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5 *Attorneys for Defendants/Third-Party Plaintiffs K. Hovnanian*
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
10 Arizona non-profit corporation,

11 Plaintiff,

12 v.

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

**DEFENDANTS' RESPONSE TO
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)

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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 submit their response to Third-
11 Party Defendants Renco, LLC dba Renco Roofing and Desert Vista, Inc.'s Joint Motions in
12 Limine #1 and #2.

MOTION IN LIMINE #1

13
14 This Motion in Limine appears to be an attempt to place additional argument on the record
15 in connection with Renco and Desert Vista's pending Motion for Summary Judgment. The
16 Movants has mischaracterized the evidence on the issues, which was set forth in detail on the
17 record in K. Hovnanian's Response to their Motion for Summary Judgment.

18 Simply put, the claims by Plaintiff as set forth by its experts are that the components of the
19 property were not constructed consistently with the applicable standards. Every individual defect
20 claim that Plaintiff makes is based on an assertion by their expert that standards of care were not
21 met in the construction. If Plaintiff can show that the conditions were constructed negligently,
22 then those issues arise from the negligence of the party that actually performed the construction.

23 Plaintiff has not brought a claim for "stucco cracks." Plaintiff's claims, as laid out subpart
24 by subpart, are based on installation inconsistent with the claimed standard, such as improper
25 installation of weep screeds, building paper/weather resistive barrier, foam boards, control joints,
26 or other components. Third-Party Defendants argued at oral argument that the claims included
27 "stucco cracks" and that there could be multiple causes. That is not true. Plaintiff's claims for
28 repairs as set forth are from alleged negligent installation of various components. The expert

1 alleges that these conditions will cause cracking or deterioration. The evidence as presented on
2 the record in K. Hovnanian’s Response to Desert Vista and Renco’s Motion for Summary
3 Judgment shows the factual responsibility for installation of each of the conditions that Plaintiff’s
4 expert opines were negligently constructed.

5 Plaintiff’s opinion evidence could potentially show that construction of some or all
6 components was performed negligently as inconsistent with the plans, codes, material installation
7 requirements, or industry standards identified by its expert Ed Fronapfel. Some items are not
8 contested by K. Hovnanian or the Third-Party Defendants, such as the missing weep screeds at
9 soffits. For each of the stucco and roof issues identified by Plaintiff’s expert, there is fact evidence
10 regarding actual responsibility for the installation of the component, as already set forth on the
11 record.

12 Desert Vista and Renco have not identified evidence that could show there are other causes
13 for their noncompliance with codes, standards, building plans, or other specific standards that
14 should have been followed in the construction of their work. Desert Vista and Renco have not
15 identified evidence to show that their failure to meet appropriate standards of care are attributable
16 to any other parties or non-parties. It is their burden to prove this defense and would at most be a
17 factual dispute.

18 No part of Renco or Desert Vista’s Motion *in Limine* #1 provides any legal basis to exclude
19 evidence. The Motion *in Limine* should be denied.

20 **MOTION IN LIMINE #2**

21 This Motion *in Limine* is more appropriately directed at Plaintiff only. No limitation of any
22 evidence should be granted against K. Hovnanian.

23 Plaintiff and its expert have claimed that defects exist in the EPS foam board including but
24 not limited to their claim that grooves were required but are missing. The argument as set forth
25 by Desert Vista appears to be that evidence conclusively proves that the EPS board material was
26 ordered with proper grooves. K. Hovnanian has set forth in its pending Motion for Partial
27 Summary Judgment Regarding Claims of Unsupported Defects why this issue should be resolved
28 in Defendants’ favor pursuant to Ariz.R.Civ.P. 56. If the issue of repairs needed to the EPS board

1 due to claimed lack of grooves and insufficient thickness is not resolved substantively in K.
2 Hovnanian's favor, then K. Hovnanian should not be excluded from raising any evidence that may
3 be necessary and relevant against Desert Vista. If Plaintiff is allowed to make claims about the
4 improper material selection and/or installation of the EPS board, then Defendants must be
5 permitted to produce the factual evidence (including the testimony from Desert Vista through its
6 representative) that proves Desert Vista selected, ordered, and installed this allegedly defective
7 building component. Either the component was not negligently supplied and installed or it was
8 defective because Desert Vista negligently supplied and installed it.

9 No part of Renco or Desert Vista's Motion *in Limine* #2 provides any legal basis to exclude
10 evidence against Defendants. The Motion *in Limine* should be denied.

11
12 Dated: January 30, 2023

LORBER, GREENFIELD & POLITO, LLP

13
14 By: /s/Louis Horowitz
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20 *K. Hovnanian Arizona Operations, LLC*

21
22 Original of the foregoing e-filed
23 this 30th day of January, 2023 with:

24 Clerk of the Court
25 Maricopa County Superior Court
26 101 W. Jefferson
27 Phoenix, AZ 85003

28 COPY of the foregoing emailed this
30th day of January, 2023 to:

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