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10 *Attorneys for the Plaintiff*

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

13 GALLERY COMMUNITY
14 ASSOCIATION, an Arizona non-profit
15 corporation,

16 Plaintiff,

17 vs.

18 K. HOVNANIAN AT GALLERY, LLC,
19 an Arizona limited liability company; et
20 al.

21 Defendants. _____

22 K. HOVNANIAN AT GALLERY, LLC,
23 an Arizona limited liability company; et
24 al.

25 Third-Party Plaintiffs,

26 v.

27 ARTISTIC STAIRS, LTD., an Arizona
28 limited liability company; et al.

 Third-Party Defendants.

Case No. CV2020-008714

Assigned to Hon. Michael Kemp

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S REQUEST FOR RULE
56(d) RELIEF AND EXPEDITED
HEARING**

(Oral Argument Requested)

1 I, Penny J. Manship, declare and state as follows:

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1. I am an Associate with Burg Simpson Eldredge Hersh Jardine, PC, and I am counsel for Plaintiff Gallery Community Association (“Association”).

2. I make this Affidavit in support of Plaintiff’s Request for Rule 56(d) Relief and Expedited Hearing. The statements made herein are based upon my own personal knowledge.

3. I have been counsel for the Association throughout the proceedings in this case and am responsible for the day-to-day management of the case in my office, including discovery matters.

4. Although Defendants’ counsel recently provided copies of plans upon an informal request from me for such documents, no formal discovery has taken place in this case yet. This is so because the parties previously agreed that initial disclosures under Rule 26.1(a) would be exchanged after the case is at issue, and the case is not at issue because several third-party defendants named by Defendants/Third-Party Plaintiffs in their Third-Party Complaint have yet to appear or been defaulted.

5. On March 12, 2021, I proposed to Defendants’ counsel amending the previous agreement to provide initial disclosures after the case is at issue, to agree to April 12, 2021 as a deadline for initial disclosures for all parties currently in the case. Attached hereto is a true and correct copy of my March 12, 2021 email to Defendants’ counsel on this topic. Plaintiff’s counsel has not received a response to this proposal.

6. As of this date, the parties have not engaged in an early meeting pursuant to Rule 16(b) to discuss preparation of a Joint Report and proposed Scheduling Order. Also in my email dated March 12, 2021, I proposed setting a date for an early meeting and offered several dates of availability on or before March 23rd. Again, I have not received a response to this proposal.

1 7. Following is a discussion of the factors required under Ariz. R. Civ. P.
2 56(d)(1)(A):

- 3 a. At a minimum, the Association requires Defendants' initial disclosures
4 that will identify potential witnesses and Defendants' documents
5 relevant to the claims in this case. In particular, the Association requires
6 discovery regarding the roles of each Defendant with respect to the
7 development, design, construction, and/or sale of The Gallery.
- 8 b. The evidence needed by the Association is within the Defendants
9 possession, custody, or control.
- 10 c. The Association believes that the evidence will reveal what involvement
11 each Defendant had at the Project, including their potential roles as
12 builder-vendors or builders at The Gallery.
- 13 d. This methods of discovery that I intend to use is to obtain initial
14 disclosures, propounding interrogatories and/or requests for admission,
15 and taking depositions of Defendants' 30(b)(6) deponents.
- 16 e. The Association estimates that at least six months will be needed to
17 complete this discovery. This amount of time is necessary because
18 typically, in construction defect cases such as this, 30(b)(6) depositions
19 are not taken until expert liability reports are prepared so that the parties
20 are fully informed regarding the alleged defects at the project when such
21 depositions are taken. The Association's liability experts only recently
22 conducted intrusive testing and there is currently no deadline for their
23 expert reports because a scheduling order has not be proposed or entered.

1 I declare under penalty of perjury under the laws of the State of Arizona that the
2 foregoing is true and correct.

3 Executed on March 22, 2021, in Englewood, Colorado.

4
5
6 By:  _____
7 Penny J. Manship, Affiant

8 STATE OF COLORADO)
9 COUNTY OF DOUGLAS)

10 Subscribed and sworn to before me on this 22nd day of March, 2021, by
11 Penny J. Manship. Witness my hand and official seal. My commission expires: 12/28/2024

12 [SEAL]

13 Notary Public, State of Colorado

JESSICA L HARMON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 2011402818
MY COMMISSION EXPIRES DECEMBER 28, 2024

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From: [Penny J. Manship](#)
To: [Dennis Wilenchik \(diw@wb-law.com\)](#); [Mario Campos](#); [barbaras@wb-law.com](#)
Cc: [Craig S. Nuss](#); [Jessica Harmon](#)
Subject: Gallery - Discovery
Date: Friday, March 12, 2021 4:06:00 PM

Just wanted to reach out and recap what I discussed with Mario and Barbara this morning. We are definitely open to discussing dates for depositions. However, prior to selecting any specific dates for depositions, we think it is appropriate at this time to schedule an early meeting pursuant to Rule 16(b) with all of the parties currently in the case and to discuss preparation of a Joint Report and proposed Scheduling Order. And although we previously agreed to do initial disclosures after the case is at issue, because there are still several third-party defendants who have yet to appear in the case, we think it would be better at this point to set a deadline for initial disclosures for all parties currently in the case, and then with respect to anyone appearing subsequently, they can do their disclosures 30 days after their first appearance.

I can send out an email to all counsel proposing a deadline for initial disclosures and offering some dates for the early meeting. How about April 12 for the initial disclosures deadline? And I am available before 2pm on March 16, or any time on March 18, 19, or 23 for an early meeting. Let me know what works for your office.

Thank you.

Penny J. Manship
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