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1 **COMP**
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FILED

FEB 3 4 54 PM '09

E. J. ...
CLERK OF THE COURT

DISTRICT COURT
 CLARK COUNTY, NEVADA

Attorneys for Plaintiffs

10

11 JAMES LAROCCA an individual;
 12 CONSTANCE LAROCCA an individual; and
 13 POES 1 through 1,000,

Plaintiffs,

14 v.

15 WILLIAM LYON HOMES, INC., a Foreign
 16 Corporation, and DOES 1 through 1,000,

Defendants.

Case No.

A581752

Dept No.

XXII

COMPLAINT AND DEMAND FOR JURY TRIAL

ARBITRATION EXEMPTION CLAIMED:
Unusual Circumstances/Good Cause

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1 COME NOW Plaintiffs, by and through their attorneys, ANGIUS & TERRY LLP, and for causes
2 of action against Defendants, and each of them, allege as follows:

3 1.1. Plaintiff JAMES LAROCCA is, and at all times herein mentioned was, the owner of the
4 improved real property commonly known as 9021 Labine, City of Las Vegas, parcel number, 177-
5 23-111-043, situated in Clark County, Nevada.

6 1.2. Plaintiff CONSTANCE LAROCCA is, and at all times herein mentioned was, the
7 owner of the improved real property commonly known as 9051 Newcombe Street, City of Las
8 Vegas, parcel number 177-23-111-010, situated in Clark County, Nevada.

10 2. Plaintiffs POES 1 through 1,000 are, and all times herein mentioned were, owners of
11 improved real property in Las Vegas, Nevada.

12 3. Each of the parcels of improved real property described above, including the residential
13 structure, any appurtenances, landscaping and all other improvements, will be referred to collectively
14 in this Complaint as the HOMES.

16 4. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned,
17 Defendant WILLIAM LYON HOMES, INC., was a foreign corporation engaged in and doing
18 business in Clark County, Nevada.

20 5. Defendant DOES 1 through 1,000, inclusive, whether individual, corporate, associate or
21 otherwise, whose true names and capacities at this time are unknown to Plaintiff, are sued by these
22 fictitious names. Plaintiffs are informed and believe and thereon allege that at all times herein
23 mentioned each of the Defendants sued herein as DOES 1 through 1,000 was the agent, servant, and
24 employee of his, her or its co-Defendants and, in doing the things hereinafter mentioned, was acting
25 in the scope of his, her or its authority as such agent, servant, and employee, and with the permission,
26 consent and/or ratification of his, her or its co-Defendants.

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1 6. Each of said fictitiously named Defendants, whether an individual, corporation,
2 association, or otherwise, is in some way liable or responsible to the Plaintiffs on the facts
3 hereinafter alleged and caused injuries and damages proximately thereby as alleged. At such time as
4 Defendants' true names become known to Plaintiffs, Plaintiffs will amend this Complaint to insert
5 said true names and capacities.
6

7 7. Plaintiffs are informed and believe and thereon allege that Defendants Builder and DOES
8 1 through 1,000, were, and at all times herein mentioned are, engaged in the mass production of
9 residential structures and appurtenances for sale and use by members of the general public, and that
10 Defendants, and each of them, participated in the development, design, construction and/or sale of
11 the Homes.
12

13 8. Plaintiffs are informed and believe and thereon allege that Defendants Builder and DOES
14 1 through 1,000, as developers, sellers and/or builders developed the HOMES, which structures were
15 intended to be used as residential dwellings.
16

17 9. Plaintiffs are informed and believe and based thereon allege Defendants Builder and
18 DOES 1 through 1,000, as developers, designers, sellers and/or builders of the HOMES, knew that
19 the homes, appurtenances, and structures would be sold to and be used by members of the general
20 public for the purpose of residences and said Defendants knew or reasonably should have known that
21 the persons who would purchase said units would do so without inspection for the defects set forth
22 herein.
23

24 10. Defendants Builder and DOES 1 through 1,000, at all times herein mentioned, were and
25 are merchants with respect to the HOMES and structures thereon, which were not of merchantable
26 quality and were not erected in a reasonable and workmanlike manner.
27

28 11. Defendants Builder and DOES 1 through 1,000, as developers, mass developers, mass-

1 constructors and mass-producers of the HOMES are liable and responsible to Plaintiffs for all
2 damages suffered as a result of the deficiencies set forth herein.

3
4 12. Within three years past, Plaintiffs discovered that their HOMES have been and are
5 experiencing defective conditions of the real property and structures thereon, including without
6 limitation, the roofs/eaves, stucco, concrete flatwork, HVAC lines, and drywall; and that said
7 components are not of merchantable quality, nor were they designed, erected, constructed or installed
8 in a workmanlike manner, but instead are defective and, as now known, the subject components
9 demonstrate improper, nonexistent, and/or inadequate design, construction, manufacture,
10 installation, and/or build. Plaintiffs are informed and believe and thereon allege that the structures
11 may be additionally defective in ways and to an extent not precisely known, but which will be
12 established at the time of trial, according to proof.

13
14 13. Plaintiffs have complied with all pre-filing requirements of Nevada Revised Statutes
15 40.600 through 40.695, except to the extent such requirements have been excused, waived or
16 rendered irrelevant by the actions, failure to act or status of Defendants, and each of them.

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18 14. Plaintiffs are informed and believe, and based thereon allege, that the items generally
19 referred to and particularly described herein were "latent deficiencies" within the meaning of Nevada
20 Revised Statutes §11.202 through §11.205, in that the above-described defects arose out of, were
21 attributable to and are directly and proximately caused by the above-described latent deficiencies in
22 the design, specifications, planning, supervision, observation of construction, construction,
23 development and/or improvement of the subject premises and subject structures, and that prior to the
24 time when it was discovered by Plaintiffs as set forth herein, could not have been discovered by the
25 exercise of reasonable diligence. Plaintiffs, at all times herein mentioned, relied on the skill of
26 Defendants Builder and DOES 1 through 1,000, in producing homes and appurtenances thereto that
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1 were reasonably fit for their intended purpose.

2 15. Plaintiffs are still not fully aware of all of the causes, the full extent and possible legal
3 significance of the results or causes of the property conditions herein above-described due to the loss
4 being continual and latent in nature. Plaintiffs are lay individuals who have required expert
5 consultations to provide a review of the property conditions. Plaintiffs are still not informed of all
6 causes or entire results of the full extent of these latent deficiencies, nor are Plaintiffs fully informed
7 of the potential causes of the resultant distress due to the loss being continual and latent in nature.
8

9 16. Plaintiffs are informed and believe, and thereon allege, that Defendants Builder and
10 DOES 1 through 1,000, did inspect and market said homes and appurtenances with full knowledge
11 of the causes and effects of defects in the construction of the HOMES, the deficiencies in design,
12 installation and supervision thereof and, in willful and reckless disregard of the defective conditions,
13 causes and results. In particular, Plaintiffs are informed and believe and thereon allege that said
14 Defendants in the inspection, design, installation and supervision of the HOMES, engaged in a
15 course of conduct to reduce the costs of development by the use of substandard, deficient and
16 inadequate design and construction techniques and materials.
17

18 17. Plaintiffs are informed and believe, and thereon allege, that Defendants Builder and
19 DOES 1 through 1,000, ignored curing the causes of the defects and pursued a course of
20 development and construction of the HOMES so as to increase their profit from the project at the
21 expense of the ultimate purchaser, knowing that defects were latent, not apparent from a casual
22 inspection, but would only become apparent as time passed.
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24 18. Plaintiffs are informed and believe, and based thereon allege, that any and all repair
25 attempts by Defendants Builder and DOES 1 through 1,000, failed to adequately correct said
26 property damages and deficiencies, resulting in further property damages.
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1 were of merchantable quality and fit for its intended purposes as residences without significant
2 defective construction or conditions un-remedied or unrepaired by said Defendants.

3
4 24. Plaintiffs are informed and believe, and thereon allege, that the subject structures and
5 subject premises were not constructed in accordance with applicable law or according to sound
6 standards of engineering and construction, were not constructed in a workmanlike manner, were not
7 free from defective materials, and were not of proper durability, reliability, habitability,
8 merchantability, and/or general quality and not fit for their intended use.

9
10 25. Plaintiffs are informed and believe, and thereon allege, that as a direct and proximate
11 result of the defects set forth herein, Plaintiffs have suffered damages in an amount precisely
12 unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter
13 be required to perform works of repair, restoration, and construction to portions of the structures to
14 prevent further damages and to restore the structures to their proper condition. Plaintiffs will
15 establish the precise amount of such damages at trial, according to proof, for the following damages:

- 16
17 a. The cost of any repairs already made;
- 18 b. The cost of any repairs yet to be made that are necessary to cure any construction
19 defect;
- 20 c. The expenses of temporary housing reasonably necessary during the repair;
- 21 d. The loss of the use of all or any part of the residence;
- 22 e. The value of any other property damaged by the construction defect;
- 23 f. The reduction in market value of the residences;
- 24 g. Any additional costs incurred by the Plaintiff, including, but not limited to, any costs
25 and fees incurred for the retention of experts;
- 26
27 h. Any attorney's fees;
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1 i. Any interest provided by statute;

2 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

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4 **SECOND CAUSE OF ACTION**
5 **(Breach of Express Warranties)**
6 **(Against Builder and DOES 1 through 1,000)**

7 26. Plaintiffs reallege and incorporate by reference paragraphs 1 through 25.

8 27. Plaintiffs are informed and believe, and based thereon alleges, Defendants Builder and
9 DOES 1 through 1,000, expressly warranted through sales brochures of the subject premises, related
10 advertising circulars and materials, and through the contracts of sale and related sales warranty
11 information regarding the subject premises, that the HOMES were designed and constructed in a
12 commercially reasonable and habitable manner.

13
14 28. When Defendants Builder and DOES 1 through 1,000, offered the HOMES and
15 appurtenances for sale to the general public for use as residences, Plaintiffs relied on Defendants
16 Builder and DOES 1 through 1,000 express representations that these HOMES and appurtenances
17 were marketed for sale to the general public, and thus of merchantable quality, suitable for their
18 intended purpose, without major, significant defective construction or conditions, un-remedied or
19 unrepaired by said Defendants.

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21 29. Defendants Builder DOES 1 through 1,000, breached these express warranties by selling
22 the HOMES with the above-described deficiencies in the design, specification, planning supervision,
23 construction, observation of construction, development and/or improvement and repair of the
24 Association Development.

25
26 30. As a direct and proximate result of the breach of the express warranties by Defendants
27 Builder and DOES 1 through 1,000, as alleged above, Plaintiffs suffered damages stemming from the
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1 failure of the real property and structures thereon, as set forth above.

2 31. Plaintiffs are informed and believe, and thereon allege, that as a direct and proximate
3 result of the breaches set forth herein, Plaintiffs have suffered damages in an amount precisely
4 unknown, but believed to be within the jurisdiction of this Court in that they have been and will
5 hereafter be required to perform investigations and works of repair, restoration, and construction to
6 portions of the structures to prevent further damage and to restore the structures to their proper
7 condition and/or will suffer damages in an amount the full nature and extent of which shall be
8 ascertained according to proof at trial.
9

10
11 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

12 **THIRD CAUSE OF ACTION**
13 **Negligence**
14 **Against Builder and DOES 1 through 1,000**

15 32. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 31.

16 33. Plaintiffs are informed and believe, and thereon allege, that Defendants Builder and
17 DOES 1 through 1,000, were and are builders, contractors, general contractors, subcontractors,
18 suppliers, material men, architects and/or engineers, or other persons, entities or professionals who
19 participated in the process of design, engineering, manufacture, and/or construction of homes,
20 appurtenances, buildings, improvements and structures of the Association Development and who
21 performed works of labor, supplied materials, equipment and/or services necessary for the building
22 and construction, including supervision of construction of the HOMES with the knowledge that the
23 homes and appurtenances thereto would be sold to and used by members of the public. In so doing,
24 said Defendants in the capacity as builder, contractor, subcontractors, supplier, materialmen,
25 architect, engineer, seller and/or general contractor or otherwise, caused the HOMES to be designed,
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1 engineered and/or constructed through their own works of labor, their supplying of materials,
2 equipment and services, and through causing other contractors and subcontractors, including other
3 Defendants to perform works of labor, to supply materials, equipment and services in order to
4 properly complete the HOMES so that it could be sold to and used by members of the public.
5

6 34. Plaintiffs are informed and believe, and thereon allege, that Defendants Builder and
7 DOES 1 through 1,000, whether builder, contractor, subcontractor, supplier, material men, architect,
8 engineer or otherwise, negligently, carelessly, tortuously, and wrongfully failed to use reasonable
9 care in the analysis, preparation, design, manufacture, construction, and/or installation of the
10 HOMES.
11

12 35. Plaintiffs are informed and believe, and thereon allege, that Defendants Builder and
13 DOES 1 through 1,000, whether builder, contractor, subcontractor, supplier, material men, architect,
14 engineer or otherwise, performed work, labor and/or services for the construction of the HOMES,
15 and each knew or should have known that if the HOMES were not properly or adequately designed,
16 engineered, supervised and/or constructed, that the owners and users would be substantially damaged
17 thereby, and that HOMES would be defective and not of merchantable quality.
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19 36. The Defendants Builder and DOES 1 through 1,000 were under a duty to exercise
20 ordinary care as builder, contractor, subcontractor, supplier, material men, architect, engineer or
21 otherwise to avoid reasonably foreseeable injury to users and purchasers of the homes,
22 appurtenances, buildings, improvements and structures, and knew or should have foreseen that
23 purchasers and/or users would suffer the damages set forth herein if said Defendants, and each of
24 them, failed to perform their duty to cause the HOMES to be designed, engineered and constructed in
25 a proper workmanlike manner and fashion.
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27 37. In performing the works of a builder and/or contractor, subcontractor, supplier, material
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1 man, architect, engineer or otherwise, Defendants Builder and DOES 1 through 1,000 breached their
2 duty owed to Plaintiffs and neglected to perform the work, labor and services properly or adequately
3 in that each said Defendant so negligently, carelessly and in an unworkmanlike manner performed
4 the aforesaid work, labor and/or services such that the HOMES were designed, engineered and/or
5 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner.
6

7 38. Plaintiffs are informed and believe, and thereon allege, that as a direct and proximate
8 result of the conduct described herein, Plaintiffs have suffered damages in an amount precisely
9 unknown, but believed to be within the jurisdiction of this Court, in that it has been and will in the
10 future be required to perform investigations and works of repair, restoration, and construction to
11 portions of the structures to prevent further damage and to restore the structures to their proper
12 condition and/or will suffer damages in an amount the full nature and extent of which shall be
13 ascertained according to proof at trial.
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16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against Defendants Builder and
18 DOES 1 through 1,000, and each of them, as follows:

- 19 1. For general damages in excess of \$10,000.00;
- 20 2. The cost of any repairs already made;
- 21 3. The cost of any repairs yet to be made that are necessary to cure any construction
22 defect;
- 23 4. The expenses of temporary housing reasonably necessary during the repair;
- 24 5. The loss of the use of all or any part of the residence;
- 25 6. The value of any other property damaged by the construction defect;
- 26 7. The reduction in market value of the residences;
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- 8. Any additional costs incurred by the Plaintiff, including, but not limited to, any costs and fees incurred for the retention of experts;
- 9. For prejudgment interest and any interest provided by statute;
- 10. For cost of suit and attorneys' fees incurred by Plaintiffs herein;
- 11. For any and all damages recoverable under NRS 40.655; and
- 12. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs herein demand a trial by jury on all issues so triable.

Dated: ~~January~~ 2, 2009
February

ANGIUS & TERRY LLP

By: 

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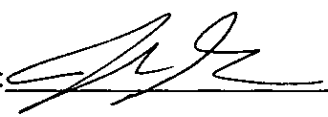
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned hereby affirms that the foregoing **COMPLAINT AND DEMAND FOR JURY TRIAL** filed in District Court, does not contain the Social Security number of any person.

DATED this 2nd day of ~~January~~^{February}, 2009.

ANGIUS & TERRY LLP

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