them as herein above alleged, Plaintiffs suffered damages stemming from,  
11 among other items, defectively built roofs, leaking windows, dirt coming through windows, drywall  
12 cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and  
13 other poor workmanship. Numerous additional defective conditions exist as more particularly  
14 described in Plaintiffs' expert reports. Plaintiffs are presently unaware of the precise amount of  
15 damages, but will establish the same at trial according to proof, and in accordance with NRS 40.655.  
16

17                           **THIRD CAUSE OF ACTION**

18                           **(Negligence and Negligence per se**

19                           **As to All Defendants, and Does 1 through 400)**

20           25. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24 of the Complaint  
21 as though fully set forth herein.  
22

23           26. Plaintiffs allege that Defendants, and each of them, knew or should have known that if the  
24 subject structure and subject premises were not properly or adequately designed, engineered,  
25 marketed, supervised and/or constructed, that the owners and users would be substantially damaged  
26 thereby, and that the subject structures would be defective and not of merchantable quality.  
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1 27. Plaintiffs allege that the Defendants, and each of them, named herein were under a duty to  
2 exercise ordinary care to avoid reasonably foreseeable injury to users and purchasers of the subject  
3 premises and structures, and knew or should have foreseen with reasonable certainty that purchasers  
4 and/or users would suffer the monetary damages set forth herein, if said Defendants, and each of  
5 them, failed to perform their duty to cause the subject premises and subject structures to be designed,  
6 engineered and completed in a proper and workmanlike manner and fashion.  
7

8 28. Said Defendants, and each of them, breached their duty owed to Plaintiffs, failed and  
9 neglected to perform the work, labor and services properly or adequately in that each said Defendants  
10 so negligently, carelessly, recklessly and in an unworkmanlike manner designed, constructed and  
11 inspected the subject property and performed the aforesaid work, labor and/or services, such that the  
12 subject premises and subject structures as described herein were designed, engineered and/or  
13 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner, thereby  
14 breaching the duty owed to Plaintiffs. Further, Defendant sellers knew or should have known that the  
15 premises were constructed in an unworkmanlike manner.  
16  
17

18 29. Defendants' negligence alleged above includes the failure to meet the applicable building  
19 codes and ordinances which were in effect. Plaintiffs' members and their predecessors in interest  
20 were members of the class of persons which the building codes and ordinances were designed to  
21 protect. Such violations are negligence per se on the part of Defendants, and each of them.  
22

23 30. As a direct and proximate result of the foregoing negligence and negligence per se,  
24 carelessness and unworkmanlike conduct, actions and/or omissions by said Defendants, and each of  
25 them, Plaintiffs have suffered damages in an amount in excess of \$10,000.00. Plaintiffs are presently  
26 unaware of the precise amount of damages needed in order to correct the defective conditions of the  
27 subject property and subject structures, but will establish the same at trial according to proof.  
28

1 31. Plaintiffs are also entitled to the damages set forth at NRS 40.655.

2 **FOURTH CAUSE OF ACTION**

3 **(Negligent Misrepresentation and Negligent Failure to Disclose**

4 **as to All Defendants and Does 1 through 400)**

5  
6 32. Plaintiffs reallege and incorporate by referenced paragraphs 1 through 31 of the  
7 Complaint, as though fully set forth herein.

8  
9 33. Plaintiffs allege that, at all relevant times, Defendants, and each of them, owed to  
10 Plaintiffs and members of the general public, a duty to disclose all conditions potentially having  
11 adverse impact upon the subject properties, their value and their safety as well as stability. Plaintiffs  
12 allege that Defendants, and each of them, also owed Plaintiffs and members of the general public a  
13 duty to represent with reasonable accuracy the actual conditions, quality and significant factors  
14 concerning value, safety and stability of the subject properties. As the builders, developers and  
15 sellers of said subject properties, Defendants, and each of them, held a special relationship of trust  
16 and confidence with potential buyers such that duties of disclosure and accurate representations were  
17 incumbent upon Defendants, and each of them.

18  
19 34. Plaintiffs allege that Defendants, and each of them, at all relevant times, in breach of the  
20 duties set forth above, negligently misrepresented and/or failed to disclose to Plaintiffs and members  
21 of the general public, facts and information regarding the defective conditions known to Defendants  
22 and affecting the subject properties, as described herein above.

23  
24 35. Plaintiffs are informed and believe, and thereon allege, that Defendants, and each of them,  
25 knew or should have known that members of the public, including the Plaintiffs, would purchase the  
26 single family homes and that Defendants who have superior knowledge and expertise as builders,  
27 developers and sellers of the subject properties, were required to correct any such defects in the  
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1 properties and were further required not to sell such defective properties, and were also required to  
2 make such defects in the properties known to Plaintiffs as prospective purchasers.

3  
4 36. Had Plaintiffs known the undisclosed facts, Plaintiffs would have either investigated the  
5 condition and integrity of said homes and common areas or would have declined to purchase the  
6 residences, nor would Plaintiffs have relied, as they did, upon Defendants, and each of their,  
7 representations that the subject homes were generally in good condition and fit for their intended use  
8 and that all repair work and/or renovations had been successfully completed.

9  
10 37. Plaintiffs allege that as a direct and proximate result of the defects set forth herein,  
11 Plaintiffs have suffered damages in an amount not fully known, but believed to be within the  
12 jurisdiction of this Court in that they have been and will hereafter be required to perform works of  
13 repair, restoration, and construction to portions of the structures to prevent further damage and to  
14 restore the structures to their proper condition. Plaintiffs will establish the precise amount of such  
15 damages at trial, according to proof.

16  
17 38. Plaintiffs are also entitled to the damages set forth at NRS 40.655.

18 **FIFTH CAUSE OF ACTION**

19 **(Breach of Implied Warranty of Habitability as to All Defendants and Does 1 through 400)**

20  
21 39. Plaintiffs reallege and incorporate by reference paragraphs 1 through 38 of the Complaint,  
22 as though fully set forth herein.

23 40. All Defendants each impliedly warranted that said homes would be of good and  
24 merchantable quality, would be habitable, and would be completed in a workmanlike manner.  
25 Further, said Defendants impliedly warranted the quality of construction of the homes and common  
26 areas as provided in NRS 116.4114.  
27  
28

1           41. The Plaintiffs purchased their homes in reliance on the implied warranties and promises  
2 made by Defendants, and each of them. Plaintiffs have duly performed all of the covenants and  
3 conditions of said contracts on their part to be performed.  
4

5           42. Certain Plaintiffs and/or Homeowners at the subject property have notified Defendants of  
6 said breach of implied warranties and said Defendants have refused and continue to refuse to remedy  
7 these defects.  
8

9           43. As a direct and proximate result of the breach of the implied warranties by Defendants and  
10 each of them as herein above alleged, Plaintiffs suffered damages stemming from, among other items,  
11 defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco  
12 cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor  
13 workmanship. Plaintiffs are presently unaware of the precise amount of damages, but will establish  
14 the same at trial according to proof.  
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1 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as  
2 follows:

- 3 1. For general and special damages in excess of \$10,000.00 including but not limited to,  
4 costs of repair, loss of market value, loss of use, loss of financing, loss of investment  
5 and out-of-pocket expenses to be determined at time of trial;  
6  
7 2. For damages in an amount according to proof;  
8  
9 3. For reasonable attorneys fees and costs according to proof.  
10  
11 4. For prejudgment and post-judgment interest on all sums awarded, according to proof  
12 at the maximum legal rate;  
13  
14 5. For all damages pursuant to NRS 40.600 through 40.695; in particular 40.650 and  
15 40.655;  
16  
17 6. For costs of suit incurred;  
18  
19 7. For such other and further relief as the Court may deem just and proper.  
20  
21

22 DATED this 2 day of February, 2009

23 SHINNICK, RYAN & RANSAYAGE P.C.

24 By

  
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