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6 *at Gallery, LLC and K. Hovnanian Arizona Operations, LLC*

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

9 GALLERY COMMUNITY ASSOCIATION, an  
Arizona non-profit corporation,

10 Plaintiff,

11 v.

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

19 Defendants.

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

24 Third-Party Plaintiffs,

25 v.

26 CHAS ROBERTS AIR CONDITIONING, INC.,  
27 an Arizona corporation; DESERT VISTA, INC.,  
an Arizona corporation; GOTHIC  
28 LANDSCAPING, INC., a California corporation;

Case No. CV2020-008714

**MOTION IN LIMINE #1  
REGARDING PLAINTIFF'S  
UNTIMELY SUPPLEMENTAL  
DEFECT AND REPAIR OPINIONS**

(Assigned to the Honorable Katherine  
Cooper)

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1 HOME BUILDERS SITE SERVICES OF  
2 ARIZONA, LLC, an Arizona limited liability  
3 company; LEBLANC BUILDING CO., INC., an  
4 Arizona corporation; LIBERTY  
5 CONSTRUCTORS, LLC, an Arizona limited  
6 liability company, dba LIBERTY ARIZONA;  
7 RENCO LLC, an Arizona limited liability  
8 company, dba RENCO ROOFING; R/S SERVICE  
& SUPPLY, INC., an Arizona corporation;  
SARGON MASONRY CONSTRUCTION, LLC,  
an Arizona limited liability company; and DOES  
1-50.

Third-Party Defendants,

9 COME NOW Defendants K. Hovnanian at Gallery, LLC and K. Hovnanian Arizona  
10 Operations, LLC, by and through undersigned counsel, and hereby move in limine for an order  
11 excluding references by Plaintiff to untimely claims of defective conditions at the pool cabana  
12 and at a roof deck penthouse door.

13 Plaintiff's expert opinions on liability were required to be disclosed by June 23, 2021 with  
14 cost of repair reports to be identified by July 23, 2021. See Scheduling Order dated May 27, 2021.

15 Plaintiff has not identified when these issues first manifested or first became known.  
16 Plaintiff's disclosures indicate that issues at the pool cabana and penthouse doors were known to  
17 Plaintiff early on. Plaintiff identified pool cabana drywall and other issues as a component of  
18 damages in their First Supplemental Disclosure Statement dated June 23, 2021 and first identified  
19 claims regarding penthouse in their Second Supplemental Disclosure Statement on July 23, 2021.  
20 These did not appear in liability expert reports or cost reports until months after the deadlines.  
21 (See excerpts as Exhibits A and B.)

22 Plaintiff identified liability opinions on new issues in a report from its expert SBSA  
23 (Edward Fronapfel) dated October 14, 2021 and disclosed October 15, 2021. The report identified  
24 alleged deficiencies in the metal seam roof of the pool cabana building and areas of the ceiling  
25 with cracked or peeling paint. Plaintiff described these as improper past repairs. The report  
26 included photographs taken in August, 23 2021 by Plaintiff's other expert. The report included  
27 claims of damaged trim at a penthouse door, again with photos taken by Plaintiff's other expert

1 on August 23, 2021. (Exhibit C, Report, GALLERY-SBSA\_005163-5192 at pp. 15-  
2 30/GALLERY-SBSA\_005177-5192.)

3 Plaintiff first identified repair costs for the pool cabana and penthouse door issues in a  
4 supplemental Nautilus Cost of Repair report dated November 8, 2021 and disclosed November  
5 11, 2021. (Exhibit D.)

6 The supplemental SBSA report also contains photographs of damage from two roof leaks  
7 alleged to have occurred in August 2021. To the extent those leaks occurred after Plaintiff's report  
8 deadlines and could have been investigated, they are outside the scope of this Motion in Limine.  
9 Deposition testimony from Plaintiff's expert Ed Fronapfel indicates that the pool cabana and other  
10 areas were investigated by SBSA at the time roof leaks were observed in August 2021 during an  
11 inspection of the new roof leaks. (Exhibit E, excerpts of Deposition of E. Fronapfel, pp. 35:8-  
12 37:21.) Plaintiff's expert had observed the pool cabana before. (*Id.*, 36:15-37:21.)

13 This court previously entered a ruling excluding certain of Defendants' disclosed reports  
14 as untimely. See Minute Entry dated July 29, 2022.

15 The record confirms the issues were known prior to the deadlines and did not manifest after  
16 the deadlines. Issues at the pool cabana and penthouse roof were known to Plaintiff ahead of their  
17 expert disclosure deadlines and at least partly investigated by the experts ahead of the expert report  
18 deadlines. Documentation of the issues by the experts occurred months later in August 2021.  
19 Disclosure of liability opinions and cost of repair opinions occurred months after that in October  
20 and November 2021.

21 Disclosure of untimely opinions on liability and cost should be excluded as they violate the  
22 scheduling order, which were already strictly enforced against Defendants.

23 Dated: January 20, 2023

LORBER, GREENFIELD & POLITO, LLP

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1 Original of the foregoing e-filed  
this 20<sup>th</sup> day of January, 2023 with:

2 Clerk of the Court  
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4 Phoenix, AZ 85003

5 COPY of the foregoing emailed this  
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