

Exhibit F

In the Matter Of:

GALLERY COMMUNITY V K HOVNANIAN AT GALLERY

CV2020-008714

WEST HARRINGTON

September 06, 2022



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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GALLERY COMMUNITY ASSOCIATION, an Case No. CV2020-008714
Arizona non-profit corporation,

Plaintiff,

v.

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.

~~~~~  
AND RELATED THIRD-PARTY ACTION.  
~~~~~

VIDEOCONFERENCE DEPOSITION OF WEST HARRINGTON,

APPEARING REMOTELY FROM

RANCHO CUCAMONGA, CALIFORNIA

September 6, 2022

9:01 a.m., PDT

Reported by Eve K. Burton, RPR, CRR,
Arizona CR Certificate No. 50261, California CSR No. 12527

Job No. J8562083

1 The videoconference deposition of WEST
2 HARRINGTON, noticed by Defendants/Third-Party Plaintiffs
3 K. Hovnanian at Gallery, LLC, and K. Hovnanian Arizona
4 Operations, LLC, was taken on September 6, 2022, from
5 9:01 a.m. to 12:58 p.m., Pacific Daylight Time, Deponent
6 appearing remotely from Rancho Cucamonga, California,
7 before Eve K. Burton, RPR, CRR, Arizona CR Certificate
8 No. 50261, California CSR No. 12527.

9
10 VIDEOCONFERENCE APPEARANCES

11
12 For Plaintiff:

13 BURG SIMPSON ELDREDGE HERSH & JARDINE P.C.
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19 For Defendants/Third-Party Plaintiffs K. Hovnanian
20 at Gallery, LLC, and K. Hovnanian Arizona
21 Operations, LLC:

22 LORBER, GREENFIELD & POLITO, LLP
23 LOUIS W. HOROWITZ, ESQ.
24 3930 East Ray Road, Suite 260
25 Phoenix, Arizona 85044
 (602) 437-4177
 lhorowitz@lorberlaw.com

1 stucco subcontractors?

2 A. Yes.

3 Q. Do you recall if you reviewed a detailed
4 scope-of-work document in connection with your work on
5 this case?

6 A. I don't recall one way or another.

7 Q. Did you get any information from Desert Vista's
8 principals or employees regarding the actual work
9 performed by Desert Vista or contracted to be performed by
10 Desert Vista on the Gallery project?

11 A. Well, I did have a discussion, probably an
12 hour-long discussion, with the principal of Desert Vista,
13 who was very knowledgeable and very familiar with this
14 project, and he -- he did provide me with some information
15 that I could not otherwise have had.

16 Q. Okay.

17 A. So that was important.

18 And by the way, we were talking about things
19 that I wanted that I wasn't able to get. The one other
20 thing that I was interested in having, I understood that
21 that person -- I forget Todd's last name, but Todd is his
22 first name, the principal of Desert Vista. I understand
23 that he was deposed last week. Again, I don't believe his
24 transcript was available, but that was another thing that
25 I would have wanted, though I would say I don't feel

1 particularly impaired, since I had a long and detailed
2 conversation with him just prior to his deposition.

3 Q. Okay. Did you get any new information from him
4 that modified or changed any of your opinions?

5 A. I think the most significant information I got
6 from him was just that -- his confirmation that the EPS
7 material that they used, the foam under the one-coat
8 system, that it screwed at 12 inches on center.

9 And we looked at the photographs that
10 Plaintiff and other parties had taken of some of the
11 destructive testing, and we concluded that, at least to
12 the extent we could tell, there wasn't an area where there
13 had been a sufficient piece of EPS exposed during
14 destructive testing that would have established that there
15 was a systemic occurrence of non-grooved foam.

16 In other words -- that's a little
17 convoluted, but the EPS that they order from their
18 supplier is grooved at 12 inches on center, so if one is
19 removing a strip of foam that's less than 12 inches of
20 center -- on center, one can't conclusively determine that
21 in that piece of foam grooves were missing.

22 So I did go on to look at photographs of the
23 foam, and I concurred that I could not find places where
24 there was -- it was alleged that foam was not grooved and
25 the width of that foam was -- the width of the exposed

1 foam was at least 12 inches. And then of course, I did
2 see instances of photographs of grooved foam.

3 So that was important to me. It seems to be
4 a significant allegation by Plaintiff, and it seemed,
5 based on that, that the centers of the grooving -- that
6 Plaintiff had not established that there was a deficiency
7 in the EPS.

8 Q. Okay. And just for some context, this discussion
9 was in response to Plaintiff's claim that the EPS foam
10 material used in the construction of the stucco at Gallery
11 did not contain the required grooves?

12 A. Correct.

13 Q. Okay. The information you obtained from Todd at
14 Desert Vista was that Desert Vista did understand that a
15 grooved foam material was needed, did order a material
16 that had grooves at 12-inch on center, and did install
17 that?

18 A. Correct.

19 Q. Okay.

20 A. Well put.

21 Q. Okay. I just like a clear record.

22 You mentioned some photographs. Are those
23 photographs that you could identify or point me to today?

24 A. Well, there is an exemplar photograph in our
25 report that shows a destructive testing of a narrow strip.

1 Q. Okay. And it's your understanding that the
2 supply and installation of the EPS board was part of
3 Desert Vista's contractual responsibility?

4 A. That's my understanding.

5 Q. Okay. I want to ask you to turn to page 12 of
6 your report. This is part of your response to SBS claims
7 regarding missing weeps in different locations.

8 A. Correct.

9 Q. Okay. Now, as far as the weeps above windows
10 that SBSA has called out, you disagree that those are
11 necessary, correct?

12 Well, I guess let me step back. You
13 understand that SBSA is alleging that weeps should have
14 been installed above all fenestrations, including windows
15 and doors, at the -- at the Gallery, correct?

16 A. Correct.

17 Q. Okay. And as far as that location, do you agree
18 that that's necessary?

19 A. I disagree that it's necessary --

20 Q. Okay.

21 A. -- or that it's the standard of practice.

22 One-coat systems, I looked at literally
23 hundreds of them in the Southwest United States, and
24 one-coat is the prevalent stucco system in Arizona and
25 Nevada, and, despite what a number of research reports

1 will show, that the practice is to order windows that have
2 a projection that is deep enough to receive the foam and
3 the finish material, and the window perimeter is used as a
4 ground.

5 Q. Okay.

6 A. And the window fins are flashed just as they are
7 in a three-coat system -- excuse -- in a three-coat
8 system.

9 Q. Mm-hmm.

10 A. And frankly, any additional metal at those
11 locations would be -- it would be more than redundant. It
12 would really create -- not necessarily create a problem,
13 but from an aesthetic standpoint, it would be unnecessary
14 and obtrusive.

15 And again, going back to what the standard
16 of practice is, the standard of practice is overwhelmingly
17 to simply flash one-coat systems the way they are flashed
18 in three-coat systems and to not use head flashings or
19 weak mechanisms that abut the window product.

20 Q. Okay. What are the other -- sorry. Let me find
21 a better way to ask this.

22 SBSA has also got allegations regarding the
23 need for weep screeds at pop-outs and soffits. Do you
24 have an understanding of what they're calling for at
25 pop-outs?

1 A. Well, I think that there -- as it relates to the
2 pop-outs, they're probably just considering a pop-out just
3 like a soffit in the sense that you have a transition
4 between a horizontal and a vertical.

5 Q. Okay.

6 A. And there's a detail in the OTAK, or O-T-A-K,
7 drawings.

8 Q. Mm-hmm.

9 A. It's detail 3 on A8.01.

10 Q. Okay.

11 A. And at those locations they're showing a -- they,
12 the designer, is showing a weeping mechanism. And I don't
13 disagree that that's probably a good idea. That's a
14 separate -- separate and apart from the fenestra- -- the
15 flashings at the fenestration, though.

16 And what K. Hov's experts prescribed, which
17 I thought was a reasonable idea, was that the large
18 expanses of walls where there had been demonstrated to be
19 some -- possibly some water intrusion -- though, I
20 believed it was probably just incidental water intrusion,
21 "incidental" as defined by ASTM 2128 -- that the
22 installation of a weep mechanism at those soffit-to-wall
23 areas around the garages was probably a good idea. So I
24 concurred with that recommendation.

25 Q. Okay. As far as the cost for the installation of

1 weeps at soffits, did you also concur with the KH's
2 recommendations?

3 A. I did.

4 Q. All right. Now, the weep screeds in the soffits
5 were part of Desert Vista's scope of work and contractual
6 obligation to install, correct?

7 MS. RAI: Object --

8 THE WITNESS: I would say yes. Typically
9 that part --

10 MS. RAI: Hold on. Sorry, West. I'm going
11 to object to form and foundation. Sorry.

12 THE WITNESS: Typically, those are
13 components that are part of the plaster system and are
14 typically installed by the plasterer.

15 BY MR. HOROWITZ:

16 Q. Okay. There are -- to the extent that weep
17 screeds are required in any part of the stucco system,
18 what trade would ordinarily install that component?

19 MS. RAI: Form and foundation.

20 THE WITNESS: Correct.

21 BY MR. HOROWITZ:

22 Q. Well, it's not -- that wasn't a -- I'm asking
23 what trade would ordinarily install the weep screeds.

24 A. Right. Just what trade would. Typically it
25 would be. We don't know the specific requirements here.

1 You know, it's not uncommon sometimes that other trades
2 end up installing plaster accessories because of some
3 sequencing issues.

4 Q. Okay.

5 A. But typically those accessories, those plaster
6 accessories, would be installed by the plasterer.

7 Q. And in every instance where a plaster accessory
8 was installed by someone other than the plasterer, the
9 plasterer would have needed to include a stop or a space
10 to allow that accessory to be installed. Would you agree
11 with that?

12 MS. RAI: Form and foundation.

13 THE WITNESS: You'll have to give me -- I
14 don't know if I agree or not. I don't think I understand
15 the question quite. Maybe you can give me a hypothetical.

16 BY MR. HOROWITZ:

17 Q. Well, sure. The hypothetical --

18 Well, let me ask a different way. Did
19 Desert Vista inform you that anybody else was responsible
20 to install weep screeds or stucco stops at Gallery?

21 A. I didn't have that conversation with them.

22 Q. You included references in your report and you
23 mentioned today something about a rough order-of-magnitude
24 estimate for an elastomeric repair application. I
25 couldn't find any additional detail or I couldn't find any

1 that was appropriate, we wanted to be able to demonstrate
2 that one could move the barrier to the outside, supplement
3 the weather-resistiveness by using a product by a
4 well-known manufacturer. So that's -- I simply got
5 costing and an identification of a type of materials from
6 Omega.

7 Q. Okay. Can you turn to page 15 of your report.

8 A. Sure. Okay. There we are.

9 Q. Yeah, and I've asked you to turn to the part of
10 your report where you address SBSA's weather-resistive
11 barrier allegations.

12 A. Okay.

13 Q. And if you'd go another -- a page or two ahead,
14 you'll see the section with your own response. There it
15 is on page 18, keeps going on.

16 Could you scroll up to page 18 where your
17 response starts.

18 You understand the basic allegation here is
19 that the project is missing a second layer of
20 weather-resistive barrier in some or all locations,
21 correct?

22 A. Correct. In particular, over sheathing, OSB or
23 plywood sheathing.

24 Q. Okay. Did you generally agree with BHA's
25 observations and opinions in connection with this issue?

1 A. I'm sorry. With BHA's?

2 Q. Yeah.

3 A. Correct.

4 Q. With BHA's opinions. Okay.

5 A. Yes.

6 Q. Did you see or locate --

7 Let me ask a different way. You say in your
8 report that "HCCI observed evidence of the use of a single
9 layer of WRB during our extensive review of plaintiff and
10 developer photographs."

11 A. Correct. But the single layer that -- I relied
12 on SBSA's exemplar photographs --

13 Q. Okay.

14 A. -- as being evidence of a condition they found,
15 and I relied on SBSA's assertion that they -- I think they
16 used the language -- if I may, I'm going to refer back to
17 it -- that they generally saw that.

18 Q. Okay. You don't agree that that was what was
19 generally observed in the testing, do you?

20 A. No. And that's what my -- what I did and what is
21 reflected in that 33-page document that was recently
22 deposited was sort of my quantification of what I can see
23 what Plaintiff said they saw.

24 Q. Okay.

25 A. So -- and that had never been really done.

1 And I'll just say, Plaintiff's photographs
2 are not organized in a fashion that lend themselves to
3 quantification, so I looked at the document that I believe
4 they were using to be reflective of what they saw. And
5 those are those annotated elevation drawings that I marked
6 up.

7 Q. Okay. And I'm going to ask about those in a
8 minute.

9 As far as what you had observed in
10 connection with generating your report, you had seen --
11 you had seen evidence where the weather barrier was
12 installed with two layers at many locations, correct?

13 A. Correct.

14 Q. And you had identified at least some locations
15 where it was short or where it was missing in limited
16 locations, correct?

17 A. Correct.

18 Q. Did you do any kind of quantification of the
19 photographs or other information that you had seen
20 regarding the extent that the weather-resistive barrier
21 was present or missing in a two-layer configuration?

22 A. Not at the time of my report. At the time of my
23 report, I was just looking at it generally, but I hadn't
24 found a method by which I could examine the data and
25 quantify it in a way that was reasonable. And that's what

1 I was since able to do, and that's where I came to --

2 First of all, just backing up as to my
3 opinion, I didn't see evidence of water intrusion that I
4 believed was associated with a deficiency in the
5 installation or type of WRB at the time I prepared my
6 report.

7 Q. Okay.

8 A. Because I agreed generally that the -- that the
9 code requires the use of two layers over sheathing, to the
10 extent that that condition existed, I was -- I believed
11 that a reasonable approach to that would have been to use
12 a coating, and that's why I developed the cost and concept
13 of using a -- essentially moving the weather-resistive
14 barrier to the face.

15 I -- between the submission of my report and
16 my deposition, I did find a way that I thought was a
17 reasonable, scientific, accurate method of quantifying
18 Plaintiff's own evidence, and that's what that 33-page
19 document was.

20 Q. Okay. Is it fair to say that you learned from
21 review of Mr. Fronapfel's deposition testimony that he
22 took the position that every location where a deficiency
23 in the WRB was noted would be marked on his repair
24 drawings?

25 A. Correct. And I -- frankly, I read his deposition

1 to back into where a photograph was.

2 Q. Okay. But you reviewed Ed's testimony where he
3 explained that you can locate every instance where he
4 observed a defect in the weather-resistive barrier by
5 review of these annotations that he made on the
6 elevations, correct?

7 A. That's what I understood him to mean. And as I
8 told you, I created this document before I read his
9 testimony.

10 Q. Okay. You have a note here in the upper
11 left-hand corner, page 8. Under a discussion of six
12 different -- six different numbered photographs in ovals,
13 you've got a pink highlight over "2 layers of BP over
14 sheathing."

15 A. Right. Just to remind you, the yellow is open,
16 you know, non-sheathed, and pink is sheathed, so --

17 Q. Right. I'm asking about the pink highlight
18 referring to "2 layers of BP over sheathing."

19 A. Right.

20 Q. So what's your understanding -- what's the
21 significance of the section that you highlighted here?

22 A. Well, again, they're highlighted not because I
23 think they're significant or not, just because I'm using
24 sheathing versus open framing, but it's significant in
25 review to see that, at a location where there is

1 sheathing, you see that there are two layers of
2 weather-resistive barrier.

3 Q. Okay. Is this location one of the eleven
4 locations you counted?

5 A. Correct.

6 Q. Okay.

7 A. Yeah. The 11 locations, again, aren't an
8 indication that there is 11 locations of improper WRB at
9 sheathing. It's just, there are only 11 references to WRB
10 over sheathing --

11 Q. Okay.

12 A. -- and it happens that many of them are two
13 layers.

14 Q. There aren't even 11 locations where SBSA claims
15 there to be a missing layer of sheathing at framed
16 locations; is that correct?

17 MS. MANSHIP: Objection. Form, foundation.

18 THE WITNESS: Frankly, I haven't done that
19 assessment, but --

20 BY MR. HOROWITZ:

21 Q. What's your -- I'm trying to understand what your
22 11 is. I'm sorry to cut you off, but --

23 A. No, no; not at all.

24 Q. -- I want a clear record here. I'm trying to
25 understand what your count of 11 is, and I'm not -- I'm

1 asking again because it wasn't clear before.

2 A. Sure.

3 Q. You're giving us some qualifications about what
4 something is or isn't, but I just want to understand, are
5 you counting the entire time you made a pink highlight?
6 Or are you counting every instance that you found where
7 SBSA identifies a missing layer of WRB?

8 A. I am counting every time the pink -- the 11 pink
9 are any reference to paper over sheathing, not whether
10 it's one or two layers.

11 Q. Okay. Thank you.

12 A. So --

13 Q. Okay. Based on your review and evaluation of the
14 chart and the specific locations with references to the
15 weather-resistive barrier, did you have any --

16 Let me ask this a different way.

17 What information did you get from reviewing
18 the chart and the photograph descriptions in the exercise
19 that led to the generation of Exhibit 130?

20 A. Well, what I came to believe was that Plaintiff
21 had virtually no evidence of single-layer WRB over
22 sheathed locations.

23 Q. And was your finding there generally consistent
24 with the opinions set forth by BHA in their report --

25 A. Yes.

1 Q. -- regarding the extent to which missing second
2 layer of WRB was observed at Gallery?

3 A. Yes. It's consistent with BHA's findings.

4 Q. Okay. And was that consistent with your own
5 findings as set forth in your January 2022 report?

6 A. Yes.

7 Q. Okay. Who installed the weather-resistive
8 barrier underneath the stucco at Gallery?

9 MS. RAI: Hey, Lou.

10 MR. HOROWITZ: Yeah.

11 MS. RAI: We've been going a little bit.

12 Can I take -- can we take a quick potty break?

13 MR. HOROWITZ: We can do that after I get
14 the answer to this question, sure.

15 THE WITNESS: Well, it would typically be
16 part of the plasterer's scope of work to install the WRB
17 associated with this.

18 BY MR. HOROWITZ:

19 Q. Okay. And before we go off, I just want to ask a
20 couple of quick follow-up questions. You haven't seen or
21 been told in this case anything to lead you to believe
22 that there was anything different in the contract for the
23 actual construction of the work as far as who installed
24 the weather-resistive barrier on Gallery, have you?

25 A. I haven't, but what I also haven't done is

1 installing control joints anywhere they're not
2 specifically asked to, because it creates an architectural
3 feature.

4 And I also don't see any deficiency in the
5 performance of the building with respect to cracking and
6 such, which is what control joints are intended to do, is
7 reduce the size of the planes of stucco so that cracking
8 doesn't occur outside of the control joint.

9 The configuration of these buildings also
10 with the pop-outs creates small planes, and so I don't see
11 any reason that one would need additional control joints
12 on this project.

13 So I disagree that there is a requirement,
14 and I disagree that there's any evidence that the stucco
15 system is not performing from an aesthetic standpoint or
16 functional standpoint as it should with respect to
17 cracking.

18 Q. Okay. And the control joints are part of the
19 stucco system, correct?

20 A. They are typically part of a stucco system.

21 Q. Okay. And you were talking about a joint in the
22 stucco, correct?

23 A. Correct. But it's a -- it's a plaster accessory
24 that's installed before the application of stucco, so I
25 have no specific knowledge about who installed that.

1 Q. If some accessory meant to help create the
2 control joint was installed -- you know, strike that. I
3 don't need to ask that.

4 The architectural drawings included a
5 certain vertical control joint, correct?

6 A. Correct.

7 Q. And it's your understanding that Desert Vista did
8 install and complete that vertical control joint described
9 in the architectural plans per those plans, correct?

10 A. Well, actually, I don't have any specific
11 knowledge, and I didn't ask whether that was done. It's
12 typically a part of the plasterer's scope of work.

13 Q. Mm-hmm.

14 A. But as it relates to this project, I don't have
15 any specific knowledge as to whether or not that was done
16 or whether there was a sequencing issue or whether it was,
17 in fact, installed by Desert Vista. It wasn't a part of
18 my scope to make that determination.

19 Q. Have you been given any kind of information from
20 anyone regarding any issues or problems with sequencing in
21 the construction of the Gallery project?

22 A. No, not one way or another. No information
23 regarding sequencing.

24 Q. Have you been given any kind of information from
25 anyone regarding supervision of work by trades on the

1 Q. Going to page 28 of your report, this section was
2 about noncompliant slope of horizontal stucco surfaces.

3 Do you see that?

4 A. I do.

5 Q. In your response down here, it says, "HCCI
6 observed instances of improper slope at horizontal stucco
7 surfaces at the inspections we attended and during
8 extensive review of plaintiff and developer photographs."

9 Do you see that?

10 A. I do.

11 Q. So do you agree that this is a noncompliant
12 condition?

13 A. It doesn't -- yes, I agree that it doesn't comply
14 strictly with the design slopes that were shown on some of
15 the parapet wall sections.

16 Q. But you don't believe it needs to be repaired
17 because you did not observe damage associated with the
18 as-built conditions; is that correct?

19 A. Correct. The -- there are a couple of things.
20 The slope that is present is adequate to convey water
21 away, and the top of the framing at that location, the
22 area under the stucco, is -- has a self-adhered membrane,
23 so it's -- even if there were -- even if it were dead flat
24 or if there were ponding, there likely would not be any
25 water intrusion into the interstitial spaces to cause a

1 problem.

2 And then lastly, just to kind of point out
3 another, let's say, change that is otherwise undocumented,
4 a lot of the parapet caps in the as-designed condition
5 show a sheet metal coping, but that's just a circumstance
6 where there is an as-designed condition, sheet metal
7 parapet coping, and the as-built condition turned into a
8 plastered condition. I don't have any objection to that.
9 I'm just pointing out where there are variations between
10 as designed and as built.

11 Q. Did you observe extensive stucco cracking at
12 these parapet walls?

13 A. There are some locations where there is some
14 pretty good cracking. It's usually where there is a -- if
15 you're looking at it in plan, where there's an offset in
16 the intersecting parapets.

17 So I mean, I haven't examined why that is,
18 but that looks like building movement, not necessarily
19 negative building movement, but because that offset
20 exists, that is kind of a hinge joint. That's the only
21 place I recall seeing that cracking. The water
22 intrusion --

23 Q. You don't recall seeing a bunch of like spider
24 web cracking?

25 A. I'm sorry. I didn't -- you --

Exhibit G

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF MARICOPA

3

4 GALLERY COMMUNITY ASSOCIATION, an Case No. CV2020-008714
Arizona non-profit corporation,

5 Plaintiff,

6 vs. 30(b)(6) DEPOSITION OF

7 K. HOVNANIAN AT GALLERY, LLC, an DESERT VISTA, INC.,
Arizona limited liability company;

8 K. HOVNANIAN ARIZONA OPERATIONS, by and through,
LLC, an Arizona limited liability

9 company; K. HOVNANIAN DEVELOPMENTS TODD JONES
OF ARIZONA, INC., an Arizona

10 corporation; K. HOVNANIAN COMPANIES Via Zoom Videoconference
OF ARIZONA, LLC, an Arizona

11 limited liability company; JOHN September 1, 2022
DOES I-X AND JANE DOES I-X, WHITE

12 CORPORATIONS I-X; BLACK 12:00 P.M.

13 PARTNERSHIPS I-X; AND GRAY LIMITED PHOENIX, ARIZONA
LIABILITY COMPANIES I-X,

14 Defendants.

15 K. HOVNANIAN AT GALLERY, LLC, an
16 Arizona limited liability company;
17 K. HOVNANIAN ARIZONA OPERATIONS,
18 LLC, an Arizona limited liability
19 Company; K. HOVNANIAN DEVELOPMENTS
20 OF ARIZONA, INC., an Arizona
21 corporation; K. HOVNANIAN COMPANIES
22 OF ARIZONA, LLC, an Arizona limited
23 liability company;

24 Third-Party Plaintiffs,

25 vs.

 CHAS ROBERTS AIR CONDITION, INC.,
an Arizona corporation; DESERT
VISTA, INC., an Arizona
corporation; GOTHIC LANDSCAPING,
INC., a California corporation;
HOME BUILDERS SITE SERVICES OF

1 A. You're asking me?

2 Q. Yeah.

3 A. No. The only reference to the weep screed there
4 is at the bottom plate.

5 Q. Yeah --

6 A. And the bottom --

7 Q. And when you do it, per current IBC, right?

8 A. Pardon me?

9 Q. And that it needs to be per current IBC, right?

10 A. Correct.

11 Q. You're aware the plaintiff and its expert are
12 critical of the weather-resistant barrier used here,
13 correct?

14 A. Correct.

15 Q. Who supplied and installed the weather-resistant
16 barrier on the Gallery project?

17 A. I believe we were using MDC materials, it might
18 have been ATKO materials at the time.

19 Q. Was it within your scope of work to provide and
20 install the weather-resistant barrier at Gallery?

21 A. Yes.

22 Q. Was it within your scope of work to provide all
23 weeps and weep screeds at the Gallery project?

24 A. At the sole plate, yes.

25 Q. Well, was anybody else providing or installing

1 weep screeds at Gallery?

2 MS. RAI: Form, foundation.

3 Q. Let me ask a different way.

4 If there's a weep screed in the stucco at
5 Gallery would that have been within your scope of work or
6 within someone else's scope of work?

7 A. What I can answer is that I know that weep
8 screed at the sole plate was in our specifications to be
9 done, but as to what others were required to do, I don't
10 know.

11 Q. I'm not asking what -- I'm not asking where a
12 weep screed is required, I'm asking who did them. Did
13 framers install any weep screeds at the project?

14 A. I have no idea.

15 Q. Did KHOV self-install any weep screeds at the
16 project?

17 A. That, I can't tell you either.

18 Q. Did any part of your scope of work exclude any
19 of the weep screeds that were necessary to be installed
20 and integrated into the stucco system or the one-coat
21 system at the project?

22 A. I don't know.

23 Q. You're aware that plaintiff and its expert are
24 critical of the EPS insulation foam boards that were
25 installed at the project, correct?

1 A. I am.

2 Q. Okay. Was the installation of EPS foam board
3 within Desert Vista's scope of work?

4 A. Yes.

5 Q. Okay. You're aware that plaintiff and its
6 expert are critical regarding the self-adhered membrane
7 under horizontal portions of the stucco system, correct.

8 A. I'm sorry, could you say that again?

9 Q. Sure.

10 Are you aware that plaintiff and its expert are
11 critical about the self-adhered membrane installed under
12 horizontal parts of the stucco system?

13 A. Yes.

14 Q. Okay. Was the installation of the self-adhered
15 membrane part of Desert Vista's scope of work?

16 A. I don't completely recall, but I would think
17 it -- I don't know. It's not on the specifications listed
18 here and it's been a while.

19 Q. Okay. If there is weather-resistant barrier
20 that goes over the top of a wall or a parapet wall and
21 self-adhered membrane that's supposed to be integrated
22 with that, do you know if that's something that would be
23 within your scope of work or not?

24 A. I don't know.

25 Q. No, you don't know or, no, it didn't?

1 A. No, I don't know. It depends on the
2 circumstances, I guess, of where on the building it is.

3 Q. What if it's on a parapet wall?

4 A. Well, the parapet walls I'm not sure. I'm not
5 sure who did it on those.

6 Q. What if it's under stucco?

7 A. That doesn't mean somebody else couldn't have
8 put it on before we got there.

9 Q. But you don't know if that's within your scope
10 of work?

11 A. No, I don't know if we were the ones that were
12 required to install it or not. Kind of like I was saying,
13 the metal flashing was supposed to be on top of our work
14 out there.

15 Q. Was it within your scope of work to install
16 control joints or movement joints in the stucco?

17 A. Yes, per plan.

18 Q. Now, you're aware that plaintiff and its expert
19 are critical of the placement and extent of the control
20 and movement joints, correct?

21 A. I'm aware of this, yes.

22 Q. I'm not asking if you disagree or agree with
23 their comments.

24 Do you agree that it is within your scope of
25 work to install control joints in your stucco product?

1 A. Per plan.

2 Q. Okay. We spoke about the issues with plans,
3 designs, and constructability in the course of discussions
4 of the bid and contract documents. I want to ask you, I'm
5 just trying to clarify that this next question is a little
6 different.

7 Do you recall during the construction of Gallery
8 there being any issues that you or anyone else from
9 Desert Vista became aware of in the plans, in the designs,
10 or in the specifications that required clarification,
11 explanation, or additional instructions from K. Hovnanian?

12 A. Nothing specific, no.

13 Q. Okay. Do you recall any issue where you ever
14 needed any kind of clarification, additional instruction,
15 or, you know, or an RFI where you didn't get it?

16 A. Well, if I didn't get it I wouldn't know.

17 Q. Well, if you asked for something, if you asked
18 for something from K. Hovnanian did you get it?

19 A. Honestly, I don't recall. I wasn't on this
20 subdivision.

21 Q. Okay. Do you have any records of any kind of
22 written request for information being made?

23 A. Not that I'm aware of.

24 Q. Do you have any information that you got from
25 any of the people who were involved in the construction

Exhibit H

Gallery COA v K Hov at Gallery, LLC

BHA # 19-7096

Preliminary Defense Cost of Defense Scope Estimate

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
ISSUE SUMMARY			Direct Const		Burdened Cost
I.	Structural		0		0
1.0	Compliance with Geotechnical Report		0		0
2.0	Lateral Force Resisting System (LFRS)		0		0
II.	Civil		0		0
1.0	Grading and Drainage		0		0
2.0	Concrete Flatwork		0		0
III.	Building Envelope		49,905		67,612
1.0	Façade - Exterior Cladding and Sealants Type 1 - Stucco		43,975		59,578
2.0	Moisture Management System (Barriers, Flashings, Drainage)		5,930		8,034
3.0	Roofing System Type 1 - Modified Bitumen Roll Roofing		0		0
4.0	Elevated Decks, Balconies, or Walkways		0		0
5.0	Pool Area		0		0
TOTAL			49,905		67,612

Gallery COA v K Hov at Gallery, LLC

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Preliminary Defense Cost of Defense Scope Estimate

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
I. Structural					
1.0	Allegation: Compliance with Geotechnical Report Summary: No repairs				
1.0	Subtotal by issue				0
2.0 A	Allegation: Lateral Force Resisting System (LFRS) Defense Repair: No repairs				
2.0 A	Subtotal by issue				0
I. Structural - SUBTOTAL					0

Gallery COA v K Hov at Gallery, LLC

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
II. Civil					
1.0 Grading & Drainage					
1.0 A	Allegation: Drainage Bounded by Concrete Flatwork				
	Defense Repair: Per PGG report: No repairs				
1.0 A	Subtotal by issue				0
1.0 B	Allegation: Non-Compliant Management of Concentrated Flows				
	Defense Repair: Per PGG report: No repairs				
1.0 B	Subtotal by issue				0
1.0 Grading and Drainage - SUBTOTAL					0

Gallery COA v K Hov at Gallery, LLC

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
2.0 Concrete Flatwork					
2.0 A	Allegation: Non-Compliant Cross-Slope of Sidewalks Defense Repair: Per PGG report: No repairs				
2.0 A	Subtotal by issue				0
2.0 B	Allegation: Non-Compliant Longitudinal Slope of Sidewalks Defense Repair: Per PGG report: No repairs				
2.0 B	Subtotal by issue				0
2.0 C	Allegation: Non-Compliant Landings Defense Repair: Per PGG report: No repairs				
2.0 C	Subtotal by issue				0
2.0 Concrete Flatwork - SUBTOTAL					0

Gallery COA v K Hov at Gallery, LLC

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Preliminary Defense Cost of Defense Scope Estimate

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
3.0 Streets and Roadways					
3.0 A	Allegation: Asphalt Pavement Distress				
	Defense Repair: Per PGG report: No repairs required.				
3.0 A	Subtotal by issue				0
3.0 Streets and Roadways - SUBTOTAL					0
Civil - Subtotal					0

Gallery COA v K Hov at Gallery, LLC

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
III. Building Envelope					
1.0 Façade - Exterior Cladding and Sealants Type 1 - Stucco					
<p>1.0 A Allegation: Missing Weep Mechanism in Stucco</p> <p>Defense Repair: Remove stucco at wall-to-soffit transitions, remove and replace damaged OSB sheathing as needed (assume 32 sf), install metal accessories, and patch the stucco to match the existing finish.</p>					
3-Plex					
	Access repair, access and stock materials, protect adjacent surfaces	Loc	56.50	1	56.50
	Set up and lay out work	Loc	176.00	1	176.00
	Remove 12" strip of stucco at wall-to-soffit transition	Sf	10.30	147	1,514.10
	Replace damaged OSB sheathing as needed	Sf	3.40	32	108.69
	Install new Amerimix stucco system; including WRB, weep screeds, insulation, etc.	Sf	11.69	147	1,718.43
	Prime and paint all repairs and blend into adjacent finishes	Sf	4.52	147	664.44
	Clean up, debris disposal, material handling	Loc	241.50	1	241.50
	Subtotal (one repair)				4,480
	Factor of occurrence			1	1
5-plex					
	Access repair, access and stock materials, protect adjacent surfaces	Loc	56.50	1	56.50
	Set up and lay out work	Loc	264.00	1	264.00
	Remove 12" strip of stucco at wall-to-soffit transition	Sf	10.30	267	2,750.10
	Replace damaged OSB sheathing as needed	Sf	3.40	64	217.39
	Install new Amerimix stucco system; including WRB, weep screeds, insulation, etc.	Sf	11.69	267	3,121.23
	Prime and paint all repairs and blend into adjacent finishes	Sf	4.52	267	1,206.84
	Clean up, debris disposal, material handling	Loc	283.00	1	283.00
	Subtotal (one repair)				7,899
	Factor of occurrence			5	5
1.0 A	Subtotal by issue				43,975
<p>1.0 B Allegation: Non-Compliant WRB for Stucco System</p> <p>Defense Repair: No repairs necessary.</p>					
1.0 B	Subtotal by issue				0
<p>1.0 C Allegation: Non-Compliant EPS Foam Board for Stucco System</p> <p>Defense Repair: No repairs necessary.</p>					
1.0 C	Subtotal by issue				0

Gallery COA v K Hov at Gallery, LLC

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
1.0 D	Allegation: Non-Compliant Slope of Horizontal Stucco Surfaces Defense Repair: No repairs necessary.				
1.0 D	Subtotal by issue				0
1.0 E	Allegation: Deficient Self-Adhered Membrane under Horizontal Stucco System Defense Repair: No repairs necessary.				
1.0 E	Subtotal by issue				0
1.0 F	Allegation: Missing Control/Movement Joints Defense Repair: No repairs necessary.				
1.0 F	Subtotal by issue				0
1.0	Façade - Exterior Cladding and Sealants Type 1 - Stucco - SUBTOTAL				43,975

Gallery COA v K Hov at Gallery, LLC

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
2.0 Moisture Management System (Barriers, Flashings, Drainage)					
2.0 A	Allegation: Missing Sheet Metal Flashing at Window Head Defense Repair: No repair is required.				
2.0 A	Subtotal by issue				0
2.0 B	Allegation: Non-Compliant Flashing to Stucco Interface Defense Repair: Where deck edge metal is buried in the stucco, extend the edge metal past the stucco face by installing new sheet metal under the existing drip edge. The new sheet metal should have a break to match the existing edge metal and be installed in a continuous bed of silicone sealant and then painted to match. (assume 10 decks total)				
	Access repair, protect adjacent surfaces	Loc	40.00	1	40.00
	Set up and lay out work	Loc	50.00	1	50.00
	Lift edge metal and remove loose stucco	Loc	100.00	1	100.00
	Insert new sheet metal edge flashing under existing to extend past stucco face	Loc	125.00	1	125.00
	Paint to match existing	Loc	100.00	1	100.00
	Clean up, debris disposal, material handling	Loc	50.00	1	50.00
	Subtotal (one balcony deck)				465
	Factor of occurrence			10	
2.0 B	Subtotal by issue				4,650
2.0 C	Allegation: Non-Compliant Isolation Joints at Dissimilar Materials Defense Repair: At two (2) locations, route groove in cold joint crack; fill with high-grade flexible sealant; paint repair to match adjacent finishes.				
	Access repair, protect adjacent surfaces	Loc	40.00	1	40.00
	Set up and lay out work	Loc	50.00	1	50.00
	Remove material at CMU cold joint	Loc	50.00	1	50.00
	Insert backer rod and fill joint with high-grade flexible sealant	Loc	200.00	1	200.00
	Paint to match existing	Loc	150.00	1	150.00
	Clean up, debris disposal, material handling	Loc	150.00	1	150.00
	Subtotal (one repair)				640
	Factor of occurrence			2	
2.0 C	Subtotal by issue				1,280
2.0 Moisture Management System (Barriers, Flashings, Drainage) - SUBTOTAL					5,930

Gallery COA v K Hov at Gallery, LLC

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Preliminary Defense Cost of Defense Scope Estimate

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
3.0 Roofing System Type 1 - Spray Polyurethane Foam (SPF)					
3.0A	<p>Allegation: Non-Compliant Slope to Roof Drains</p> <p>Defense Repair: No repair required.</p>				
3.0 A	Subtotal by issue				0
3.0	Roofing System Type 1 - Modified Bitumen Roll Roofing - SUBTOTAL				0

Gallery COA v K Hov at Gallery, LLC

BHA # 19-7096

Preliminary Defense Cost of Defense Scope Estimate

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
4.0 Elevated Decks, Balconies, or Walkways					
4.0 A	Allegation: Non-Compliant Slope of Deck				
	Defense Repair: No repairs needed.				
4.0 A	Subtotal by issue				0
4.0 Elevated Decks, Balconies, or Walkways - SUBTOTAL					0

Gallery COA v K Hov at Gallery, LLC

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Preliminary Defense Cost of Defense Scope Estimate

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
5.0 Pool Area					
5.0	Allegation: Improper Wall & Ceiling Assembly and Fire Feature at Pool Defense Repair: No repairs needed.				
5.0	Subtotal by issue				0
5.0	Pool Area - SUBTOTAL				0
	Building Envelope - SUBTOTAL				49,905

Gallery COA v K Hov at Gallery, LLC

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Preliminary Defense Cost of Defense Scope Estimate

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Ref	Description	Um	Unit Cost	Total Quantity	Total Cost
DIRECT COST TOTAL					49,905
	General Conditions				2,495
Subtotal					52,400
	Contingency				5,240
	Overhead and Administration				2,882
	Contractors Fee				5,764
	Permits, Bonds & Insurance				1,326
Construction Subtotal					67,612
Design and Monitoring Fees					0
Total Relocation					0
Project Total					67,612

Exhibit I

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF MARICOPA

3

4 GALLERY COMMUNITY ASSOCIATION, an Case No. CV2020-008714
Arizona non-profit corporation,

5 Plaintiff,

6 vs. 30(b)(6) DEPOSITION OF

7 K. HOVNANIAN AT GALLERY, LLC, an RENCO LLC,
Arizona limited liability company;

8 K. HOVNANIAN ARIZONA OPERATIONS, by and through,
LLC, an Arizona limited liability

9 company; K. HOVNANIAN DEVELOPMENTS JEFFREY PAUL NICKERSON
OF ARIZONA, INC., an Arizona

10 corporation; K. HOVNANIAN COMPANIES
OF ARIZONA, LLC, an Arizona

11 limited liability company; JOHN Via Zoom Videoconference
DOES I-X AND JANE DOES I-X, WHITE

12 CORPORATIONS I-X; BLACK

13 PARTNERSHIPS I-X; AND GRAY LIMITED
LIABILITY COMPANIES I-X,

14 Defendants. September 2, 2022

15

16 K. HOVNANIAN AT GALLERY, LLC, an 12:30 P.M.
Arizona limited liability company;

17 K. HOVNANIAN ARIZONA OPERATIONS, PHOENIX, ARIZONA
LLC, an Arizona limited liability

18 Company; K. HOVNANIAN DEVELOPMENTS
OF ARIZONA, INC., an Arizona

19 corporation; K. HOVNANIAN COMPANIES
OF ARIZONA, LLC, an Arizona limited

20 liability company;

21 Third-Party Plaintiffs,

22 vs.

23 CHAS ROBERTS AIR CONDITION, INC.,
an Arizona corporation; DESERT

24 VISTA, INC., an Arizona
corporation; GOTHIC LANDSCAPING,

25 INC., a California corporation;
HOME BUILDERS SITE SERVICES OF

1 specifics of any warranty call-outs after the project was
2 closed. I would have to research that.

3 Q. Do you have any information about the claims
4 made by the plaintiff in this case?

5 A. I do not.

6 Q. Okay. Have you done any investigation of the
7 project yourself or on behalf of RenCo?

8 A. I have not.

9 Q. Okay. Are you aware of any type of site visit
10 or investigation of the project done besides, done by
11 RenCo besides what was done on RenCo's behalf by its
12 attorneys and its litigation experts and consultants?

13 A. I am not aware.

14 Q. Okay. In your own words, can you tell me what
15 work was performed by RenCo at the Gallery?

16 A. We installed a roofing system on the flat roofs
17 and we installed a walk deck pedestrian system on the
18 balcony.

19 Q. In connection with installation of a walk deck
20 system on the balcony did you or someone else at RenCo
21 review and investigate the area where the work was to be
22 performed to make sure it was ready to receive RenCo's
23 work?

24 A. I did not do any investigation, no.

25 Q. Who at RenCo would have done that?

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

3 C E R T I F I C A T E

4 BE IT KNOWN that the foregoing deposition was taken
5 before me; that the witness before testifying was duly sworn
6 by me to testify to the whole truth; that the 50 foregoing
7 pages are a full, true and accurate record of the
8 proceedings, all done to the best of my skill and ability;
9 that the proceedings were taken down by me in shorthand and
thereafter reduced to print under my direction.

8 I CERTIFY that I am in no way related to any
parties hereto nor am I in any way interested in the outcome
9 hereof.

- 10 [XX] Review and signature was requested.
11 [] Review and signature was waived.
12 [] Review and signature was not requested.

12 I CERTIFY that I have complied with the ethical
obligations set forth in ACJA 7-206.

13 DATED this 19th day of September,
14 2022, Phoenix, Arizona.

16 

17 _____
18 Angela Fritts, RPR
19 Arizona Certified Reporter, No. 50615

20 It is FURTHER CERTIFIED that Esquire Deposition
21 Solutions, LLC, Registered Reporting Firm, has complied with
the ethical obligations set forth in ACJA 7-206.

22 _____/s/_____
23 Registered Reporting Firm
24 Arizona RRF No. R1048
25