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5 *Attorney for Third-Party Defendants Renco, LLC dba Renco Roofing and Desert Vista, Inc.*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

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

10 Plaintiff;

11 v.

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

20 Defendants.

21
22 KHOVNANIAN AT GALLERY, LLC,
an Arizona limited liability company;
23 KHOVNANIAN ARIZONA
OPERATIONS, LLC, an Arizona limited
24 liability company; KHOVNANIAN

NO. CV2020-008714

**THIRD-PARTY DEFENDANTS RENCO,
LLC DBA RENCO ROOFING AND
DESERT VISTA, INC.'S JOINT
MOTIONS IN LIMINE #1 AND #2**

*(Assigned to the Honorable Katherine
Cooper)*

1 DEVELOPMENTS OF ARIZONA, INC.,
2 an Arizona corporation; KHOVNANIAN
3 COMPANIES OF ARIZONA, LLC, an
4 Arizona limited liability company;

5
6 Third-Party Plaintiffs

7 v.

8 CHAS ROBERTS AIR
9 CONDITIONING, INC., an Arizona
10 corporation; DESERT VISTA, INC., an
11 Arizona corporation; GOTHIC
12 LANDSCAPING, INC., a California
13 corporation; HOME BUILDERS SITE
14 SERVICES OF ARIZONA, LLC an
15 Arizona limited liability company;
16 LEBLANC BUILDING CO., INC., an
17 Arizona corporation; LIBERTY
18 CONSTRUCTORS, LLC, an Arizona
19 limited liability company DBA LIBERTY
20 ARIZONA; RENCO LLC, an Arizona
21 limited liability company; dba RENCO
22 ROOFING; R/S SERVICE & SUPPLY,
23 INC., an Arizona corporation; SARGON
24 MASONRY CONSTRUCTION, LLC, an
Arizona limited liability company; and
DOES 1-50.

Third-Party Defendants.

Third-Party Defendants, Desert Vista, Inc. and Renco, LLC dba Renco Roofing (“Third-Party Defendants”), by and through counsel, pursuant to ARCP Rule 7.2, hereby submit this Motion *in Limine* #1 and #2 in advance of the March 13, 2023, Trial.

The purpose of a motion *in limine* “is to avoid disclosing to the jury prejudicial matters which may compel a mistrial.” *State ex rel. Berger v. Superior Court*, 108 Ariz. 396, 397 (1972). It is “generally used as a substitute for evidentiary objections at trial.” *Zimmerman v. Shakman*, 204 Ariz. 231, 235 ¶ 12 (App. 2003).

1 **MOTION IN LIMINE # 1**

2 Third-Party Defendants move to preclude Plaintiff Gallery and Third-Party Plaintiffs
3 KHov from introducing any and all documentary evidence, expert opinions, and testimony
4 regarding the negligence standard, including duty, breach, causation, and damages as it relates
5 to Desert Vista and Renco as precluded by the Court in the ‘Ruling re Motion to Preclude’ Order
6 dated July 29, 2022.

7 KHov’s indemnification clause in the parties’ agreement states that causation is required
8 to be proven for indemnification. Further, Arizona Anti-Indemnity Statute A.R.S. § 32-1159.01,
9 generally states that a party is only liable for indemnification to the extent of its own negligence
10 and thus, the proportion of fault must be established. No such evidence or testimony is in the
11 record and any previous evidence was precluded in the Court’s Order dated July 29, 2022.

12 At Oral Argument, KHov’s counsel’s position was that causation was not required. As
13 such, it is undisputed that there is no evidence, testimony and opinions on causation and fault
14 for damages as it relates to Third-Party Defendants and the same should be precluded at trial.
15 KHov’s counsel took the position that this testimony is not needed, not that it is required. Since
16 it is undisputed, this evidence should be precluded per the Court Order dated July 9, 2022.

17 **MOTION IN LIMINE # 2**

18 Third-Party Defendants move to preclude Plaintiff Gallery and Third-Party Plaintiffs
19 KHov from introducing any expert testimony, opinions, and documentary evidence regarding
20 the foamboards at the Project and the lack of grooves in the foamboards as alleged by Plaintiff
21 Gallery in its destructive testing.

22 Plaintiff’s claim is that the grooved foamboards were not installed as required by the plans,
23 however, our evidence shows that Third-Party Defendants ordered foamboards with grooves 12-
24 inches on center, which means one should see grooves every 12 inches. *See attached Invoice with*

1 *grooved foamboards attached as Exhibit A.* Plaintiff's photograph of the foamboard does not
2 show adequate cuts to show those grooves and no measurements were taken. The photo available
3 is unclear whether it is the front or the back of the foamboard. The foamboard was never
4 preserved by Plaintiff.

5 As such, there is no evidence that there is a groove missing every 12 inches. Therefore,
6 the Court should preclude any documentary evidence, testimony, and expert opinions that there
7 is a lack of grooves every 12 inches. To keep this evidence is misleading and would confuse the
8 jury. The probative value of this evidence is substantially outweighed by unfair prejudice and
9 thus the Court should preclude the evidence, testimony, and opinions related to Plaintiff's claim
10 that the foamboards lacked grooves.

11 A Certificate of Good Faith Consultation pursuant to Rule 7.2 is attached hereto as
12 Exhibit B.

13 **DATED** this 20th day of January, 2023.

14 **RAI DUER P.C.**

15
16 By: /s/ Mohamad Tokko

17 Rina Rai

18 Mohamad H. Tokko

19 ***Attorneys for Renco Roofing and Desert Vista,
Inc.***

20 **ORIGINAL** of the foregoing e-filed
21 This 20th day of January, 2023, with:

22 Clerk of the Court

23 **Maricopa County Superior Court**

24 201 W. Jefferson

Phoenix, Arizona 85003

1 **COPY** of the foregoing e-delivered
This 20th day of January, 2023, to:

2
3 The Honorable Katherine Cooper
4 Maricopa County Superior Court
5 **East Court Building – 711**
6 101 W Jefferson
7 Phoenix, AZ 85003

8 **COPIES** of the foregoing e-mailed
This 20th day of January, 2023, to:

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(See Attached Service List)

By: /s/ Tracy L. O'Brien

Service List

Gallery Community Association v. K. Hovnanian at Gallery, LLC

CV2020-008714

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