

JEFF FINE  
Clerk of the Superior Court  
By Vanessa Garcia, Deputy  
Date 07/27/2020 Time 16:51:24

Description	Amount
CASE# CV2020-008714	
CIVIL NEW COMPLAINT	333.00
TOTAL AMOUNT	333.00
Receipt# 27880478	

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*Attorneys for the Plaintiff*

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

GALLERY COMMUNITY  
ASSOCIATION, an Arizona non-profit  
corporation,

Plaintiff,

vs.

K. HOVNANIAN AT GALLERY, LLC,  
an Arizona limited liability company; K.  
HOVNANIAN ARIZONA  
OPERATIONS, LLC, an Arizona  
limited liability company; K.  
HOVNANIAN DEVELOPMENTS OF  
ARIZONA, INC., an Arizona  
corporation; K. HOVNANIAN  
COMPANIES OF ARIZONA, LLC, an  
Arizona limited liability company;  
JOHN DOES I-X AND JANE DOES I-  
X, WHITE CORPORATIONS I-X;  
BLACK PARTNERSHIPS I-X; AND  
GRAY LIMITED LIABILITY  
COMPANIES I-X,

Defendants.

Case No. CV2020-008714

**COMPLAINT AND JURY DEMAND**

The plaintiff, by and through undersigned counsel, hereby complains against the  
defendants as follows:

1           1.     The plaintiff is Gallery Community Association (“Association”), an Arizona  
2 nonprofit corporation that acts as the property owners association for the property known  
3 as The Gallery, located in Scottsdale, Arizona with authority and capacity to institute and  
4 prosecute this action in the State of Arizona.

5           2.     Pursuant to the Articles of Incorporation of Gallery Community Association  
6 (the “Articles”), the plaintiff was incorporated under the laws of the State of Arizona,  
7 including A.R.S. Section 10-3101, et seq., dealing with nonprofit corporations, as  
8 amended from time to time (the “Nonprofit Corporation Act”).

9           3.     Pursuant to the Articles, the plaintiff’s purpose is “to act as a property  
10 owners association and to perform all things and exercise all the power and rights of a  
11 corporation that are lawful and consistent with the foregoing purposes ....”

12           4.     The plaintiff is governed by the Declaration of Covenants, Conditions,  
13 Restrictions, and Easements for Gallery recorded at Maricopa County Recorder’s Office  
14 at instrument 2016-0317923 on May 10, 2016 (“Declaration”), as amended.

15           5.     The Declaration requires the Association to repair and maintain the common  
16 elements including, but not limited to, the “Association Property” and “Common Area” as  
17 those terms are defined in the Declaration and the exterior walls, stucco, façade, roofs or  
18 other surfaces of the “Dwelling Units” as defined in the Declaration.

19           6.     The Association brings this action pursuant to A.R.S. § 12-1361, et seq. and  
20 § 33-2001, et seq.

21           7.     Pursuant to A.R.S. § 12-1363(N), the Affidavit of Bob Vander Waal,  
22 President of the Board of Directors of the Association, is attached hereto as Exhibit A.

23           8.     Defendant K. Hovnanian at Gallery, LLC developed the project, was the  
24 declarant for the project, and conveyed the common elements of the project to the  
25 Association’s name in a quit claim deed dated October 6, 2016, recorded at document  
26 2016-0736922 in the Maricopa County Recorder’s Office.

27           9.     Defendant K. Hovnanian at Gallery, LLC also acted as the vendor by selling  
28 individual unit owners their units at The Gallery.



1 workmanlike manner, and by providing a product that violates applicable building codes,  
2 product manufacturer installation instructions, and is not suitable for its intended use.

3 18. Defendants' defective work has caused resultant damage at The Gallery.

4 19. Through their negligence, defendants damaged the Association and its  
5 members in an amount to be shown at trial.

6 20. Defendants acted to serve their own interests, and had reason to know and  
7 consciously disregarded a substantial risk that their conduct might significantly injure the  
8 rights of the Association and its members.

9 21. Defendants consciously pursued a course of conduct knowing that it created  
10 a substantial risk of significant harm to others, including the Association and its members.

11 22. The Association is entitled to punitive damages.

## 12 SECOND CAUSE OF ACTION

### 13 **(Breach of Implied Covenant of Good Faith and Fair Dealing - Against Defendants** 14 **K. Hovnanian at Gallery, LLC, K. Hovnanian Developments of Arizona, Inc., and K.** 15 **Hovnanian Companies of Arizona, LLC)**

16 23. The Association incorporates herein by reference all allegations included in  
17 paragraphs 1-22.

18 24. Arizona law implies a covenant of good faith and fair dealing in every  
19 contract.

20 25. The Association and defendant K. Hovnanian at Gallery, LLC entered into a  
21 contract in the form of the Declaration.

22 26. The contract made assurances that the work would be or had been done  
23 correctly.

24 27. The defendants' work was not done correctly.

25 28. The Association had justified expectations that the work would be  
26 completed correctly, and if not, that the defendants would correct any deficiencies.

27 29. The defendants have refused to correct the deficiencies.



1           38.    The Association is in privity of contract with defendant K. Hovnanian at  
2 Gallery, LLC in the Declaration.

3           39.    Defendant K. Hovnanian at Gallery, LLC breached the Declaration by not  
4 performing its work in compliance with the terms of that contract and by building a  
5 project that does not comply with applicable laws and building codes.

6           40.    The defendants' breaches of their contracts damaged the Association and its  
7 members in an amount to be proven at trial.

8  
9           WHEREFORE, the Association prays for judgment against the defendants as  
10 follows:

11           a.    For compensatory damages in an amount to be shown at trial,  
12 including but not limited to the cost of repairing all defective work and resultant  
13 damage, as well as the cost of the Association's expert investigation required to  
14 prove the existence, nature, and cause of every defect, as well as the appropriate  
15 repair methodology, and the cost of performing those repairs;

16           b.    For punitive damages in an amount sufficient to punish the  
17 defendants and/or to deter the defendants and others from similar misconduct in the  
18 future;

19           c.    For its reasonable attorneys' fees pursuant to the parties' contracts as  
20 appropriate and pursuant to A.R.S. § 12-341.01 and § 12-1364 as determined upon  
21 application to the Court;

22           d.    For its court costs pursuant to the parties' contracts as appropriate  
23 and pursuant to A.R.S. § 12-341;

24           e.    For pre- and post-judgment interest on all sums awarded; and

25           f.    For such other and further relief as the Court deems just and proper.

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**THE ASSOCIATION HEREBY DEMANDS TRIAL BY A JURY OF ALL ISSUES  
SO TRIABLE**

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of July, 2020.

**BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC**

By: 

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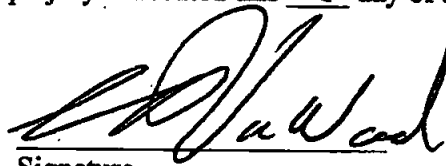
**AFFIDAVIT OF BOB VANDER WAAL**

STATE OF ARIZONA     )  
  )  
County of Maricopa    )

I, Bob Vander Waal, representing the Board of Directors of Gallery Community Association hereby affirm as follows:

1. I am the President of the Board of Directors of Gallery Community Association (the "Association").
2. I have read the entire Complaint accompanying this Affidavit and prepared on behalf of the Association.
3. On behalf of the Association, I agree with all of the allegations and facts contained in the Complaint.
4. The Association and its Board of Directors are not receiving and have not been promised anything of value in exchange for filing the Complaint.

This affidavit is signed under the penalty of perjury. Executed this 22<sup>nd</sup> day of July, 2020

  
Signature