

RECEIVED

May 04 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No.: 2021-CP-27-00069
Appellate Case No. 2025-001116

Mark W. McGilton,..... Respondent,

v.

1223 May River Road, LLC, D.R. Horton, Inc., and
Lotty Trucking, LLC f/k/a Ramos Trucking, LLC,..... Defendants,

of which D.R. Horton, Inc. is the Appellant,

AND

1223 May River Road, LLC, ...Third-Party Plaintiffs,

v.

Kenneth Scott Builders, Inc., ...Third-Party Defendants.

RECORD ON APPEAL
VOLUME I

Benjamin T. Shelton, SC Bar #77207
Shelton Law Firm, LLC
PO Box 21069
Hilton Head Island, SC. 29925
843-802-0087
ben@sheltonlawsc.com

Attorney for Respondent

Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com

*Attorney for Appellant
D. R. Horton, Inc.*

John S. Nichols, SC Bar # 4210
Bluestein, Thompson, Sullivan, LLC
1614 Taylor Street
Columbia, SC. 29201
803-779-7599
john@bluesteinattorneys.com

Attorney for Respondent

Warren P. Johnson, SC Bar # 71759
Joshua R. Fester, SC Bar # 102241
Darrell T. Johnson, Jr., SC Bar # 3010
Law Office of Darrell Thomas Johnson Jr., LLC
300 Main Street
Hardeeville, SC. 29927
843 784 2142
tdjohnson@johnsonlawoffice.com

Attorneys for Lotty Trucking, LLC, f/k/a Ramos Trucking, LLC

Ryan W. Conner, SC Bar # 101702
Kevin W. Mims, SC Bar # 69418
W. Chase McNair, SC B 100695ar #
Luzuriaga Mims, LLP
1156 King Street
Charleston, SC. 29403
843 410 4713
rconner@lmlawllp.com
kmims@lmlawllp.com
cmcnair@lmlawllp.com

Attorneys for Kenneth Scott Builders, LLC

John T. Crawford, Jr., SC Bar # 69682
Kimila L. Wooten, SC Bar # 64516
David L. Paavola, SC Bar # 100714
Amelia M. Farmer, SC Bar # 105750
W. Jacob Henerey, SC Bar # 102268
Kenison, Dudley & Crawford, LLC
325 West McBee Ave., Suite 301
Greenville, South Carolina 29601
(864) 242-4899
(864) 242-4844 (fax)
crawford@conlaw.com
wooten@conlaw.com
paavola@conlaw.com
farmer@conlaw.com
henerey@conlaw.com

*Attorneys for Appellant
D. R. Horton, Inc.*

RECORD ON APPEAL INDEX
Appellant D.R. Horton, Inc. – Respondent Mark W. McGilton
Appeal 2025-001116

VOLUME I

Orders

1. Consent Order September 20, 2022 (discovery and venue).	1
2. Order Granting Motion to Amend October 26, 2022	4
3. Order of Dismissal of 1223 May River Road, LLC October 26, 2022.	7
4. Consent Confidentiality Order January 3, 2024	10
5. Consent Scheduling Order January 17, 2024.....	20
6. Order Granting Plaintiff’s Motion to Compel March 5, 2024	23
7. Order, Form 4, Denying Motions for Summary Judgment June 4, 2024	32
8. Order June 13 2024 (amending scheduling Order).....	35
9. Order Form 4, field August 28, 2024 (scheduling).....	38
10. Order Consent Scheduling December 13, 2024.....	41
11. Order Granting Sanctions January 15, 2025	45
12. Order on Reconsideration filed June 3, 2025.....	56

Pleadings and Filings

13. Plaintiff’s Complaint filed February 17, 2021	67
14. Answer and Motion to Dismiss of 1223 May River Road filed March 19, 2021	82
15. Plaintiff ‘s Motion for Entry of Default as to Defendant Lotty Trucking filed March 22, 2021.....	87
a. Exhibit 1	89
16. D.R. Horton’s Answer filed April 14, 2021.....	91

17. Amended Answer, Motion to Dismiss, and Third-Party Plaintiff's Complaint of 1223 May River Road Against Kenneth Scott Builders filed April 15, 2021	100
a. Exhibit A.....	107
18. Defendants D.R. Horton and 1223 May River Road's Motion to Transfer Venue filed April 16, 2021	122
19. Kenneth Scott Builders' Answer to 1223 May Rivers Road's Third-Party Complaint filed May 27, 2021	124
20. Plaintiff's Motion to Compel and for Sanctions Against Defendant D.R. Horton filed November 4, 2021	131
a. Exhibit 1	133
b. Exhibit 2	158
c. Exhibit 3	160
21. Motion for Order of Dismissal of 1223 May River Road and Kenneth Scott Builders filed April 26, 2022	161
22. D.R. Horton's Motion to Stay Discovery filed August 3, 2022	163
23. D.R. Horton's Motion to Amend Answer filed August 4, 2022.....	167
24. D.R. Horton's Amended Answer and Crossclaims filed August 4, 2022.....	169
25. Plaintiff's Memo in Opposition to Motion to Change Venue August 15, 2022	189
26. D.R. Horton's Memorandum in Support of Its Motion to Amend filed August 16, 2022	195
a. Exhibit A.....	200
27. D.R. Horton's Memo in Support of Its Motion to Stay Discovery and In Opposition to Plaintiffs' Motion to Compel and for Sanctions filed August 16, 2022	217
28. D.R. Horton's Memo in Support of Its Motion to Transfer Venue filed August 16, 2022	224
29. D.R. Horton's Amended Memo in Support of its Motion to Transfer Venue filed August 16, 2022.....	230

30. Plaintiff's Memo in Support of its Motion to Compel and For Sanctions filed August 17, 2022.....	237
a. Exhibit 1.....	242
b. Exhibit 2.....	413
c. Exhibit 3.....	436
d. Exhibit 4.....	444
e. Exhibit 5.....	466
f. Exhibit 6.....	471
g. Exhibit 7.....	473

VOLUME II

31. D.R. Horton's Amended Answer and Third-Party Complaint filed October, 26, 2022 ..	476
a. Exhibit A.....	494
32. Kenneth Scott Builders' Answer to D.R. Horton's Third-Party Complaint filed November 22, 2022.....	511
33. Plaintiff's Renewed Motion to Compel and Rule to Show Cause filed October 17, 2023	523
a. Exhibit 1.....	528
b. Exhibit 2.....	530
c. Exhibit 3.....	533
34. Affidavit of Attorney's Fees filed March 15, 2024	535
35. Kenneth Scott Builder's Motion for Summary Judgment filed March 29, 2024.....	540
a.Exhibit A.....	543
b.Exhibit B.....	544
36. D.R. Horton's Motion for Summary Judgment as to Plaintiff filed May 21, 2024.....	561
37. Kenneth Scott Builder's Memo in Support of its Motion for Summary Judgment filed May 23, 2024	564
38. D.R. Horton's Memo in Support of its Motion for Summary Judgment as to Plaintiff filed May 29, 2024	570
a. Exhibit A.....	584
b. Exhibit B.....	601

c. Exhibit C	612
d. Exhibit D	621
e. Exhibit E	624
f. Exhibit F.....	629
39. D.R. Horton’s Memo in Opposition to Kenneth Scott Builders’ Motion for Summary Judgment as to D.R. Horton’s Claims filed May 29, 2024.....	630
a. Exhibit A.....	642
40. Plaintiff’s Memo in Opposition to D.R. Horton’s Motion for Summary Judgment filed May 29, 2024	659
41. Affidavit of Alfredo Uriostegui, dated April 10, 2017 filed May 30, 2024	674
42. D.R. Horton’s Motion to Amend Scheduling Order filed June 6, 2024	676
43. D.R. Horton’s Memo in Support of its Motion to Extend Scheduling Order filed June 10, 2024.....	678
44. Plaintiff’s Memo in Opposition to D.R. Horton’s Motion to Amend Scheduling Order filed June 10, 2024.....	682
a. Exhibit 1	689
b. Exhibit 2.....	698
c. Exhibit 3.....	720
d. Exhibit 4.....	723
45. D.R. Horton’s Motion to Reconsider Order on its Motion for Summary Judgment filed June 13, 2024	733
a. Exhibit A.....	750
b. Exhibit B	767
c. Exhibit C	778
d. Exhibit D.....	789
e. Exhibit E	792
f. Exhibit F.....	779
46. Plaintiffs’ Motion for Rule to Show Cause filed August 19, 2024.....	798
a. Exhibit 1	807
b. Exhibit 2.....	809
47. Letter with Exhibit 3 filed by Plaintiff August 20, 2024	814
a. Exhibit 3.....	814

48. D.R. Horton’s Motion for Costs and Sanctions filed September 4, 2024.....	818
a. Exhibit 1.....	821
49. Plaintiff’s Offer of Judgment filed October 3, 2024.....	824
50. Plaintiff’s Memo in Support of Motion for Rule to Show Cause filed October 14, 2024. Plaintiff requested exhibits 1-4, 7, 8 be included; Defendant has also included 6	826
a. Exhibit 1.....	854
b. Exhibit 2.....	857
c. Exhibit 3.....	860
d. Exhibit 4.....	864
e. Exhibit 6.....	868
f. Exhibit 7.....	869
g. Exhibit 8.....	872
51. Affidavit of Attorney Benjamin T. Shelton filed October 14, 2024.....	895
52. Affidavit of Attorney John Crawford filed October 15, 2024 with exhibits	899
a. Exhibit A.....	902
b. Exhibit B.....	910
c. Exhibit C.....	912
d. Exhibit D.....	916
e. Exhibit E.....	919
f. Exhibit F.....	923
g. Exhibit G.....	933
h. Exhibit H.....	936
i. Exhibit I.....	943
53. D.R. Horton’s Memo in Opposition to Plaintiff’s Motion for Rule to Show Cause filed October 16, 2024.....	947
a. Exhibit A.....	960
b. Exhibit B.....	963
c. Exhibit C.....	964
d. Exhibit D.....	966

VOLUME III

54. Affidavit of Attorney Jason M. Imhoff filed October 16, 2024.....	973
55. D.R. Horton’s Memo in Support of Motions for Sanctions filed October 16, 2024	980

a. Exhibit 1.....	985
b. Exhibit 2.....	988
c. Exhibit 3.....	992
d. Exhibit 4.....	994
e. Exhibit 5.....	1081
f. Exhibit 6.....	1085
g. Exhibit 7.....	1087
56. Letter and Deposition of Jared O’Sako filed October 17, 2024	1120
57. Letter filed October 18, 2024.....	1332
58. D.R. Horton’s Response and Objections to Plaintiff’s Proposed Order on Rule to Show Cause filed December 23, 2024.....	1337
59. Plaintiff’s Reply to D.R. Horton’s “Response” filed January 1, 2025	1343
a. Exhibit 1.....	1352
60. Letter of Default filed January 15, 2025.....	1353
61. D.R. Horton’s Motion to Reconsider filed January 27, 2025	1355
a. Exhibit A.....	1369
b. Exhibit B.....	1377
c. Exhibit C.....	1382
d. Exhibit D.....	1387
e. Exhibit E	1390
f. Exhibit F.....	1392
g. Exhibit G.....	1408
h. Exhibit H.....	1431
i. Exhibit I	1434

VOLUME IV

j. Exhibit J.....	1438
k. Exhibit K.....	1474
l. Exhibit L	1482
m. Exhibit M	1486
n. Exhibit N.....	1492
o. Exhibit O.....	1499
p. Exhibit P.....	1548

62. Plaintiff's Return to D.R. Horton's Motion for Reconsideration filed February 24, 2025	1550
a. Exhibit 1	1570
b. Exhibit 2	1571
c. Exhibit 3	1572

VOLUME V

c. Exhibit 3 Continued	1912
d. Exhibit 4	1941
63. D.R. Horton's Reply in Support of Motion to Reconsider filed March 31, 2025	1942
a. Exhibit A	1955
b. Exhibit B	1558
64. Plaintiff's Offer of Judgment filed June 4, 2025	1965
65. Notice of Appeal filed June 5, 2025	1967
a. Exhibit 1	1970
b. Exhibit 2	1981

Other Materials

66. Speeding Ticket of Mark W. McGilton in Beaufort County SC charged July 2019	1992
67. Notice of Motion to Compel and Sanctions Hearing July 11, 2022	1994
68. Notice of Motion to Compel and Sanctions Hearing November 9, 2023	1995
69. Certificate of Counsel	1996

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	C.A. NO. 2021-CP-27-00069
MARK W. MCGILTON	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CONSENT ORDER
	)	
1223 MAY RIVER ROAD, LLC, D.R.	)	
HORTON, INC., and LOTTY	)	
TRUCKING, LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	
	)	
	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
KENNETH SCOTTS BUILDERS, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	

This matter is before me by way of Plaintiff’s Motion to Compel Defendant D.R. Horton, and Motion for Sanctions per Rule 37(d), SCRCp, Against D.R. Horton (“Motion to Compel”) and Defendant D.R. Horton, Inc.’s Motion to Transfer Venue (“Motion to Transfer Venue”). These motions appeared on the August 17, 2022, Jasper County Motions Roster and counsel for the parties appeared before me on that date. On the day of the motions hearing, counsel for the parties presented to this Court that an agreement had been reached among counsel to resolve the pending motions and said agreement was entered into the record in this matter.

The parties agreed that the Motion to Compel would be withdrawn without prejudice with leave to Plaintiff to file the motion again and seek sanctions should Defendant D.R. Horton not

comply with Plaintiff's outstanding discovery requests, comply with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes.

Further, Defendant D.R. Horton, Inc. agreed to withdraw its Motion to Transfer Venue with prejudice and Defendant D.R. Horton, Inc. agreed that venue is proper in Jasper County and this case will continue to be pending and tried in Jasper County Circuit Court.

As these matters were agreed to among the parties and the agreement was entered upon the record and memorialized in this Order, it is now the Order of this Court that Plaintiff's Motion to Compel is withdrawn without prejudice with leave to file again, and Defendant D.R. Horton's Motion to Transfer Venue is dismissed with prejudice.

IT IS SO ORDERED.

The Honorable Bentley Price

WE CONSENT:

KENISON, DUDLEY & CRAWFORD, LLC

/s/Jason M. Imhoff

Jason M. Imhoff (S.C. Bar No. 69355)
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
Imhoff@conlaw.com

Attorney for D.R. Horton, Inc.

WE CONSENT:

SHELTON LAW FIRM, LLC

/s/Benjamin T. Shelton

Benjamin T. Shelton, (S.C. Bar No. 77207)
S. Harrison Williams (S.C. Bar No. 102410)
P.O. Box 21069
Hilton Head Island, SC 29925
(843) 802-0087
ben@sheltonlawsc.com
harrison@sheltonlawsc.com

Attorney for Plaintiff



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Consent Order

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-09-20 10:16:05 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	
_____	)	ORDER GRANTING
	)	MOTION TO AMEND
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	
_____	)	

This matter came before the Court on August 17, 2022, upon the Defendant D.R. Horton, Inc.'s ("D.R. Horton") Motion to Amend its Answer, pursuant to Rules 14 (a) and 15(a) of the South Carolina Rules of Civil Procedure. Pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, leave to amend shall be freely given when justice so requires and does not prejudice any other party. For the reasons stated herein, the Court finds that no party will be prejudiced by D.R. Horton's amendments and that justice requires permitting D.R. Horton to amend; accordingly, the Court GRANTS D.R. Horton's Motion to Amend.

For the foregoing reasons, this Court finds that no party will be prejudiced by D.R. Horton's amendments and that justice requires giving D.R. Horton leave to amend.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that D.R. Horton's Motion to Amend is GRANTED.

IT IS SO ORDERED.

****Electronic Signature Page To Follow****



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Amend

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-10-26 14:55:19 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	C.A. NO. 2021-CP-27-00069
MARK W. MCGILTON	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER OF DISMISSAL OF
	)	1223 MAY RIVER ROAD, LLC
1223 MAY RIVER ROAD, LLC, D.R.	)	
HORTON, INC., and LOTTY	)	
TRUCKING, LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	
	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiff,	)	
vs.	)	
	)	
KENNETH SCOTTS BUILDERS, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	

This matter is before me by way of Plaintiff's Motion for Order of Dismissal of 1223 May River Road, LLC and Kenneth Scott Builders, LLC. This motion appeared on the August 17, 2022, Jasper County Motions Roster and counsel for the parties appeared before me on that date. On the day of the motions hearing, counsel for the parties presented to this Court that the parties, except for Defendant D.R. Horton, Inc., consented to the dismissal of 1223 May River Road, LLC and Kenneth Scott Builders, LLC. At the hearing, D.R. Horton, Inc. did not object to the dismissal, and no crossclaims have been filed against 1223 May River Road, LLC.

Therefore, it is ordered that 1223 May River Road, LLC is dismissed from this action, and that all other parties remain as active defendants in the action.

IT IS SO ORDERED.

The Honorable Bentley Price



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Dismissal

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-10-26 14:59:45 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	
_____	)	
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	CONSENT CONFIDENTIALITY
	)	ORDER
v.	)	
	)	
Kenneth Scott Builders, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	
_____	)	
	)	
D.R. Horton, Inc.,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, LLC,	)	
	)	
Third-Party Defendant.	)	
_____	)	

Whereas, the parties to this Consent Confidentiality Order (“Order”) have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this Order; accordingly, it is this the 6th day of December, 2023 (or as may be entered by the Court electronically in place of the foregoing blanks for the entry of dates) ORDERED:

1. **Scope.** All documents produced in the course of discovery, all responses to discovery requests and all deposition testimony and deposition exhibits and any other materials which may be subject to discovery (hereinafter collectively “documents”) in this action shall be subject to this Order concerning confidential information as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word “CONFIDENTIAL” on the document in a manner which will not interfere with the legibility of the document, and which will permit complete removal of the Confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order. However, the party who inadvertently produces a document that contains confidential information must provide prompt written notice to the receiving party after discovering the inadvertent production. The notice shall identify the confidential information and/or portions thereof that should have been designated confidential.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information.

4. **No Retroactive Effect.** This Order shall also not restrict the use or disclosure of documents or information not obtained in this action or otherwise publicly available.

5. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected, denoted by reference to page number and

line number. Such designation shall be communicated in writing to counsel for all parties as well as to the deponent.

6. **Protection of Confidential Material.**

a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (§ 5.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation).

b. **Limited Third-Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order. Only the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

- (1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
- (2) parties and employees of a party to this Order but only to the extent necessary to the conduct of the litigation in which the information is disclosed;
- (3) deponents, trial witnesses, and hearing witnesses in this action, but only as necessary or appropriate to their testimony or anticipated testimony or cross-examination;
- (4) persons identified in a document designated as confidential as an author of the document or persons to whom a copy of such document was sent or provided prior to its production in the action;
- (5) court reporters engaged for depositions and those persons/vendors, if any, specifically engaged by the parties to copy documents; assist in pretrial discovery and document review/processing; provide trial and/or hearing support; or prepare demonstrative and audio visual aids for use in the courtroom, depositions, or mock jury

sessions;

(6) consultants, investigators, or experts (hereinafter referred to collectively as “experts”) employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit;

(7) this Court and court personnel; and

(8) other persons only upon consent of the designating party or upon order of the Court and on such conditions as are agreed to or ordered.

c. **First-Party Disclosure.** Notwithstanding the provisions of the above paragraph, a party is free to disclose its own Confidential information without restriction. Moreover, nothing shall prevent disclosure beyond the terms of this Order if the party designating the documents as Confidential expressly consents to such disclosure, either in writing or on the record any proceeding in this action.

d. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this Order, including to those parties or their counsel who have not joined in this Order.

e. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as “copies”), of documents designated as Confidential under this Order or any portion of such a document, shall be immediately affixed with the designation “CONFIDENTIAL” if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

7. **Use of Confidential Materials at Hearing or Trial.** Subject to the South Carolina Rules of Evidence, stamped confidential documents and other confidential information may be offered in evidence at any hearing or trial provided that the proponent of the evidence has given notice, within a reasonable amount of time prior to the hearing or trial, but no less than 24 hours prior to the hearing or

trial, to counsel for any party or other person that designated the material as confidential. An exhibit list shall satisfy this requirement if the confidential evidence is designated as “confidential” on the exhibit list. Any party may move the Court for an order that this evidence be received *in camera under seal* or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence should continue to be treated as confidential and, if so, what protection may be afforded to such information at the hearing or trial. Subject to the other provisions of this Order, the parties may consult with the Court in limine for the protocol for use of confidential documents for impeachment or must warn the Court immediately prior to disclosure of confidential materials for impeachment and follow the Court’s directions regarding use of the materials for impeachment and the preservation of the confidential nature of those materials.

8. **Filing of Confidential Materials.** In the event a party seeks to otherwise file any confidential material that is subject to protection under this Order with the Court, that party shall take appropriate action to ensure that the documents receive proper protection from public disclosure including:

- a. filing a redacted document with the consent of the party who designated the document as Confidential;
- b. where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or
- c. where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in the South Carolina Rules of Civil Procedure, or such other rule or procedure as may apply in the relevant jurisdiction. Where possible, only the portions of filings with the court that contain Confidential information shall be filed under seal. A public copy of such filings with all Confidential information redacted therefrom may also be filed with the Clerk’s Office.

9. **Subpoenas Seeking Confidential Information.** If any party or person that has obtained confidential materials under the terms of this Order receives a subpoena or other legal process commanding the production of any of these materials, such party or person shall promptly, no later than ten (10) days before producing the documents, notify the party or person that designated the materials as confidential of service of the subpoena. The party or person receiving the subpoena shall not produce any confidential materials in response to the subpoena without either the prior written consent of the designating party or person or an order by the Court. However, the designating party or person in such case shall have the burden of seeking a court order relieving the subpoenaed party or person of the obligations of the subpoena prior to the return date of such subpoena, or the subpoenaed person or party shall be relieved of its obligations under this paragraph.

10. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

11. **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a Confidential designation remains with the party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the Confidential designation.

c. Notwithstanding any challenge to the designation of documents as confidential,

all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing;

(2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 6.b. above; or

(3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

12. **Treatment on Conclusion of Litigation.**

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Destruction of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above shall be destroyed if in physical form or deleted from electronic sources if in that form. Notwithstanding the above requirements to destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be Confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does

not disclose the confidential documents.

13. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

14. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

15. **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients. If counsel for parties not yet represented subsequently appear, each such party can consent to this Order after their appearance via counsel by executing this agreement separately by filling in the blank signature block on the last page of this Order and providing it to Counsel for D.R. Horton, Inc. without further filings of consent in this matter with the same being bound as set forth herein.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]

I SO CONSENT:

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford Jr. (SC Bar # 69682)

Jason M. Imhoff (S.C. Bar # 69355)

704 E. McBee Ave.

Greenville, SC 29601

(864) 242-4899

(864) 242-4844 (fax)

Crawford@conlaw.com

Imhoff@conlaw.com

Attorneys for D.R. Horton

WE SO CONSENT:

s/Benjamin T. Shelton

Benjamin T. Shelton (S.C. Bar # 77207)

S. Harrison Williams (S.C. Bar # 102410)

P.O. Box 21069

Hilton Head Island, SC 29926

(843) 802-0087

ben@sheltonlawsc.com

harrison@sheltonlawsc.com

Attorneys for Plaintiff McGilton



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Consent Order

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2024-01-03 10:54:38 page 10 of 10

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC, D.R.
HORTON, INC., AND LOTTY TRUCKING,
LLC F/K/A RAMOS TRUCKING, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-27-00069

CONSENT SCHEDULING ORDER

1223 MAY RIVER ROAD, LLC,

Third-Party Plaintiffs,

vs.

KENNETH SCOTT BUILDERS, LLC,

Third-Party Defendants.

The parties hereby request the entry of the following Consent Scheduling Order in order to manage discovery and the trial date in this case. Consent of all parties having been given, the Court finds that the Scheduling Order as proposed is reasonable and in the interest of all parties.

1. **Experts:** The parties shall disclose experts no later than **February 26, 2024**. Reply expert disclosures no later than **March 27, 2024** (limited to areas disclosed by one party but not the other) by **April 26, 2024**.
2. **Mediation:** The parties shall conduct mediation on or before **June 5, 2024**.
3. This case shall be called to trial not before **August 1, 2024**.
4. This Order may be amended upon consent by the parties or a showing of good cause and only by approval of the Court.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

WE SO CONSENT:

SHELTON LAW FIRM, LLC

/s/Benjamin T. Shelton

Benjamin T. Shelton, SC Bar No.: 77207
S. Harrison Williams, SC Bar No. 102410
ben@sheltonlawsc.com
harrison@sheltonlawsc.com
PO Box 21069
Hilton Head Island, SC 29925
843.802.0087
Attorneys for Plaintiff

Hilton Head Island, South Carolina
January 12, 2024

LUZURIAGA MIMS, LLP

/s/Ryan W. Conner

Ryan W. Conner, SC Bar No. 101702
Kevin W. Mims SC Bar No. 69418
W. Chase McNair SC Bar No. 100695
50 Immigration St Ste200
Charleston, SC 29403
(843) 410-4713
kmims@lmlawllp.com
cmcnair@lmlawllp.com
Attorneys for Kenneth Scott Builders, LLC

Charleston, South Carolina
January 12, 2024

**LAW OFFICES OF DARRELL THOMAS
JOHNSON, JR., LLC**

/s/Warren P. Johnson

Warren P. Johnson, SC Bar No. 71759
P.O. Box 1125
300 Main Street
Hardeeville, SC 29927
(843) 784-2142
wpj@johnsonslawoffice.com
*Attorney for Lotty Trucking, LLC
f/k/a Ramos Trucking, LLC*

Hardeeville, South Carolina
January 12, 2024

KENISON, DUDLEY & CRAWFORD, LLC

/s/Jason M. Imhoff

Jason M. Imhoff, SC Bar No. 69355
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
Imhoff@conlaw.com
Attorney for D.R. Horton, Inc.

Greenville, South Carolina
January 12, 2024



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Scheduling Order

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-01-17 14:06:20 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC, D.R.
HORTON, INC., AND LOTTY TRUCKING,
LLC F/K/A RAMOS TRUCKING, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2023-CP-27-00069**ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL, FOR
SANCTIONS, AND HOLDING D.R.
HORTON IN CONTEMPT**

1223 MAY RIVER ROAD, LLC,

Third-Party Plaintiffs,

vs.

KENNETH SCOTT BUILDERS, LLC,

Third-Party Defendants.

On December 7, 2023, the court heard the Plaintiff Mark W. McGilton (hereinafter, "Plaintiff's) renewed Motion to Compel, for Sanctions, and Rule to Show Cause as to Defendant D.R. Horton's failure to answer discovery responses, failure to timely supplement discovery responses, and failure to abide by the court's September 22, 2022 Consent Order requiring D.R. Horton to "comply with Plaintiff's outstanding discovery requests, comply with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes."

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

As factual and procedural background, the court finds that D.R. Horton was served with Plaintiff's First Set of Interrogatories and First Requests for Production on July 22, 2021 (herein, "Initial Discovery Requests"). D.R. Horton failed to timely respond to Plaintiff's initial Discovery

Request. Plaintiff provided an extension through September 15, 2021, to answer discovery at D.R. Horton's request after Plaintiff notified D.R. Horton of its deficiency. D.R. Horton again failed to respond to Plaintiff's Initial Discovery Requests. On September 17, 2021, the Plaintiff served D.R. Horton's counsel with a letter pursuant to Rule 11, SCRCF, asking D.R. Horton to answer discovery and stating to D.R. Horton that Plaintiff's counsel would seek attorney's fees and costs and other appropriate relief if it were necessary to file a Motion to Compel. D.R. Horton again failed to answer Plaintiff's Initial Discovery Requests despite being served with the Rule 11 letter.

Plaintiff filed his first Motion to Compel and for Sanctions on November 4, 2021 (the "First Motion to Compel"). On April 16, 2022, D.R. Horton filed a motion to change venue. D.R. Horton continued to fail to respond to Plaintiff's initial request for discovery. On July 11, 2022, the court published notice that Plaintiff's First Motion to Compel would be heard on the August 17, 2022, motion's roster. On July 15, 2022, 359 days after Plaintiff's discovery requests were served D.R. Horton, Inc. responded to Plaintiff's Initial Request for discovery.

Plaintiff deemed D.R. Horton's responses to initial discovery to be deficient. The hearing on the Motion to Compel set for August 17, 2022, remained. Plaintiff provided to D.R. Horton, Inc. another Rule 11 letter on August 10, 2022, explaining what he considered to be the deficiencies with the discovery responses. On August 3, 2022, D.R. Horton, Inc. filed a Motion to Stay under Rule 26(c), SCRCF. The parties reached a consent agreement resolving Plaintiff's Motion to Compel and D.R. Horton Inc.'s Motions to Stay and to Transfer Venue.

Pursuant to the Consent Order filed September 22, 2022 (herein, "the Consent Order"), Plaintiff's Motion to Compel was withdrawn *without prejudice* with leave to refile and to seek sanctions should Defendant D.R. Horton fail to "comply with Plaintiff's outstanding discovery requests, comply with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes."

After the Consent Order was filed, Plaintiff and D.R. Horton coordinated over search terms for months and agreed to take a deposition of a defense witness to help Plaintiff understand what other material might be outstanding and not disclosed. On June 13, 2023, Plaintiff took the deposition of a D.R. Horton employee, Jared O'Saka (hereinafter, "O'Saka"). During the deposition of O'Saka, it was discovered that D.R. Horton possessed numerous files of material relevant to Plaintiff's discovery requests that it had not previously produced. After the deposition, counsel for Plaintiff and Defendant mutually agreed D.R. Horton would supplement its initial discovery responses, and that D.R. Horton would furnish information to allow Plaintiff to understand the nature of the material that exists, and the scope of what material was missing from responses.

Although D.R. Horton had agreed to provide information and materials the information was not immediately forthcoming. On July 17, 2023, Plaintiff's counsel e-mailed D.R. Horton's counsel as a follow-up concerning outstanding discovery responses, wherein D.R. Horton agreed to look into providing Plaintiff with a "file tree" of the filing system disclosed by Mr. O'Saka at his deposition and also providing files for projects involving Kenneth Scott Builders, LLC (hereinafter, "KSB"). On July 21, 2023, Plaintiff's counsel followed up with D.R. Horton's counsel again regarding the discovery material that had not been produced. On July 21, 2023, D.R. Horton's counsel responded that discovery would be supplemented the following week. On August 11, 2023, D.R. Horton's counsel provided a screen shot of some folders purportedly contained within D.R. Horton's digital files of relevance to the case including its work with KSB and asked which material the Plaintiff would like to review. In an email on August 15, 2023, Plaintiff's counsel asked to review all documents in the folders. On August 15, 2023, D.R. Horton's counsel agreed to prepare the material for production and suggested a confidentiality agreement prior to producing due to certain financial material. Plaintiff consented to a reasonable confidentiality agreement on August 22, 2023, relative to confidential material and asked that the non-confidential material be furnished immediately.

After receiving no further response or further material from D.R. Horton, on September 19, 2023, Plaintiff served counsel for D.R. Horton another letter pursuant to Rule 11, SCRCF, relating to and detailing D.R. Horton's failure to respond to discovery, describing the material sought, and reiterating D.R. Horton's pattern of discovery violations. Plaintiff received no response to his September 19, 2023 letter and filed the present Motion to Compel, for Sanctions, and Rule to Show Cause on October 17, 2023 (herein, the "Second Motion to Compel").

The Second Motion to Compel was filed and the motion roster for the instant motion was published on November 7, 2023, scheduling the motion for December 7, 2023. On Friday, December 1, 2023, D.R. Horton sent Plaintiff its proposed confidentiality order, but no additional discovery. On the evening of December 6, 2023, D.R. Horton provided Plaintiff with discovery. This discovery was provided nearly 29 months after Plaintiff's initial discovery request.

LAW/ANALYSIS

The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court. *Downey v. Dixon*, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987). In deciding on an appropriate sanction, the court should consider a sanction that will "serve to protect the rights of discovery provided by the Rules." *Id.* (citing *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1126 (5th Cir.), *cert. denied*, 400 U.S. 878, 91 S.Ct. 118, 27 L.Ed.2d 115 (1970) ("[O]ver- leniency [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery."); C. Wright, *The Law of Federal Courts* § 90 at 596 (4th ed. 1983) ("Without adequate sanctions, the procedure for discovery would be ineffectual."); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L.Ed.2d 747 (1976) (dictum) ("[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.").

“Rule 37 expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party’s failure to respond to certain discovery requests.” *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (Ct. App. 1997) (citing Rule 37(b)(2)(C)(d), SCRPC). While the sanction of striking a defendant’s answer is severe, South Carolina courts have done so when the situation necessitates the “harsh medicine” of default for discovery abuses. *Id.*, see also *McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008) (holding the circuit court did not abuse its discretion by striking the defendant’s answer because the defendant failed to (1) produce documents requested during discovery, (2) coherently organize the documents it did produce, and (3) provide complete responses to interrogatories, and the court told defendant to correct the discovery issues several times and warned the defendant “it was inclined to strike [defendant’s] answer.” “However, severe sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party’s rights.” *McNair*, 379 S.C. at 466, 665 S.E.2d at 832. If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment. *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-199; 511 S.E.2d 716, 718-719 (S.C.Ct. App. 1999) (affirming trial court’s order to strike and render default judgment where the record was full of multiple egregious discovery abuses that blocked the opposing party’s attempts to conduct meaningful discovery). An order striking pleadings is an appropriate sanction when a Defendant fails to comply with multiple court orders and when a “clear and explicit warning of the consequences if the defendant failed to comply with the order of the Court” was rendered by the trial court. *See Id.* at 199, at 719.

Here, it is undisputed that D.R. Horton held significant material responsive to the Plaintiff's initial discovery requests served on July 21, 2021, and that, despite being served, despite the Consent Order, and despite the passage of over two years, it failed to produce until the eve of the Plaintiff's Second Motion to Compel was scheduled to be heard. For these reasons, and for the other findings of fact set forth above, I find:

I find that DR Horton willfully failed to follow a previous order of the court on at least two occasions, and willfully failed to comply with its discovery obligations. It is clear that but for the filing of the motions to compel, the motions for sanctions, and but for the motions to compel hearings being scheduled, that D.R. Horton would have produced no discovery in this case. D.R. Horton's willful disregard for its discovery obligations burdens the court system, and it burdens the ability of both a plaintiff and a defendant to obtain appropriate and efficient resolution of cases.

As a major corporation, D.R. Horton is no stranger to litigation. For it to have been as tardy and non-compliant with the court's order—an order that it consented to—is concerning.

I find that D.R. Horton has failed to produce discovery as required by the SCRCF, necessitating the Plaintiff's first motion to compel. Thereafter, it agreed to the language of the Consent Order requiring it to "comply with Plaintiff's outstanding discovery requests, comply with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes."

I find that DR Horton willfully failed to follow the terms of the consent order dated September 22, 2022, by repeatedly failing to produce discovery in its possession thereafter. I find that it violated the terms of the Consent Order on at least two occasions by repeatedly acknowledging discovery material existed, promising to produce discovery, and failing to produce discovery or cooperate with Plaintiff to timely produce discovery thereafter. This willful disregard of the Plaintiff's rights forced Plaintiff to serve another Rule 11 letter, which D.R. Horton again ignored. Then, even after the Second Motion to Compel was filed, D.R. Horton only produced

certain discovery the day before the hearing on this Second Motion to Compel was scheduled to be heard. These two acts alone constitute two distinct violations of the Consent Order.

I find DR Horton's failure to answer discovery requests was willful, and that D.R. Horton willfully failed to follow an order of this Court to which it had consented.

I find two instances of willful discovery abuse by D.R. Horton in this instance, but I find striking D.R. Horton's answer upon a finding of two violations of the court's order would be premature. Additionally, I am providing D.R. Horton with a clear and explicit warning that upon a finding of any further discovery violations could result in its pleadings being stricken.

Therefore, I hold D.R. Horton in contempt of court for its willful and repeated discovery violations in this matter. D.R. Horton may purge the contempt before trial by engaging in no more willful discovery violations. It shall strictly abide by time deadlines. It shall fully and timely answer and respond to discovery requests. It shall cooperate fully with Plaintiff in scheduling and producing witnesses for depositions. It shall otherwise strictly comply with this court's September 22, 2022 Order and with this Order.

Nothing in this order shall be construed to limit or restrict D.R. Horton's ability to reasonably object to discovery requests, to seek appropriate confidentiality orders, to seek orders of protection or seek other similar reasonable relief or protection from discovery requests or practices of the Plaintiff in good faith.

Finally, as a sanction for its discovery abuses, I Order that D.R. Horton shall pay Plaintiff a reasonable sum of attorney's fees and costs, for all fees and costs related to work done to compel the Defendant's discovery responses, from the time the Plaintiff began drafting his first Rule 11 letter to D.R. Horton, through the time expended by Plaintiff's counsel in drafting this Order, as requested by this Court. Upon the filing of this Order, counsel for Plaintiff shall have ten days to file an Affidavit of Attorney's Fees, after which counsel for D.R. Horton shall have 10 days after the receipt of Plaintiff's Affidavit of Attorney's Fees to raise objections thereto. Should counsel for

D.R. Horton raise objections to the Plaintiff's Affidavit of Attorney's Fees, counsel for D.R. Horton may cross-examine Plaintiff's counsel on the contents thereof before any judge sitting in the Fourteenth Judicial Circuit of South Carolina. Such questioning does not need to be heard by this judge. Payment of Attorney's Fees to Plaintiff shall be made within 30 days after the Affidavit of Attorney's Fees is filed if no objections are raised by D.R. Horton. If objections to Plaintiff's attorney's fees are raised by D.R. Horton, payment of attorney's fees must be made to Plaintiff within 10 days after the date any Order resolving objections made to Plaintiff's Affidavit of Attorney's Fees is filed.

I find nothing in the record that imputes D.R. Horton's deleterious conduct and discovery violations to the acts of its attorneys. Indeed, I find that D.R. Horton's lawyers did a substantial job in defending the conduct of their client.

The Court holds D.R. Horton in contempt. It may purge its contempt by:

1. Fulfilling all of its discovery obligations from this point forward, and by avoiding any actions that warrant further Motions to Compel or Rule to Show Cause being filed by the Plaintiff;
2. By strict compliance with all discovery deadlines and answering any existing or supplemental discovery requests; and,
3. By strict compliance with this Order and the Court's September 22, 2022 Consent Order.

IT IS SO ORDERED

s/
The Honorable Diane Schafer Goodstein
Presiding Circuit Court Judge
5200 East Jim Bilton Blvd.
Post Office Box 234
St. George, SC 29477
OFFICE: (843) 832-0332
FAX: (843) 832-0389

[DIGITAL SIGNATURE PAGE FOLLOWS]



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Sanctions

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2024-03-04 16:35:06 page 9 of 9

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Jasper
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2700069

Mark W. McGilton
 PLAINTIFF(S)

Lotty Trucking Llc F/K/A Ramos Trucking Llc et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After careful review, the motions for summary judgment by both the Defendant and Plaintiff are respectfully denied due to the existence of a genuine issue of material fact.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/04/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-06-04 07:54:38 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

MARK W. MCGILTON,
Plaintiff,

v.

1223 MAY RIVER ROAD, LLC, D.R.
HORTON, INC., AND LOTTY
TRUCKING,
LLC F/K/A RAMOS TRUCKING, LLC,

Defendants.

1223 MAY RIVER ROAD, LLC,

Third-Party Plaintiffs,

v.

KENNETH SCOTT BUILDERS, LLC,
Third-Party Defendants.

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

CASE No(s): 2021CP2700069

ORDER

The court finds that the Defendant failed to comply with the scheduling order and has not shown good cause for such violation. The court rules:

- The Defendant is allowed to use their experts and must disclose them to the Plaintiff by Friday, June 14. The Defendant will provide a CV and a detailed outline of the experts' testimony.
- Depositions: Defendant will make the experts available to the Plaintiff at the time and place of the Plaintiff's choosing. If an agreement cannot be made, the court is to be immediately contacted.
- Discovery: All discovery will be complete by September 15, 2024.
- Mediation: The parties are to mediate the case by October 15, 2024. An insurance representative with full authority to settle the case must be present at the mediation. The Plaintiff is to pick the mediator and the date and time of mediation. The Defendant is responsible for the costs of mediation.

- If the Plaintiff is not ready for trial due to the recent delay caused by the Defendant, the court will consider granting a continuance.
- The case is set for a date certain trial on October 21, 2024, before Judge Hughston.



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Form 4

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-06-13 11:21:40 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Jasper
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2700069

Mark W. McGilton
 PLAINTIFF(S)

Lotty Trucking Llc F/K/A Ramos Trucking Llc et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on a Status Conference on August 16, 2024. This case is continued off the October 21, 2024, Jasper County Jury Trial Roster. The parties have until November 30, 2024 to complete discovery in this matter. The parties are to schedule a Status Conference with Judge Bonds during the week of December 1, 2024, to schedule a date for trial.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/28/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-08-28 10:03:01 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC, D.R.
HORTON, INC., AND LOTTY TRUCKING,
LLC F/K/A RAMOS TRUCKING, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-27-00069

CONSENT SCHEDULING ORDER

1223 MAY RIVER ROAD, LLC, and D.R.
HORTON, INC.,

Third-Party Plaintiffs,

vs.

KENNETH SCOTT BUILDERS, LLC,

Third-Party Defendants.

The parties hereby request the entry of the following Consent Scheduling Order in order to manage discovery and the trial date in this case. Consent of all parties having been given, the Court finds that the Scheduling Order as proposed is reasonable and in the interest of all parties.

1. **Plaintiff's Expert Report:** The Plaintiff shall supplement expert reports no later than **January 17, 2025**.
2. **Defendants' Expert Reports:** The Defendants shall produce expert reports no later than **February 17, 2025**.
3. **Discovery:** The parties shall complete all discovery in this matter on or before **March 31, 2025**.
4. **Mediation:** The parties shall conduct mediation on or before **March 4, 2025**.
5. This case shall be called to trial not before **June 30, 2025**.
6. This Order may be amended upon consent by the parties or a showing of good cause and only by approval of the Court.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

WE SO CONSENT:

SHELTON LAW FIRM, LLC

/s/Benjamin T. Shelton

Benjamin T. Shelton, SC Bar No.: 77207
S. Harrison Williams, SC Bar No. 102410
PO Box 21069
Hilton Head Island, SC 29925
(843) 802-0087
ben@sheltonlawsc.com
harrison@sheltonlawsc.com
Attorneys for Plaintiff

Hilton Head Island, South Carolina
December 4, 2024

BLUESTEIN THOMPSON SULLIVAN, LLC

/s/ John S. Nichols

John S. Nichols, SC Bar No. 4210
PO Box 7965
Columbia, SC 29202
(803) 779-7599
john@bluesteinattorneys.com
Attorney for Plaintiff

Columbia, South Carolina
December 4, 2024

**LAW OFFICES OF DARRELL THOMAS
JOHNSON, JR., LLC**

/s/ Warren P. Johnson

Warren P. Johnson, SC Bar No. 71759
P.O. Box 1125
300 Main Street
Hardeeville, SC 29927
(843) 784-2142
wpj@johnsonslawoffice.com
*Attorney for Lotty Trucking, LLC
f/k/a Ramos Trucking, LLC*

Hardeeville, South Carolina
December 4, 2024

KENISON, DUDLEY & CRAWFORD, LLC

/s/ John T. Crawford

John T. Crawford, Jr. SC Bar No. 69682
Kimila L. Wooten, SC Bar No. 64516
Amelia M. Framer, SC Bar No. 105750
325 W. McBee Avenue
Greenville, SC 29601
(864) 242-4899
crawford@conlaw.com
wooten@conlaw.com
farmer@conlaw.com
Attorney for D.R. Horton, Inc.

Greenville, South Carolina
December 4, 2024

LUZURIAGA MIMS, LLP

/s/ Ryan W. Conner

Ryan W. Conner, SC Bar No. 101702

Kevin W. Mims SC Bar No. 69418

W. Chase McNair SC Bar No. 100695

1156 King Street

Charleston, SC 29403

(843) 725-0001

rconner@lmlawllp.com

kmims@lmlawllp.com

cmcnair@lmlawllp.com

Attorneys for Kenneth Scott Builders, LLC

Charleston, South Carolina

December 4, 2024



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Consent Order

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-12-13 09:03:04 page 4 of 4

STATE OF SOUTH CAROLINA	)	
COUNTY OF JASPER	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
MARK W. MCGILTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2021-CP-27-00069
	)	
1223 MAY RIVER ROAD, LLC, D.R.	)	
HORTON, INC., AND LOTTY	)	
TRUCKING, LLC F/K/A RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
KENNETH SCOTT BUILDERS, Inc.,	)	
Third-Party Defendants.	)	
	)	

ORDER

This matter was before the Court on October 17, 2024, to resolve two pending motions. The first was a Motion for Rule to Show Cause filed by the Plaintiff, Mark W. McGilton. The second was a motion Defendant D.R. Horton filed seeking sanctions against Plaintiff pursuant to Rule 37, SCRCF. Appearing for the Plaintiff were Benjamin T. Shelton, Esquire, and S. Harrison Williams, Esquire, of Hilton Head Island and John S. Nichols, Esquire of Columbia. Appearing for the Defendant D.R. Horton was John T. Crawford, Jr., Esquire, and Jason Imhoff, Esquire, of Greenville. Appearing for Kenneth Scott Builders, Inc. was Ryan W. Conner, Esquire, of Charleston. After reviewing the record and hearing arguments of counsel the Court GRANTS the Plaintiff's Motion for Rule to Show Cause. The Court DENIES the Defendant's motion for sanctions.

DISCUSSION

This is the fourth time the Court has addressed discovery issues involving D.R. Horton, who was previously held in contempt for discovery abuse in this matter. As the Court of Appeals explained, “[a]n abiding maxim of the successful trial lawyer, like the motto of the Boy Scouts, is ‘Be Prepared.’” *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). The Court of Appeals later explained:

The entire thrust of the discovery rules involves full and fair disclosure, “to prevent a trial from becoming a guessing game or one of surprise for either party.” *State Highway Dep’t v. Booker*, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (quoting *Hodge v. Myers*, 255 S.C. 542, 545, 180 S.E.2d 203, 205 (1971)). Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987).

Samples v. Mitchell, 329 S.C. 105, 113-114, 495 S.E.2d 213, 217 (1997).

The imposition of sanctions for discovery abuse is generally entrusted to the sound discretion of the circuit court. *Downey v. Dixon*. In deciding on an appropriate sanction, the court should consider a sanction that will “serve to protect the rights of discovery provided by the Rules.” *Id.* (citing *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1126 (5th Cir.), *cert. denied*, 400 U.S. 878 (1970) (“[O]ver-lenieny [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery.”); C. Wright, *The Law of Federal Courts* § 90 at 596 (4th ed. 1983) (“Without adequate sanctions, the procedure for discovery would be ineffectual.”); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L.Ed.2d 747 (1976) (dictum) (“[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those

whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.”).

Rule 37, SCRCP, “expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party’s failure to respond to certain discovery requests.” *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (Ct. App. 1997) (citing Rule 37(b)(2)(C) and (d), SCRCP). *See, also, Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003) (“[p]ursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may ‘make such orders in regard to the failure as are just,’ including an order dismissing the action or proceeding, or any part thereof.”); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-199, 511 S.E.2d 716, 718-719 (Ct. App. 1999) (affirming trial court’s order to strike and render default judgment where the record was full of multiple egregious discovery abuses that blocked the opposing party’s attempts to conduct meaningful discovery).

An order striking pleadings is an appropriate sanction when a party fails to comply with multiple court orders and when a “clear and explicit warning of the consequences if the defendant failed to comply with the order of the Court” was rendered by the trial court. *Griffin Grading* at 199, 511 S.E.2d at 719. *See also Davis v. Parkview Apartments*, 409 S.C. 266, 762, S.E.2d 535 (2014) (upholding an order of dismissal as a sanction for plaintiff’s repeated failure to comply with discovery orders); *QZO, Inc. v. Moyer*, 358 S.C. 246, 257, 594 S.E.2d 541, 547 (Ct. App. 2004) (affirming the sanction of striking the appellant’s answer and declaring him in default where evidence supported the circuit court’s finding that the appellant willfully destroyed evidence and willfully violated a temporary restraining order); *Halverson v. Yawn*, 328 S.C. 618, 620–21, 493

S.E.2d 883, 884–85 (Ct. App. 1997) (finding that a dismissal of a complaint was appropriate when appellant failed to timely respond to discovery requests, in violation of an order).

While the sanction of striking a party’s pleading is severe, South Carolina courts have done so when the situation necessitates this “harsh medicine” for discovery abuses. *See also McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008) (holding the circuit court did not abuse its discretion by striking the defendant’s answer because the defendant failed to (1) produce documents requested during discovery, (2) coherently organize the documents it did produce, or (3) provide complete responses to interrogatories, and the court told defendant to correct the discovery issues several times and warned the defendant “it was inclined to strike [defendant’s] answer.”). “However, severe sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party’s rights.” *McNair*, 379 S.C. at 466, 665 S.E.2d at 832.

A. Plaintiff’s Rule to Show Cause

In his initial discovery requests Plaintiff served on July 22, 2021, Plaintiff asked D.R. Horton to identify all communications between D.R. Horton, Inc. and Kenneth Scott Builders, Inc. relating to Cypress Ridge. (Plaintiff’s Gen. Interrog. No. 2). Plaintiff asked D.R. Horton to “Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense of this case.” (Plaintiff’s Stand. Interrog. No. 2). Plaintiff also asked D.R. Horton to identify all documents “which You have knowledge relating to this lawsuit.” (Plaintiff’s Gen. Interrog. No. 4).

Plaintiff further requested a copy of any building permits, zoning permits, or other documents obtained by D.R. Horton to develop Cypress Ridge, located at 210 Hulston Landing Rd., Bluffton, SC 29909. (Plaintiff’s 1st RFP No. 11). The Plaintiff also requested “[c]opies of

all documents identified, referred to, or used in your answers to Plaintiff's First Set of Interrogatories." (Plaintiff's 1st RFP No. 1).

Defendant D.R. Horton has based its defense in this case on the premise that it is merely an owner of the development and did not have a hand in the construction or act as a general contractor. (See Def. D.R. Horton, Inc.'s Mtn. for Summary Judgment as to Pl. Mark W. McGilton, and Def. D.R. Horton, Inc.'s Mtn. to Reconsider, Alter or Amend Order on its Mtn. for Summary Judgment). Defendant deposed the Plaintiff's safety and compliance expert, highlighting the contention that D.R. Horton was purportedly merely an owner of the land and not a General Contractor. Plaintiff's safety and compliance expert testified that D.R. Horton's responsibilities over the land and development merely as owner and not acting as contractor would be very limited if existent at all.

After Plaintiff's Safety and Compliance Expert testified, in a subsequent deposition Mr. Alfredo Uriostegui, the driver of the dump truck involved in the collision in this matter, testified that he regularly worked on a site in Cypress Ridge where D.R. Horton was building its regional office building. (Uriostegui Dep. 235:14-237:23). He also testified that he loaded and removed dirt from the site where D.R. Horton was building its regional office building both across Hulston Landing Rd. to another phase of the Cypress Ridge development as "good dirt." (Uriostegui Dep. 235:14-237:23). He testified further that he removed dirt from the site where D.R. Horton was building its regional office building and hauled it off site for use at other construction sites. (Uriostegui Dep. 235:14-237:23). Finally, Mr. Uriostegui testified he regularly worked all day hauling dirt from the office building site to the townhome site at Cypress Ridge. (Uriostegui Dep. 184:23-185:3).

Based upon the later deposition testimony of Mr. Uriostegui, Plaintiff's counsel searched for any permits or plans relating to what is known as the "Commercial" phase or Office/RV Lot phase of the Cypress Ridge development within material produced by Defendant D.R. Horton. While Defendant had produced invoices and payment requests from Kenneth Scott Builders, Inc. relating to the Office/RV Lot phase (showing that Kenneth Scott Builders invoiced D.R. Horton over \$300,000.00 for work), D.R. Horton produced no permits or plans relating to the Office/RV lot phase.

Plaintiff filed a Freedom of Information Act (FOIA) request for material relating to the Office/RV lot phase of development by D.R. Horton with the Town of Bluffton. In response to the FOIA request, the Town of Bluffton produced:

1. A copy of the building permit for the regional office headquarters for D.R. Horton showing that D.R. Horton was both the applicant and the General Contractor for the regional office building within the commercial phase a/k/a office and RV phase of Cypress Ridge;
2. Documents showing that plans for the site of D.R. Horton's regional office and the R/V Lot phase were one and the same;
3. Volumes of communications (hundreds if not thousands of pages) between D.R. Horton's 30(b)(6) deponents, the Town of Bluffton concerning the control, methods, permitting, and means of the development of Cypress Ridge, and several communications between Kenneth Scott Builders, Inc. and D.R. Horton's employees; and

4. Several notices of inspection and notices of violations relating to grading, surface and wastewater rules and regulations from the Town of Bluffton directed to Defendant D.R. Horton.

These documents tend to show that D.R. Horton was the general contractor of record for the very phase of work which was being completed by the Dump Truck Operator (as defined in Plaintiff's Complaint) when the Dump Truck Operator collided with the Plaintiff on his way back to Cypress Ridge to perform more work for D.R. Horton. The documents support Plaintiff's contention that D.R. Horton was the General Contractor over the phase of development from which the Dump Truck Operator mined dirt and regularly hauled loads of dirt off site. That is, these documents are evidence that Defendant D.R. Horton was acting as the General Contractor over the Dump Truck Operator, having power, control and responsibility over him.

The documents support Plaintiff's contention that D.R. Horton allowed an uninsured and un-maintained dump truck to operate on its construction site and the Operator to keep its truck on its construction site for well over a year. D.R. Horton concealed these facts from the Plaintiffs and failed to disclose these facts to the court in its motion for Summary Judgment. D.R. Horton was in possession of these very same documents but failed to produce them for over three years after Plaintiff's discovery requests to which these documents would have been responsive.

As mentioned above, this is the fourth time the parties have been before the circuit court regarding the Defendant D.R. Horton's failure to cooperate fully with discovery. On September 20, 2022, the Honorable Bentley Price entered an order on Plaintiff's motion to compel and for sanctions, noting the parties had reached an agreement such that "the Motion to Compel would be withdrawn without prejudice with leave to Plaintiff to file the motion again and seek sanctions should Defendant D.R. Horton not comply with Plaintiff's outstanding discovery requests, comply

with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes.” (Sept. 20, 2022 Consent Order at p. 1-2).

On March 4, 2024, the Honorable Diane Goodstein sanctioned Defendant D.R. Horton, held the Defendant in contempt, and ordered:

[Defendant] may purge the contempt before trial by engaging in no more willful discovery violations. It shall strictly abide by time deadlines. It shall cooperate fully and timely answer and respond to discovery requests. It shall cooperate fully with Plaintiff in scheduling and producing witnesses for depositions. It shall otherwise strictly comply with this court’s September 22, 2022 Order and with this Order.

(Mar. 5, 2024 Order Granting Pl.’s Mtn. to Compel, for Sanctions, and Holding D.R. Horton in Contempt at 7). Importantly, Judge Goodstein added “*I am providing D.R. Horton with a clear and explicit warning that upon a finding of any further discovery violations by any judge, that its pleadings will be subject to being struck.*” (emphasis added).

On June 13, 2024, the Honorable Robert Bonds granted D.R. Horton leave to disclose experts in this matter after D.R. Horton failed to comply with the previous scheduling order and failed to disclose experts within the time frame set forth in the scheduling order. Judge Bonds specifically found “[D.R. Horton] failed to comply with the scheduling order and has not shown good cause for such violation.” (Jun. 13, 2024 Order at 1).

I find Defendant D.R. Horton has engaged in willful disobedience as well as gross indifference to the prior orders of this Court. *McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008). Judge Price’s order was direct; Judge Goodstein’s order held D.R. Horton in contempt and provided a clear warning; and Judge Bonds’ order found D.R. Horton failed to demonstrate good cause for continuing to violate prior orders. I find the appropriate sanction for D.R. Horton’s repeated violation that will “serve to protect the rights of discovery provided by the Rules” is to strike its Answer and declare Defendant D.R. Horton in default. *Downey v. Dixon*, 294

S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987); *Davis v. Parkview Apartments*, 409 S.C. 266, 762, S.E.2d 535 (2014). Accordingly, I grant Plaintiff's Motion, strike Defendant D.R. Horton's answer, and declare D.R. Horton in default.

B. Defendant's Motion for Sanctions

Defendant D.R. Horton moved for sanctions against Plaintiff after Plaintiff filed his Rule to Show Cause, contending Plaintiff engaged in discovery abuse by producing three expert witnesses for depositions who were not prepared to give complete testimony. The Court rejects these arguments.

With regard to Lindsay Moore, the life care planner, D.R. Horton was aware that her report disclosed potential medical costs which were not certain at the time of the report and were dependent upon future recommendations by Plaintiff's treating physicians when D.R. Horton scheduled her deposition. Ms. Moore's deposition testimony merely removed the potential future medical costs which were uncertain from a table at the end of her report, and reserved leave to incorporate those amounts should Plaintiff and his physicians determine that medical costs indeed are necessary (and not potential) in the future. Furthermore, any issue regarding her failure to attend in person is moot since in response to Plaintiff's offer to have Ms. Moore drive to the deposition site, D.R. Horton's counsel agreed to proceed with the virtual deposition (and attended the deposition virtually himself).

With regard to Michael Fryar, Plaintiff's vocational rehabilitation assessment and earning capacity expert, D.R. Horton was aware that his report was preliminary because Mr Fryar's written report specified that his findings were preliminary. Mr. Fryar reserved the opportunity to modify and/or supplement his findings, and at the time of the deposition and the time of his report, Mr.

Fryar did not have the final disability conclusion from Plaintiff's physicians regarding Plaintiff's ability to work.

With regard to Andy Rowland, D.R. Horton insisted upon taking Mr. Rowland's deposition before D.R. Horton's Rule 30(b)(6) deposition, after being informed that many of Mr. Rowland's opinions might not be final or conclusive without being able to review the same. D.R. Horton was fully aware that Mr. Rowland needed additional information prior to formulating final conclusive opinions, some of which turned out to be the very documents D.R. Horton failed to produce in discovery.

I find there is no discovery abuse on Plaintiff's part regarding these three witnesses. I therefore deny D.R. Horton's request that the Court enter sanctions against Plaintiff pursuant to Rule 37, SCRCP.

CONCLUSION

For the reasons stated, the Court GRANTS the Plaintiff's Motion and finds the Defendant failed to show cause why its Answer should not be struck as a sanction for repeated discovery abuse. Accordingly, the Court strikes the Defendant's Answer as permitted by Rule 37(b)(2)(C), SCRCP, and declares Defendant D.R. Horton in default.

The Court DENIES the Defendant's Motion for Sanctions.

SO ORDERED.

Honorable Maité Murphy
Circuit Court Judge

January __, 2025



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Sanctions

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2025-01-15 12:15:46 page 11 of 11

STATE OF SOUTH CAROLINA	)	
COUNTY OF JASPER	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
MARK W. MCGILTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2021-CP-27-00069
	)	
1223 MAY RIVER ROAD, LLC, D.R.	)	
HORTON, INC., AND LOTTY	)	
TRUCKING, LLC F/K/A RAMOS	)	ORDER GRANTING IN PART AND
TRUCKING, LLC,	)	DENYING PART DEFENDANT’S MOTION
	)	TO RECONSIDER, ALTER, OR AMEND
Defendants.	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
KENNETH SCOTT BUILDERS, Inc.,	)	
Third-Party Defendants.	)	
	)	

This matter comes before the Court on Defendant D.R. Horton’s Motion to Reconsider, Alter, or Amend the Order Granting Plaintiff’s Rule to Show Cause, striking Defendant’s Answer, and Denying Defendant’s Motion for Sanctions. This Court Amends its previous Order as follows:

DISCUSSION

This Court has addressed discovery issues involving D.R. Horton numerous times; D.R. Horton was previously held in contempt for discovery abuse in this matter. The Court of Appeals has explained:

The entire thrust of the discovery rules involves full and fair disclosure, “to prevent a trial from becoming a guessing game or one of surprise for either party.” *State Highway Dep’t v. Booker*, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (quoting

Hodge v. Myers, 255 S.C. 542, 545, 180 S.E.2d 203, 205 (1971)). Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987).

Samples v. Mitchell, 329 S.C. 105, 113-114, 495 S.E.2d 213, 217 (1997).

The imposition of sanctions for discovery abuse is generally entrusted to the sound discretion of the circuit court. *Downey v. Dixon*. In deciding on an appropriate sanction, the court should consider a sanction that will “serve to protect the rights of discovery provided by the Rules.” *Id.* (citing *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1126 (5th Cir.), *cert. denied*, 400 U.S. 878 (1970) (“[O]ver-lenieny [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery.”); C. Wright, *The Law of Federal Courts* § 90 at 596 (4th ed. 1983) (“Without adequate sanctions, the procedure for discovery would be ineffectual.”); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L.Ed.2d 747 (1976) (dictum) (“[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.”).

Rule 37, SCRPC, “expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party’s failure to respond to certain discovery requests.” *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (Ct. App. 1997) (citing Rule 37(b)(2)(C) and (d), SCRPC). *See, also, Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003) (“[p]ursuant to Rule 37(b)(2)(C), SCRPC, when a party fails to obey an order to provide or permit discovery, the court may ‘make such orders in regard to the failure as are just,’ including an order dismissing the action or proceeding, or any part thereof.”); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg.*

Co., 334 S.C. 193, 198-199, 511 S.E.2d 716, 718-719 (Ct. App. 1999) (affirming trial court’s order to strike and render default judgment where the record was full of multiple egregious discovery abuses that blocked the opposing party’s attempts to conduct meaningful discovery).

An order striking pleadings is an appropriate sanction when a party fails to comply with multiple court orders and when a “clear and explicit warning of the consequences if the defendant failed to comply with the order of the Court” was rendered by the trial court. *Griffin Grading* at 199, 511 S.E.2d at 719. *See also Davis v. Parkview Apartments*, 409 S.C. 266, 762, S.E.2d 535 (2014) (upholding an order of dismissal as a sanction for plaintiff’s repeated failure to comply with discovery orders); *QZO, Inc. v. Moyer*, 358 S.C. 246, 257, 594 S.E.2d 541, 547 (Ct. App. 2004) (affirming the sanction of striking the appellant’s answer and declaring him in default where evidence supported the circuit court’s finding that the appellant willfully destroyed evidence and willfully violated a temporary restraining order); *Halverson v. Yawn*, 328 S.C. 618, 620–21, 493 S.E.2d 883, 884–85 (Ct. App. 1997) (finding that a dismissal of a complaint was appropriate when appellant failed to timely respond to discovery requests, in violation of an order).

While the sanction of striking a party’s pleading is severe, South Carolina courts have done so when the situation necessitates this “harsh medicine” for discovery abuses. *See also McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008) (holding the circuit court did not abuse its discretion by striking the defendant’s answer because the defendant failed to (1) produce documents requested during discovery, (2) coherently organize the documents it did produce, or (3) provide complete responses to interrogatories, and the court told defendant to correct the discovery issues several times and warned the defendant “it was inclined to strike [defendant’s] answer.”). “However, severe sanctions, such as the dismissal of an action, should only be imposed

in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights." *McNair*, 379 S.C. at 466, 665 S.E.2d at 832.

A. Plaintiff's Rule to Show Cause

In his initial discovery requests Plaintiff served on July 22, 2021, Plaintiff asked D.R. Horton to identify all communications between D.R. Horton, Inc. and Kenneth Scott Builders, Inc. relating to Cypress Ridge. (Plaintiff's Gen. Interrog. No. 2). Plaintiff asked D.R. Horton to "Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense of this case." (Plaintiff's Stand. Interrog. No. 2). Plaintiff also asked D.R. Horton to identify all documents "which You have knowledge relating to this lawsuit." (Plaintiff's Gen. Interrog. No. 4).

Plaintiff further requested a copy of any building permits, zoning permits, or other documents obtained by D.R. Horton to develop Cypress Ridge, located at 210 Hulston Landing Rd., Bluffton, SC 29909. (Plaintiff's 1st RFP No. 11). The Plaintiff also requested "[c]opies of all documents identified, referred to, or used in your answers to Plaintiff's First Set of Interrogatories." (Plaintiff's 1st RFP No. 1).

Defendant D.R. Horton has based its defense in this case on the premise that it is merely an owner of the development and did not have a hand in the construction or act as a general contractor. (See Def. D.R. Horton, Inc.'s Mtn. for Summary Judgment as to Pl. Mark W. McGilton, and Def. D.R. Horton, Inc.'s Mtn. to Reconsider, Alter or Amend Order on its Mtn. for Summary Judgment). Defendant deposed the Plaintiff's safety and compliance expert, highlighting the contention that D.R. Horton was purportedly merely an owner of the land and not a General Contractor. Plaintiff's safety and compliance expert testified that D.R. Horton's responsibilities

over the land and development merely as owner and not acting as contractor would be very limited if existent at all.

After Plaintiff's Safety and Compliance Expert testified, in a subsequent deposition Mr. Alfredo Uriostegui, the driver of the dump truck involved in the collision in this matter, testified that he regularly worked on a site in Cypress Ridge where D.R. Horton was building its regional office building. (Uriostegui Dep. 235:14-237:23). He also testified that he loaded and removed dirt from the site where D.R. Horton was building its regional office building both across Hulston Landing Rd. to another phase of the Cypress Ridge development as "good dirt." (Uriostegui Dep. 235:14-237:23). He testified further that he removed dirt from the site where D.R. Horton was building its regional office building and hauled it off site for use at other construction sites. (Uriostegui Dep. 235:14-237:23). Finally, Mr. Uriostegui testified he regularly worked all day hauling dirt from the office building site to the townhome site at Cypress Ridge. (Uriostegui Dep. 184:23-185:3).

Based upon the later deposition testimony of Mr. Uriostegui, Plaintiff's counsel searched for any permits or plans relating to what is known as the "Commercial" phase or Office/RV Lot phase of the Cypress Ridge development within material produced by Defendant D.R. Horton. While Defendant had produced invoices and payment requests from Kenneth Scott Builders, Inc. relating to the Office/RV Lot phase (showing that Kenneth Scott Builders invoiced D.R. Horton over \$300,000.00 for work), D.R. Horton produced no permits or plans relating to the Office/RV lot phase.

Plaintiff filed a Freedom of Information Act (FOIA) request for material relating to the Office/RV lot phase of development by D.R. Horton with the Town of Bluffton. In response to the FOIA request, the Town of Bluffton produced:

1. A copy of the building permit for the regional office headquarters for D.R. Horton showing that D.R. Horton was both the applicant and the General Contractor for the regional office building within the commercial phase a/k/a office and RV phase of Cypress Ridge;
2. Documents showing that plans for the site of D.R. Horton's regional office and the R/V Lot phase were one and the same;
3. Volumes of communications (hundreds if not thousands of pages) between D.R. Horton's 30(b)(6) deponents, the Town of Bluffton concerning the control, methods, permitting, and means of the development of Cypress Ridge, and several communications between Kenneth Scott Builders, Inc. and D.R. Horton's employees; and
4. Several notices of inspection and notices of violations relating to grading, surface and wastewater rules and regulations from the Town of Bluffton directed to Defendant D.R. Horton.

These documents tend to show that D.R. Horton was the general contractor of record for the very phase of work which was being completed by the Dump Truck Operator (as defined in Plaintiff's Complaint) when the Dump Truck Operator collided with the Plaintiff on his way back to Cypress Ridge to perform more work for D.R. Horton. The documents support Plaintiff's contention that D.R. Horton was the General Contractor over the phase of development from which the Dump Truck Operator mined dirt and regularly hauled loads of dirt off site. That is, these documents are evidence that Defendant D.R. Horton was acting as the General Contractor over the Dump Truck Operator, having power, control and responsibility over him.

The documents support Plaintiff's contention that D.R. Horton allowed an uninsured and un-maintained dump truck to operate on its construction site and the Operator to keep its truck on its construction site for well over a year. D.R. Horton concealed these facts from the Plaintiffs and failed to disclose these facts to the court in its motion for Summary Judgment. D.R. Horton was in possession of these very same documents but failed to produce them for over three years after Plaintiff's discovery requests to which these documents would have been responsive.

The record reflects this is the fourth time the parties have been before the circuit court regarding the Defendant D.R. Horton's failure to cooperate fully with discovery. On September 20, 2022, the Honorable Bentley Price entered an order on Plaintiff's motion to compel and for sanctions, noting the parties had reached an agreement such that "the Motion to Compel would be withdrawn without prejudice with leave to Plaintiff to file the motion again and seek sanctions should Defendant D.R. Horton not comply with Plaintiff's outstanding discovery requests, comply with continuing discovery obligations, and work in good faith with Plaintiff to resolve any further discovery disputes." (Sept. 20, 2022 Consent Order at p. 1-2).

On March 4, 2024, the Honorable Diane Goodstein sanctioned Defendant D.R. Horton, held the Defendant in contempt, and ordered:

[Defendant] may purge the contempt before trial by engaging in no more willful discovery violations. It shall strictly abide by time deadlines. It shall cooperate fully and timely answer and respond to discovery requests. It shall cooperate fully with Plaintiff in scheduling and producing witnesses for depositions. It shall otherwise strictly comply with this court's September 22, 2022 Order and with this Order.

(Mar. 5, 2024 Order Granting Pl.'s Mtn. to Compel, for Sanctions, and Holding D.R. Horton in Contempt at 7). Importantly, Judge Goodstein added "*I am providing D.R. Horton with a clear and explicit warning that upon a finding of any further discovery violations by any judge, that its pleadings will be subject to being struck.*" (emphasis added).

On June 13, 2024, the Honorable Robert Bonds granted D.R. Horton leave to disclose experts in this matter after D.R. Horton failed to comply with the previous scheduling order and failed to disclose experts within the time frame set forth in the scheduling order. Judge Bonds specifically found “[D.R. Horton] failed to comply with the scheduling order and has not shown good cause for such violation.” (Jun. 13, 2024 Order at 1).

This Court finds Defendant D.R. Horton has engaged in willful disobedience as well as gross indifference to the prior orders of this Court, resulting in prejudice to the Plaintiff and justifying said sanctions. *McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008); *see also Davis v. Parkview Apartments*, 409 S.C. 266 (2014). Judge Price’s order was direct; Judge Goodstein’s order held D.R. Horton in contempt and provided a clear warning; and Judge Bonds’ order found D.R. Horton failed to demonstrate good cause for continuing to violate prior orders. Defendant D.R. Horton’s repeated disregard for the discovery process and subsequent court orders has caused prejudice to the Plaintiff.

The Court find the appropriate sanction for D.R. Horton’s repeated violation that will “serve to protect the rights of discovery provided by the Rules” is to strike its Answer and declare Defendant D.R. Horton in default. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987); *Davis v. Parkview Apartments*, 409 S.C. 266, 762, S.E.2d 535 (2014). Accordingly, the Court GRANTS Plaintiff’s Motion, strikes Defendant D.R. Horton’s answer, and declares D.R. Horton in default.

B. Defendant’s Motion for Sanctions

Defendant D.R. Horton moved for sanctions against Plaintiff after Plaintiff filed his Rule to Show Cause, contending Plaintiff engaged in discovery abuse by producing three expert

witnesses for depositions who were not prepared to give complete testimony. The Court respectfully rejects these arguments.

With regard to Lindsay Moore, the life care planner, D.R. Horton was aware that her report disclosed potential medical costs which were not certain at the time of the report and were dependent upon future recommendations by Plaintiff's treating physicians when D.R. Horton scheduled her deposition. Ms. Moore's deposition testimony merely removed the potential future medical costs which were uncertain from a table at the end of her report, and reserved leave to incorporate those amounts should Plaintiff and his physicians determine that medical costs indeed are necessary (and not potential) in the future. Furthermore, any issue regarding her failure to attend in person is moot since in response to Plaintiff's offer to have Ms. Moore drive to the deposition site, D.R. Horton's counsel agreed to proceed with the virtual deposition (and attended the deposition virtually himself).

With regard to Michael Fryar, Plaintiff's vocational rehabilitation assessment and earning capacity expert, D.R. Horton was aware that his report was preliminary because Mr. Fryar's written report specified that his findings were preliminary. Mr. Fryar reserved the opportunity to modify and/or supplement his findings, and at the time of the deposition and the time of his report, Mr. Fryar did not have the final disability conclusion from Plaintiff's physicians regarding Plaintiff's ability to work.

With regard to Andy Rowland, D.R. Horton insisted upon taking Mr. Rowland's deposition before D.R. Horton's Rule 30(b)(6) deposition, after being informed that many of Mr. Rowland's opinions might not be final or conclusive without being able to review the same. D.R. Horton was fully aware that Mr. Rowland needed additional information prior to formulating final conclusive

opinions, some of which turned out to be the very documents D.R. Horton failed to produce in discovery.

The Court finds there is no discovery abuse on Plaintiff's part regarding these three witnesses. This Court therefore deny D.R. Horton's request that the Court enter sanctions against Plaintiff pursuant to Rule 37, SCRCP.

CONCLUSION

For the reasons stated, the Court respectfully GRANTS in part and DENIES in part Defendant's Motion to Reconsider, Alter, or Amend its previous Order. However, the result of the previous Order remains and the Court GRANTS the Plaintiff's Motion and finds the Defendant failed to show cause why its Answer should not be struck as a sanction for repeated discovery abuse. Accordingly, the Court strikes the Defendant's Answer as permitted by Rule 37(b)(2)(C), SCRCP, and declares Defendant D.R. Horton in default.

The Court DENIES the Defendant's Motion for Sanctions.

SO ORDERED.



Jasper Common Pleas

Case Caption: Mark W. McGilton VS 1223 May River Road, Llc , defendant, et al
Case Number: 2021CP2700069
Type: Order/Other

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2025-06-02 18:58:18 page 11 of 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO. 2021-CP-27-
MARK W. McGILTON,	)	
	)	
Plaintiff,	)	
	)	SUMMONS
v.	)	
	)	JURY TRIAL DEMANDED
1223 MAY RIVER ROAD, LLC;	)	
D.R. HORTON, INC.; and, LOTTY	)	
TRUCKING LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office, Post Office Box 21069, Hilton Head Island, South Carolina 29925, within thirty (30) days after service thereof, exclusive of the day of such service, and if you fail to appear and defend against the said action then judgment by default will be rendered against you for the relief demanded in the Complaint.

/s/Benjamin T. Shelton

SHELTON LAW FIRM, LLC

P.O. Box 21069

Hilton Head Island, SC 29925

(843) 802-0087

ben@sheltonlawsc.com

February 17, 2021

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO. 2021-CP-27-
MARK W. McGILTON,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	
	)	JURY TRIAL DEMANDED
1223 MAY RIVER ROAD, LLC,	)	
D.R. HORTON, INC., and, LOTTY	)	
TRUCKING, LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
<u>Defendants.</u>	)	

The Plaintiff, by and through the undersigned attorney, comes now in a Complaint against the above referenced Defendants, to show:

PREAMBLE

On March 13, 2018, the Plaintiff, Mr. Mark W. McGilton, was lawfully operating his vehicle on May River Rd. in or about Bluffton, South Carolina. At no fault of the Plaintiff, a dump truck driver, operating unlawfully and engaged together with the Defendants for their mutual benefit and with a common purpose of hauling dirt from one project site to another, crossed the center line and caused a head-on collision resulting in devastating permanent injury and damages to the Plaintiff.

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of Beaufort County, South Carolina.
2. Plaintiff incorporates the preamble as if repeated herein.

3. Defendant Lotty Trucking LLC f/k/a Ramos Trucking, LLC (herein, "**Ramos Trucking**") is a South Carolina limited liability company that at all relevant times maintained a principal place of business in Ridgeland, in Jasper County, South Carolina. Upon information and belief, Ramos Trucking garaged, kept, and/or maintained and did provide maintenance, parts, and labor to the maintenance of the dump truck operated by the dump truck driver before, at or around the time of the accident at issue in this matter. At all relevant times Ramos Trucking held a duty to third parties, including the Plaintiff, to reasonably perform services, provide reasonable parts for, and reasonably maintain the dump truck at issue in this matter.

4. Defendant 1223 May River Road, LLC (herein, "**1223 May River**") is a South Carolina limited liability company and is the owner and developer of a commercial real estate development located at 1223 May River Road, Bluffton, SC 29910, with its principal place of business in Beaufort County, South Carolina. 1223 May River held, shared, or assumed certain duties and obligations to third parties, including the Plaintiff, while carrying out its business at and development of 1223 May River Road.

5. D.R. Horton, Inc. (herein, "**D.R. Horton**") is a foreign corporation doing business throughout South Carolina. It is now and was at all relevant times herein the builder and developer of a community known as Cypress Ridge, located at 210 Hulston Landing Rd, Bluffton, SC 29909 (a project hereinafter referenced as, "**Cypress Ridge**"). D.R. Horton held, shared, or assumed certain duties and obligations to third parties,

including the Plaintiff, while carrying out its business at and development of Cypress Ridge.

6. Jurisdiction and venue are proper in this Court.

FACTS

7. At all relevant times herein, 1223 May River engaged with, and exercised control, responsibility and a shared a financial interest with Kenneth Scott Builders, Inc. (hereinafter, "Kenneth Scott") and Kenneth Scott's employee, servant and agent, Jacob-AU Trucking, LLC (herein, "Jacob-AU") and Alfredo Uriostegui (Kenneth Scott, Jacob-AU and Alfredo Uriostegui, hereinafter collectively referenced as the "Dump Truck Operator") in a relationship comprised of common interests for the common purpose of (among other things) the development and construction of 1223 May River Rd., and profited from the same.

8. At all relevant times, D.R. Horton engaged with, and exercised control, responsibility and a shared financial interest with the Dump Truck Operator in a relationship comprised of common interests for the common purpose of (among other things) the development and construction of Cypress Ridge, and profited from the same.

9. On or about March 13, 2018, Plaintiff was operating his vehicle on May River Road in Bluffton, Beaufort County, South Carolina. The Dump Truck Operator was traveling in the opposite direction on May River Road. Said dump truck, unable to stop with brakes, crossed the centerline in effort to avoid colliding with a vehicle in the dump

truck's lane of traffic, and collided with Plaintiff in a head-on collision. At approximately 45 miles per hour. The Plaintiff's vehicle was destroyed. The Plaintiff suffered millions of dollars of medical bills and painful permanent injuries as a result of the collision.

10. Shortly prior to the collision, the dump truck was being operated for the mutual benefit of the Dump Truck Operator, 1223 May River, and D.R. Horton, loading dirt at Cypress Ridge and hauling it to be dumped at 1223 May River.

11. Immediately before the collision, the dump truck was operated for the mutual benefit of the Dump Truck Operator, 1223 May River, and D.R. Horton, returning dumping dirt from Cypress Ridge at 1223 May River Rd., acting in furtherance of the common purpose.

12. At the time of the accident, the Dump Truck Operator was driving the dump truck from 1223 May River Rd. and returning to Cypress Ridge to load more fill dirt to be returned to, and dumped at, 1223 May River Rd., furthering the common purpose of hauling dirt shared by it, 1223 May River, and, D.R. Horton.

13. At the time of the collision, the dump truck at issue was controlled, operated, managed, engaged and/or utilized by D.R. Horton, 1223 May River, and the Dump Truck Operator for their shared, common interest and profit, for the common purpose of the development of 1223 May River and Cypress Ridge, and in hauling goods (i.e. dirt) for compensation over the public roadways of South Carolina, which was the very purpose that the respective relationships between them were established.

14. Defendants negligently owned, leased, supplied, entrusted, contracted, directed, operated, controlled, and/or maintained the dump truck, thereby causing the dump truck to strike Plaintiff's vehicle.

15. Defendants negligently hired, provided, supplied, trained, and/or instructed the dump truck driver in the safe use and operation of the dump truck.

16. At the time of the collision, the dump truck driven by the Dump Truck Operator had several maintenance violations, including those related to brakes, in violation of law.

17. The dump truck that collided with the Plaintiff failed to maintain certain mandatory contracts, in violation of law.

18. The dump truck involved in the accident with Plaintiff constituted an unlawful public safety hazard and/or a dangerous instrument.

19. D.R. Horton and 1223 May River each held certain responsibilities and duties to the Plaintiff to reasonably supervise and control work arising from premises they owned, their projects, jobsites, and/or premises over which they controlled.

20. D.R. Horton and 1223 May River each held certain responsibilities and duties to the Plaintiff to reasonably ensure that work done at their projects on premises that they owned or controlled was lawfully performed.

21. D.R. Horton and 1223 May River each held duties to the Plaintiff to reasonably supervise their projects and reasonably prevent unlawful public safety

hazards and/or dangerous instruments from performing work at locations they owned and/or at their projects.

22. Defendant Ramos Trucking held a duty to provide reasonable services, commercially reasonable parts, and maintenance to the dump truck operated by Dump Truck Operator. Defendant Ramos Trucking breached these duties. It was foreseeable that its breach of duties would cause serious injury to third parties operating vehicles on public highways, including the Plaintiff.

23. Additionally, the Defendants owed Plaintiff a statutory and common law duty of care.

24. That Defendants breached said duties as outlined herein.

FOR A FIRST CAUSE OF ACTION
(Negligent Maintenance – Garage Liability)
(As to Defendant Lotty Trucking, LLC)

25. The Plaintiff repeats all preceding paragraphs of this Complaint as if fully restated verbatim herein.

26. Defendant Lotty Trucking LLC f/k/a Ramos Trucking, LLC, (herein, “*Ramos Trucking*”) upon information and belief, garaged and/or stored the dump truck in question, and performed maintenance and/or supplied parts to the dump truck that collided with the Plaintiff.

27. Ramos Trucking’s principal place of business where the dump truck was stored and garaged was at all relevant times in Jasper County, South Carolina.

28. Upon information and belief, the dump truck driver paid or otherwise provided consideration to Ramos Trucking for the storage and maintenance of the dump truck.

29. Ramos Trucking owed all foreseeable third parties, including the Plaintiff, a duty to exercise reasonable care in the maintenance of the dump truck.

30. Ramos Trucking owed the Plaintiff a duty to exercise reasonable care in supplying parts to the dump truck.

31. Upon information and belief, Ramos Trucking breached these duties of care owed to the Plaintiff. The failure by Ramos Trucking to exercise reasonable care caused and/or contributed to the dump truck operating as a dangerous instrument and public safety hazard, thereby causing the collision and injuries to the Plaintiff.

32. Specifically, at the time of the accident, the dump truck had maintenance violations relating to brake performance, including but not limited to several loose and/or improperly connected slack adjusters, loose brake chamber, several kinked brake hoses, oil covered brake pads, a leaking brake seal, improper brake hose connections, unmaintained push rods, and loose bolts.

33. Upon information and belief, on or about March 13, 2018, the operator of the dump truck unlawfully swerved into oncoming traffic and head-on into the Plaintiff, when the over 25,000lb dump truck's brakes malfunctioned and/or knowing or believing

that the dump truck's brakes would malfunction, in effort to avoid colliding with a slowing or stopped vehicle in their lane of traffic.

34. In addition, upon information and belief, as stated above, the operator of the dump truck, Jacob-AU and Alfredo Uriostegui, and, Ramos Trucking shared a financial interest in the operator of the dump truck's hauling operations.

35. As a direct and proximate result of Ramos Trucking's acts or omissions, which were negligent, grossly negligent, reckless and wanton, the Plaintiff suffered injuries and damages in an amount to be shown at the trial of the matter.

36. The Plaintiff prays for a judgment against Ramos Trucking for actual and consequential damages, and for a reasonable amount of punitive damages in an amount to be determined by the jury at the trial of the matter.

FOR A SECOND CAUSE OF ACTION

(Gross Negligence/Negligence as to D.R. Horton and 1223 May River Road)
(Joint Enterprise Liability)

37. Plaintiff repeats the preceding paragraphs of this Complaint as if fully restated verbatim herein.

38. At all relevant times herein, Defendant D.R. Horton and 1223 May River Road were engaged in a joint enterprise with the Dump Truck Operator relative to the development of their respective projects and in the hauling of dirt from one project to the other.

39. The accident and injuries described herein were caused by the Dump Truck Operator while it acted in furtherance of the joint enterprise of D.R. Horton and the Dump Truck Operator of the development of the Cypress Ridge project, and, in while engaged in the joint enterprise of hauling dirt from Cypress Ridge project during the project's construction and development.

40. The accident and injuries described herein were caused by the Dump Truck Operator while it acted in furtherance of the joint enterprise of 1223 May River and the Dump Truck Operator of the development of the 1223 May River project, and while engaged in the joint enterprise of hauling dirt to the 1223 May River Rd. project during its construction and development.

41. While engaged in and in furtherance of its the joint enterprise with D.R. Horton, the Dump Truck Operator was negligent, grossly negligent, reckless and wanton in the operation and maintenance of the Dump Truck.

42. While engaged in and in furtherance of its joint enterprise with 1223 May River, the Dump Truck Operator was negligent, grossly negligent, reckless and wanton in the operation and maintenance of the Dump Truck.

43. The dump truck was operated in violation of law.

44. Upon information and belief, at all relevant times of their joint enterprise, Defendants were unlawfully operating as a motor carrier.

45. Defendant 1223 May River and D.R. Horton and the Dump Truck Operator are jointly and severally liable for all acts and/or omissions in furtherance of their joint enterprises.

46. That Defendants were negligent, negligent per se, careless, reckless, grossly negligent, willful, and wanton at the time and place above mentioned in the following particulars:

- a. in operating a motor vehicle, a dangerous instrumentality, in an unsafe manner;
- b. in traveling too fast for conditions;
- c. in failing to maintain the proper lane of travel;
- d. in failing to yield the right of way;
- e. in operating a dump truck with multiple safety violations;
- f. in operating a dump truck with inadequate brakes;
- g. in failing to properly maintain the dump truck;
- h. in failing to properly inspect the dump truck;
- i. in failing to keep the dump truck under proper control;
- j. in making an unsafe maneuver;
- k. in failing to supervise work done at premises they own, operate and/or managed;
- l. in failing to ensure work done at premises they owned, operated and or maintained was done lawfully;
- m. in allowing an illegal, dangerous instrument from performing work at their premises;
- n. in failing to supervise servants, agents, and/or employees;

- o. in failing to use the degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances; and
- p. in such other and further particulars as the evidence in trial may show;

all of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Plaintiff herein, said acts being in violation of the statute and common laws of the State of South Carolina.

47. The Plaintiff, in addition to actual and consequential damages, is entitled to a reasonable award of punitive damages in an amount to be determined by the jury at the trial of the case.

FOR A THIRD CAUSE OF ACTION
(Negligent Entrustment)
As to D.R. Horton and 1223 May River Rd.

48. The Plaintiff restates the preceding paragraphs of this Complaint as if fully repeated verbatim herein.

49. The Defendants D.R. Horton and 1223 May River Rd. held a duty to the Plaintiff to exercise reasonable care in entrusting the Dump Truck Operator to haul dirt to and/or from their respective projects.

50. The Defendants D.R. Horton and 1223 May River Rd. knew or reasonably should have known that the operations of the dump truck involve a danger to the public and require mandatory licenses, mandatory safety requirements, and/or other mandatory financial requirements.

51. Defendants D.R. Horton and 1223 May River Rd. knew, or should have known, that the Dump Truck Operator was operating in violation of law and was unfit to transport goods for hire within South Carolina.

52. By entrusting Dump Truck Operator with the dangerous loads and operations to and from their projects, the Defendants D.R. Horton and 1223 May River Rd. breached duties of care owed to the Plaintiff.

53. As a direct and proximate result, the Plaintiff suffered injuries and damages.

54. The acts and omissions by Defendants D.R. Horton and 1223 May River Rd. were grossly negligent, reckless and wanton, and the Plaintiff is entitled to an award of punitive damages in a reasonably amount to be determined by the jury at trial.

FOR A FOURTH CAUSE OF ACTION
(Vicarious Liability)
(as to D.R. Horton and 1223 May River Rd.)

55. The Plaintiff restates the preceding paragraphs of this Complaint as if fully repeated verbatim herein.

56. At all relevant times, the Dump Truck Operator was acting as an agent, servant, or employee of the Defendants at the direction and control of the Defendants within the scope of such agency, service and/or employment.

57. The Defendants D.R. Horton and 1223 May River Rd. are jointly and severally liable for the acts and omissions of their agent, servant, and/or employee.

58. As a direct and proximate result of the Dump Truck Operator's acts or omissions, the Plaintiff suffered injuries and damages.

59. The acts and omissions of the Defendants were negligent, grossly negligent, reckless and wanton, and the Plaintiff is entitled to an award of punitive damages in a reasonably amount to be determined by the jury at trial.

FOR A FIFTH CAUSE OF ACTION
(Negligent Selection)
(As to D.R. Horton and 1223 May River Rd.)

60. The Plaintiff repeats the preceding paragraphs of this Complaint as if fully restated verbatim herein.

61. D.R. Horton and 1223 May River Rd. held a duty to the Plaintiff to exercise reasonable care to engage and/or employ a competent and careful dump truck operator for its respective projects.

62. D.R. Horton and 1223 May River Rd. knew or should have known that the Dump Truck Operator operated unlawfully, failed to lawfully maintain its vehicle, failed to reasonably inspect its vehicle, and otherwise failed to comply with mandatory requirements of South Carolina law.

63. D.R. Horton and 1223 May River Rd. failed to exercise reasonable care in choosing, hiring, selecting, maintaining, engaging, and/or supervising the Dump Truck Operator relative to operations on or material hauled to and from their projects.

64. The Plaintiffs injuries would not have happened but for the Defendants' negligent selection of the Dump Truck Operator.

65. As a direct and proximate result of D.R. Horton and 1223 May River Rd. failing to exercise reasonable care in the selection of the Dump Truck Operator, the Plaintiff suffered injuries and damages. Further the Defendants acts were grossly

negligent, reckless and wanton and the Plaintiff is entitled to a reasonable award of punitive damages to be determined at the trial of the matter.

WHEREFORE, Plaintiff prays for an award against the Defendants for actual and punitive damages in an amount to be determined by the jury at the trial of the case, costs and attorney's fees.

SHELTON LAW FIRM, LLC

/s/ Benjamin T. Shelton

ATTORNEY FOR PLAINTIFF

SC Bar No. 77207

P.O. Box 21069

Hilton Head Island, SC 29925

(843) 802-0087

ben@sheltonlawsc.com

Hilton Head Island, South Carolina

February 17, 2021

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Mark W. McGilton,

Plaintiff,

v.

1223 May River Road, LLC, D.R.
Horton, Inc. and Lotty Trucking, LLC
f/k/a Ramos Trucking, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-27-00069

**ANSWER OF 1223 MAY RIVER ROAD, LLC
AND MOTION TO DISMISS
(Jury Trial Requested)**

Defendant 1223 May River Road, LLC, answering the Plaintiff's Complaint, alleges and will show as follows:

FOR A FIRST DEFENSE

1. Defendant denies any allegations pertaining to it in the PREAMBLE of the Complaint.
2. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Complaint.
3. Answering Paragraph 2 of the Complaint, Defendant reiterates its responses to the allegations of the PREAMBLE and Paragraph 1 as if fully incorporated herein.
4. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3 of the Complaint.
5. Defendant denies the allegations of Paragraph 4 of the Complaint.
6. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Complaint.

7. Defendant denies the allegations of Paragraph 6 of the Complaint.

8. Defendant denies the allegations of Paragraphs 7 of the Complaint.

9. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 8 of the Complaint.

10. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 9 of the Complaint, denies the same and demands strict proof thereof.

11. Defendant denies the allegations of Paragraphs 10, 11, 12, 13, 14, and 15 of the Complaint.

12. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraphs 16, 17, and 18 of the Complaint, denies the same and demands strict proof thereof.

13. Defendant denies the allegations of Paragraphs 18, 19, 20, 21, 22, and 23 of the Complaint.

14. Answering Paragraph 24 of the Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 23 as if fully incorporated herein.

15. The allegations of Paragraphs 25 through 36 do not pertain to this Defendant and hence require no response.

16. Answering Paragraph 37 of the Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 36 as if fully incorporated herein.

17. Defendant denies the allegations of Paragraphs 38, 39, 40, 41 and 42 of the Complaint.

18. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 43 of the Complaint, denies the same and demands strict proof thereof.

19. Defendant denies the allegations of Paragraphs 44, 45, 46 and 47 of the Complaint.

20. Answering Paragraph 48 of the Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 47 as if fully incorporated herein.

21. Defendant denies the allegations of Paragraphs 49, 50, 51, 52, 53, and 54 of the Complaint.

22. Answering Paragraph 55 of the Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 54 as if fully incorporated herein.

23. Defendant denies the allegations of Paragraphs 56, 57, 58, 59, and 59 of the Complaint.

24. Answering Paragraph 60 of the Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 59 as if fully incorporated herein.

25. Defendant denies the allegations of Paragraphs 60, 61, 62, 63, 64, and 65 of the Complaint. Further answering, Defendant denies it had any role in “selecting” the Dump Truck Operator.

FOR A SECOND DEFENSE

26. Plaintiff's Complaint fails to state a cause of action against the Defendant and should be dismissed pursuant to Rule 12(b)(6), SCRCF as this Defendant, as an owner of commercial real estate, had no role whatsoever in the selection and hiring of subcontractors or the entrustment of third parties' vehicles to subcontractors who transported fill dirt to

Defendant's property. The truck in question was not owned by Defendant. Furthermore, this Defendant has no duty to Plaintiff as is alleged in the Complaint.

FOR A THIRD DEFENSE

27. Plaintiff's damages, if any, are the sole and proximate result of the actions or omissions of another person or entity.

FOR A FOURTH DEFENSE

28. Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than fifty percent (50%). In the alternative, Plaintiff's recovery, if any, should be reduced by virtue of Plaintiff's own negligence.

FOR A FIFTH DEFENSE

29. Plaintiff has failed to mitigate his damages, if any.

FOR A SIXTH DEFENSE

30. Punitive damages are unconstitutional under the 5th, 8th and 14th Amendments of the United States Constitution and similar provisions of the South Carolina Constitution.

FOR A SEVENTH DEFENSE

31. Plaintiff's damages, if any, were the result of a sudden emergency.

FOR AN EIGHTH DEFENSE

32. Plaintiff's damages, if any, were the result of an unavoidable accident.

FOR A NINTH DEFENSE AND BY WAY OF A MOTION TO DISMISS

34. Plaintiff has failed to join other parties as is necessitated by Rule 19 of the South Carolina Rules of Civil Procedure and should be dismissed.

FOR A TENTH DEFENSE AND BY WAY OF A MOTION TO DISMISS

35. This case is pending in an improper venue and needs to be transferred to Beaufort County and further consolidated with another action that Plaintiff filed arising out of the same accident.

FOR AN ELEVENTH DEFENSE AND BY WAY OF A MOTION TO DISMISS

36. This matter should be dismissed under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure because another action is pending in Beaufort County for the same accident.

FOR A THIRTEENTH DEFENSE

37. Defendant reserves and does not waive any additional further defenses that may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully answered the Complaint of Plaintiff, Defendant pray that the Complaint be dismissed, with costs assessed to Plaintiffs, and for such other and further relief as the Court may deem proper.

HAYNSWORTH SINKLER BOYD, P.A.

s/ Roopal S. Ruparelia

Roopal S. Ruparelia (SC Bar No. 16003)
1201 Main Street, 22nd Floor
Post Office Box 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 - telephone
(803) 765.1243 - fax
rruparelia@hsblawfirm.com

March 19, 2021
Columbia, South Carolina

*Attorneys for Defendant 1223 May River
Road, LLC*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO. 2021-CP-27-00069
MARK W. McGILTON,	)	
	)	
Plaintiff,	)	
	)	Motion for Entry of Default as
v.	)	to Defendant Lotty Trucking,
	)	LLC f/k/a Ramos Trucking, LLC
1223 MAY RIVER ROAD, LLC;	)	
D.R. HORTON, INC.; and, LOTTY	)	
TRUCKING LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	

Pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure, Plaintiff, Mark W. McGilton, ("Plaintiff"), by and through his undersigned attorney, hereby moves for an entry of default against Defendant Lotty Trucking, LLC f/k/a Ramos Trucking, LLC in the above matter, and show that the Summons and Complaint of the Plaintiff was filed in this Court on February 17, 2021, in Civil Action No. 2021-CP-27-00069. Plaintiff's Summons and Complaint were served on Defendant Lotty Trucking, LLC f/k/a Ramos Trucking, LLC on February 17, 2021, as evidenced by the Proof of Service filed with the Court filed on March 15, 2021, and, attached hereto as Exhibit "1". Pursuant to Rule 12(a), SCRCF, Defendant Lotty Trucking, LLC f/k/a Ramos Trucking, LLC had thirty (30) days to answer or otherwise plead in this action, making its answer due on or before March

19, 2021. Defendant Lotty Trucking, LLC f/k/a Ramos Trucking, LLC has failed to plead or otherwise defend in a manner as required pursuant to Rules 12(a) and 6(e) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff Mark W. McGilton moves for an Order for Entry of Default, per Rule 55(a), SCRCF against Defendant Lotty Trucking, LLC f/k/a Ramos Trucking, LLC. This motion for an Order for an Entry of Default is based upon the Affidavit of Service attached as Exhibit 1 and the affirmations contained herein.

SHELTON LAW FIRM, LLC

By: *s/Benjamin T. Shelton*
Attorney for the Plaintiff
SC BAR NO: 77207
P.O. Box 21069
Hilton Head Island, SC 29925
ben@sheltonlawsc.com
(843) 802-0087

March 22, 2021
Hilton Head Island, South Carolina

AFFIDAVIT OF SERVICE

State of South Carolina

County of Jasper

Common Pleas Court

Case Number: 2021-CP-27-69

Plaintiff:
MARK W. MCGILTON

vs.

Defendant:
1223 MAY RIVER ROAD, LLC, D.R. HORTON, INC.; and, LOTTY TRUCKING, LLC f/k/a RAMOS TRUCKING, LLC

For:
Benjamin T. Shelton
Shelton Law Firm, LLC
P.O. Box 21069
Hilton Head Island, SC 29925

Received by Carolina Investigative & Consulting Services, LLC to be served on **Lotty Trucking, LLC F/K/A Ramos Trucking, LLC, 17 ISLE OF PALMS W, BLUFFTON, SC 29910.**

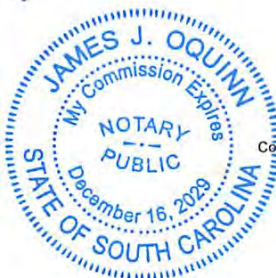
I, Tyler Chapman, being duly sworn, depose and say that on the **17th day of February, 2021** at **8:40 pm**, I:

served a **REGISTERED AGENT** by delivering a true copy of the **1) SUMMONS (Jury Trial Demanded)** **2) COMPLAINT (Jury Trial Demanded)** with the date and hour of service endorsed thereon by me, to: **CHARLOTTA RAMOS** as **Registered Agent** at the address of: **17 ISLE OF PALMS W, BLUFFTON, SC 29910** on behalf of **Lotty Trucking, LLC F/K/A Ramos Trucking, LLC**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18 and have no interest in the above action or connection therewith.

Subscribed and Sworn to before me on the 17th
day of FEBRUARY, 2021 by the affiant
who is personally known to me.


NOTARY PUBLIC




Tyler Chapman
Process Server

Carolina Investigative & Consulting Services,
LLC
548 Deloss Point Road
Ridgeland, SC 29936
(843) 226-0940

Our Job Serial Number: JOE-2021000011

Copyright © 1992-2021 Database Services, Inc. - Process Server's Toolbox V8.0n

RETURN TO: JASPER COUNTY CLERK

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

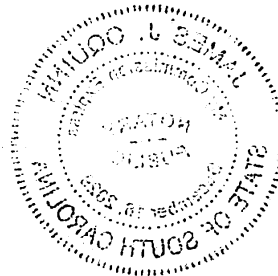
Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069

Case No. 2021CP2700069



STATE OF SOUTH CAROLINA
COUNTY OF JASPER

MARK W. MCGILTON.,

Plaintiff,

v.

1223 MAY RIVER ROAD, LLC;
D.R. HORTON, INC.; and LOTTY
TRUCKING, LLC f/k/a RAMOS
TRUCKING, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2021-CP-27-00069

**DEFENDANT D.R. HORTON, INC.'S
ANSWER TO COMPLAINT**

COMES NOW Defendant D.R. Horton, Inc. ("D.R. Horton" or "Defendant"), by and through its undersigned counsel, and hereby answers Mark M. McGilton's ("Plaintiff") Complaint as follows:

Each and every allegation set forth in Plaintiff's Complaint, not expressly admitted herein, is hereby denied.

FOR A FIRST DEFENSE
(Answer to Complaint)

1. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 1 of Plaintiff's Complaint, and therefore denies the same.
2. D.R. Horton denies the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 3 of Plaintiff's Complaint, and therefore denies the same.
4. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 4 of Plaintiff's Complaint, and therefore denies the same.

5. D.R. Horton admits so much of Paragraph 5 of Plaintiff's Complaint as alleges that D.R. Horton was a builder in Cypress Ridge community. D.R. Horton denies the remaining allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. The allegations contained in Paragraph 6 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

7. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 7 of Plaintiff's Complaint, and therefore denies the same.

8. D.R. Horton denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 9 of Plaintiff's Complaint, and therefore denies the same.

10. D.R. Horton denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. D.R. Horton denies the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. D.R. Horton denies the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. D.R. Horton denies the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. D.R. Horton denies the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. D.R. Horton denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 16 of Plaintiff's Complaint, and therefore denies the same.

17. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 17 of Plaintiff's Complaint, and therefore denies the same.

18. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 18 of Plaintiff's Complaint, and therefore denies the same.

19. The allegations contained in Paragraph 19 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

20. The allegations contained in Paragraph 20 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

21. The allegations contained in Paragraph 21 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

22. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 22 of Plaintiff's Complaint, and therefore denies the same.

23. The allegations contained in Paragraph 23 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

24. D.R. Horton denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Paragraph 25 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

26. The allegations contained in Paragraph 26 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiff's Complaint and, therefore, denies the same.

27. The allegations contained in Paragraph 27 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required,

D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27 of Plaintiff's Complaint and, therefore, denies the same.

28. The allegations contained in Paragraph 28 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28 of Plaintiff's Complaint and, therefore, denies the same.

29. The allegations contained in Paragraph 29 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29 of Plaintiff's Complaint and, therefore, denies the same.

30. The allegations contained in Paragraph 30 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 of Plaintiff's Complaint and, therefore, denies the same.

31. The allegations contained in Paragraph 31 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 31 of Plaintiff's Complaint and, therefore, denies the same.

32. The allegations contained in Paragraph 32 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 32 of Plaintiff's Complaint and, therefore, denies the same.

33. The allegations contained in Paragraph 33 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required,

D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33 of Plaintiff's Complaint and, therefore, denies the same.

34. The allegations contained in Paragraph 34 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 34 of Plaintiff's Complaint and, therefore, denies the same.

35. The allegations contained in Paragraph 35 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35 of Plaintiff's Complaint and, therefore, denies the same.

36. The allegations contained in Paragraph 36 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint and, therefore, denies the same.

37. Paragraph 37 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

38. D.R. Horton denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39. D.R. Horton denies the allegations contained in Paragraph 39 of Plaintiff's Complaint.

40. D.R. Horton denies the allegations contained in Paragraph 40 of Plaintiff's Complaint.

41. D.R. Horton denies the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42. D.R. Horton denies the allegations contained in Paragraph 42 of Plaintiff's Complaint.

43. D.R. Horton denies the allegations contained in Paragraph 43 of Plaintiff's Complaint.

44. D.R. Horton denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

45. D.R. Horton denies the allegations contained in Paragraph 45 of Plaintiff's Complaint.

46. D.R. Horton denies the allegations contained in Paragraph 46 of Plaintiff's Complaint.

47. D.R. Horton denies the allegations contained in Paragraph 47 of Plaintiff's Complaint.

48. Paragraph 48 of Plaintiff's Complaint can neither be admitted nor denied, and D.R.

Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

49. D.R. Horton denies the allegations contained in Paragraph 49 of Plaintiff's Complaint.

50. D.R. Horton denies the allegations contained in Paragraph 50 of Plaintiff's Complaint.

51. D.R. Horton denies the allegations contained in Paragraph 51 of Plaintiff's Complaint.

52. D.R. Horton denies the allegations contained in Paragraph 52 of Plaintiff's Complaint.

53. D.R. Horton denies the allegations contained in Paragraph 53 of Plaintiff's Complaint.

54. D.R. Horton denies the allegations contained in Paragraph 54 of Plaintiff's Complaint.

55. Paragraph 55 of Plaintiff's Complaint can neither be admitted nor denied, and D.R.

Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

56. D.R. Horton denies the allegations contained in Paragraph 56 of Plaintiff's Complaint.

57. D.R. Horton denies the allegations contained in Paragraph 57 of Plaintiff's Complaint.

58. D.R. Horton denies the allegations contained in Paragraph 58 of Plaintiff's Complaint.

59. D.R. Horton denies the allegations contained in Paragraph 59 of Plaintiff's Complaint.

60. Paragraph 60 of Plaintiff's Complaint can neither be admitted nor denied, and D.R.

Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

61. The allegations contained in Paragraph 61 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

62. D.R. Horton denies the allegations contained in Paragraph 62 of Plaintiff's Complaint.

63. D.R. Horton denies the allegations contained in Paragraph 63 of Plaintiff's Complaint.

64. D.R. Horton denies the allegations contained in Paragraph 64 of Plaintiff's Complaint.

65. D.R. Horton denies the allegations contained in Paragraph 65 of Plaintiff's Complaint.

66. With respect to the WHEREFORE Paragraph of Plaintiff's Complaint, D.R. Horton denies that Plaintiff is entitled to any relief it seeks by and through the Complaint.

FOR A SECOND DEFENSE

67. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

68. D.R. Horton alleges that insofar as Plaintiff's Complaint seeks punitive damages, such damages are violative of both the United States and South Carolina Constitutions. As such, Plaintiff's claim for punitive damages is barred.

FOR A THIRD DEFENSE
AND BY WAY OF MOTION TO DISMISS

69. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

70. Plaintiff has failed to join other parties as is necessitated by Rule SCRCP 42, 12(b)(8), 12(b)(7), and 18 and 19 of the South Carolina Rules of Civil Procedure and should be dismissed.

FOR A FOURTH DEFENSE
AND BY WAY OF MOTION TO DISMISS

71. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

72. This case is pending in an improper venue and needs to be transferred to Beaufort County and further consolidated with another action that Plaintiff filed arising out of the same accident pursuant to SCRCP 42, 12(b)(8), 12(b)(7), and 18 and 19.

FOR A FIFTH DEFENSE
AND BY WAY OF MOTION TO DISMISS

73. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

74. This matter should be dismissed under Rules 12 (b)(7) and 12(b)(8) of the South Carolina Rules of Civil Procedure because another action is pending in Beaufort County for the same accident.

FOR A SIXTH DEFENSE

75. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

76. Defendant reserves and does not waive any additional further defenses that may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, DR. Horton prays for:

- (a) Having fully answered the allegations of the Complaint, dismissal of the Complaint and all causes of action contained therein, with prejudice, and an award to D.R. Horton, Inc of its attorney fees, costs, and other expenses incurred in defending this action;
- (b) Attorneys' fees;
- (c) Costs of this action; and
- (d) Such other and further relief that this Court deems just and proper.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

April 14, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Mark W. McGilton,

Plaintiff,

v.

1223 May River Road, LLC, D.R. Horton,
Inc. and Lotty Trucking, LLC f/k/a Ramos
Trucking, LLC,

Defendant/Third-
Party Plaintiff

v.

Kenneth Scott Builders, LLC

Third-Party
Defendant

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-27-00069

**AMENDED ANSWER OF 1223 MAY
RIVER ROAD, LLC, MOTION TO
DISMISS, AND THIRD PARTY
PLAINTIFF'S COMPLAINT AGAINST
KENNETH SCOTT BUILDERS
(Jury Trial Requested)**

Defendant 1223 May River Road, LLC, amends its Answer to Plaintiff's Complaint and asserts third-party claims as follows:

FOR A FIRST DEFENSE

1. Defendant denies any allegations pertaining to it in the PREAMBLE of the Plaintiff's Complaint.
2. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Plaintiff's Complaint.
3. Answering Paragraph 2 of the Plaintiff's Complaint, Defendant reiterates its responses to the allegations of the PREAMBLE and Paragraph 1 as if fully incorporated herein.

4. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3 of the Plaintiff's Complaint.

5. Defendant denies the allegations of Paragraph 4 of the Plaintiff's Complaint.

6. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Plaintiff's Complaint.

7. Defendant denies the allegations of Paragraph 6 of the Plaintiff's Complaint.

8. Defendant denies the allegations of Paragraphs 7 of the Plaintiff's Complaint.

9. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 8 of the Plaintiff's Complaint.

10. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 9 of the Plaintiff's Complaint, denies the same and demands strict proof thereof.

11. Defendant denies the allegations of Paragraphs 10, 11, 12, 13, 14, and 15 of the Plaintiff's Complaint.

12. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraphs 16, 17, and 18 of the Plaintiff's Complaint, denies the same and demands strict proof thereof.

13. Defendant denies the allegations of Paragraphs 18, 19, 20, 21, 22, and 23 of the Plaintiff's Complaint.

14. Answering Paragraph 24 of the Plaintiff's Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 23 as if fully incorporated herein.

15. The allegations of Paragraphs 25 through 36 do not pertain to this Defendant and hence require no response.

16. Answering Paragraph 37 of the Plaintiff's Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 36 as if fully incorporated herein.

17. Defendant denies the allegations of Paragraphs 38, 39, 40, 41 and 42 of the Plaintiff's Complaint.

18. Defendant lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph 43 of the Plaintiff's Complaint, denies the same and demands strict proof thereof.

19. Defendant denies the allegations of Paragraphs 44, 45, 46 and 47 of the Plaintiff's Complaint.

20. Answering Paragraph 48 of the Plaintiff's Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 47 as if fully incorporated herein.

21. Defendant denies the allegations of Paragraphs 49, 50, 51, 52, 53, and 54 of the Plaintiff's Complaint.

22. Answering Paragraph 55 of the Plaintiff's Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 54 as if fully incorporated herein.

23. Defendant denies the allegations of Paragraphs 56, 57, 58, 59, and 59 of the Plaintiff's Complaint.

24. Answering Paragraph 60 of the Plaintiff's Complaint, Defendant reiterates its responses to the allegations of Paragraph 1 through 59 as if fully incorporated herein.

25. Defendant denies the allegations of Paragraphs 60, 61, 62, 63, 64, and 65 of the Plaintiff's Complaint. Further answering, Defendant denies it had any role in "selecting" the Dump Truck Operator.

FOR A SECOND DEFENSE

26. Plaintiff's Complaint fails to state a cause of action against the Defendant and should be dismissed pursuant to Rule 12(b)(6), SCRCF as this Defendant, as an owner of commercial real estate, had no role whatsoever in the selection and hiring of subcontractors or the entrustment of third parties' vehicles to subcontractors who transported fill dirt to Defendant's property. The truck in question was not owned by Defendant. Furthermore, this Defendant has no duty to Plaintiff as is alleged in the Plaintiff's Complaint.

FOR A THIRD DEFENSE

27. Plaintiff's damages, if any, are the sole and proximate result of the actions or omissions of another person or entity.

FOR A FOURTH DEFENSE

28. Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than fifty percent (50%). In the alternative, Plaintiff's recovery, if any, should be reduced by virtue of Plaintiff's own negligence.

FOR A FIFTH DEFENSE

29. Plaintiff has failed to mitigate his damages, if any.

FOR A SIXTH DEFENSE

30. Punitive damages are unconstitutional under the 5th, 8th and 14th Amendments of the United States Constitution and similar provisions of the South Carolina Constitution.

FOR A SEVENTH DEFENSE

31. Plaintiff's damages, if any, were the result of a sudden emergency.

FOR AN EIGHTH DEFENSE

32. Plaintiff's damages, if any, were the result of an unavoidable accident.

FOR A NINTH DEFENSE AND BY WAY OF A MOTION TO DISMISS

34. Plaintiff has failed to join other parties as is necessitated by Rule 19 of the South Carolina Rules of Civil Procedure and should be dismissed.

FOR A TENTH DEFENSE AND BY WAY OF A MOTION TO DISMISS

35. This case is pending in an improper venue and needs to be transferred to Beaufort County and further consolidated with another action that Plaintiff filed arising out of the same accident.

FOR AN ELEVENTH DEFENSE AND BY WAY OF A MOTION TO DISMISS

36. This matter should be dismissed under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure because another action is pending in Beaufort County for the same accident.

FOR A THIRTEENTH DEFENSE

37. Defendant reserves and does not waive any additional further defenses that may be revealed by additional information that may be acquired in discovery or otherwise.

FURTHER ANSWERING PLAINTIFF'S COMPLAINT AND BY WAY OF THIRD-PARTY PLAINTIFF'S COMPLAINT AGAINST KENNETH SCOTT BUILDERS
(Equitable Indemnity)

Defendant and Third-Party Plaintiff 1223 May River Road, LLC (Defendant/Third-Party Plaintiff) asserts the following claims against Third-Party Defendant Kenneth Scott Builders, ("Kenneth Scott") as follows:

33. Defendant/Third-Party Plaintiff is an entity organized under the laws of South Carolina and conducts business in Beaufort County, South Carolina.

34. Upon information and belief, Kenneth Scott is an entity organized under the laws of South Carolina and conducts business in Beaufort County, South Carolina.

35. This court has jurisdiction over the third-party action, as well as all parties involved herein.

36. Prior to Plaintiff's incident alleged in the Plaintiff's Complaint, Defendant/Third-Party Plaintiff contracted with Kenneth Scott to provide various construction related services for the commercial development project at 1223 May River Road in Bluffton, South Carolina.

37. A special relationship exists between Defendant/Third-Party Plaintiff contracted with Kenneth Scott.

38. On March 13, 2018 Plaintiff was involved in a vehicular accident with a dump truck operated by one Alfredo Uriostegui who was employed by/an agent of Jacob-Au Trucking, LLC ("Dump Truck Operator").

39. As a result of this accident, Plaintiff initiated this lawsuit against Defendant/Third-Party Plaintiff alleging it and Kenneth Scott "engaged with, and exercised control, responsibility..." over the dump truck and the Dump Truck Operator. See Plaintiff's Complaint Paragraph 7 (attached as Exhibit A).

40. Defendant/Third-Party Plaintiff denies it ever engaged, retained, hired, or in any way interacted or has any relationship whatsoever with either the dump truck or the Dump Truck Owner as alleged in Plaintiff's Complaint.

41. The dump truck and the Dump Truck operator were in fact retained, hired, and engaged by Kenneth Scott.

42. In the event Defendant/Third-Party Plaintiff is found liable to Plaintiff for damages as alleged in the first-party claims, Defendant/Third-Party Plaintiff alleges it is without

fault and is entitled to judgment against Kenneth Scott for full and complete equitable indemnity against any such liability, plus costs, expenses and attorney's fees in defending this action.

FOR A SECOND CAUSE OF ACTION
(Contribution)

43. Defendant/Third-Party Plaintiff hereby repeats, re-alleges, and incorporates by reference the preceding Paragraphs as if fully set forth herein verbatim.

44. To the extent Defendant/Third-Party Plaintiff is ordered, or voluntarily agrees, to pay for a proportion of damages greater than its percentage of liability in causing those damages, Defendant/Third-Party Plaintiff is entitled to contribution from any and all joint tortfeasors, including Kenneth Scott.

WHEREFORE, having fully answered the Plaintiff's Complaint of the Plaintiff, Defendant Defendant/Third-Party Plaintiff, LLC prays the same be dismissed with costs; for judgment against Third-Party Defendant Kenneth Scott Builders, LLC; attorney's fees and costs associated with defense of the matter; and for such other and further relief as may be deemed just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

s/ Roopal S. Ruparelia

Roopal S. Ruparelia (SC Bar No. 16003)

Joseph D. Spate (SC Bar No. 103734)

1201 Main Street, 22nd Floor

Post Office Box 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080 - telephone

(803) 765.1243 - fax

rruparelia@hsblawfirm.com

jspate@hsblawfirm.com

April 15, 2021
Columbia, South Carolina

*Attorneys for Defendant/Third-Party Plaintiff,
1223 May River Road, LLC.*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO. 2021-CP-27-
MARK W. McGILTON,	)	
	)	
Plaintiff,	)	
	)	SUMMONS
v.	)	
	)	JURY TRIAL DEMANDED
1223 MAY RIVER ROAD, LLC;	)	
D.R. HORTON, INC.; and, LOTTY	)	
TRUCKING LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office, Post Office Box 21069, Hilton Head Island, South Carolina 29925, within thirty (30) days after service thereof, exclusive of the day of such service, and if you fail to appear and defend against the said action then judgment by default will be rendered against you for the relief demanded in the Complaint.

/s/Benjamin T. Shelton

SHELTON LAW FIRM, LLC

P.O. Box 21069

Hilton Head Island, SC 29925

(843) 802-0087

ben@sheltonlawsc.com

February 17, 2021

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	CASE NO. 2021-CP-27-
MARK W. McGILTON,	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
v.	)	
	)	JURY TRIAL DEMANDED
1223 MAY RIVER ROAD, LLC,	)	
D.R. HORTON, INC., and, LOTTY	)	
TRUCKING, LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
<u>Defendants.</u>	)	

The Plaintiff, by and through the undersigned attorney, comes now in a Complaint against the above referenced Defendants, to show:

PREAMBLE

On March 13, 2018, the Plaintiff, Mr. Mark W. McGilton, was lawfully operating his vehicle on May River Rd. in or about Bluffton, South Carolina. At no fault of the Plaintiff, a dump truck driver, operating unlawfully and engaged together with the Defendants for their mutual benefit and with a common purpose of hauling dirt from one project site to another, crossed the center line and caused a head-on collision resulting in devastating permanent injury and damages to the Plaintiff.

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of Beaufort County, South Carolina.
2. Plaintiff incorporates the preamble as if repeated herein.

3. Defendant Lotty Trucking LLC f/k/a Ramos Trucking, LLC (herein, "**Ramos Trucking**") is a South Carolina limited liability company that at all relevant times maintained a principal place of business in Ridgeland, in Jasper County, South Carolina. Upon information and belief, Ramos Trucking garaged, kept, and/or maintained and did provide maintenance, parts, and labor to the maintenance of the dump truck operated by the dump truck driver before, at or around the time of the accident at issue in this matter. At all relevant times Ramos Trucking held a duty to third parties, including the Plaintiff, to reasonably perform services, provide reasonable parts for, and reasonably maintain the dump truck at issue in this matter.

4. Defendant 1223 May River Road, LLC (herein, "**1223 May River**") is a South Carolina limited liability company and is the owner and developer of a commercial real estate development located at 1223 May River Road, Bluffton, SC 29910, with its principal place of business in Beaufort County, South Carolina. 1223 May River held, shared, or assumed certain duties and obligations to third parties, including the Plaintiff, while carrying out its business at and development of 1223 May River Road.

5. D.R. Horton, Inc. (herein, "**D.R. Horton**") is a foreign corporation doing business throughout South Carolina. It is now and was at all relevant times herein the builder and developer of a community known as Cypress Ridge, located at 210 Hulston Landing Rd, Bluffton, SC 29909 (a project hereinafter referenced as, "**Cypress Ridge**"). D.R. Horton held, shared, or assumed certain duties and obligations to third parties,

including the Plaintiff, while carrying out its business at and development of Cypress Ridge.

6. Jurisdiction and venue are proper in this Court.

FACTS

7. At all relevant times herein, 1223 May River engaged with, and exercised control, responsibility and a shared a financial interest with Kenneth Scott Builders, Inc. (hereinafter, "Kenneth Scott") and Kenneth Scott's employee, servant and agent, Jacob-AU Trucking, LLC (herein, "Jacob-AU") and Alfredo Uriostegui (Kenneth Scott, Jacob-AU and Alfredo Uriostegui, hereinafter collectively referenced as the "Dump Truck Operator") in a relationship comprised of common interests for the common purpose of (among other things) the development and construction of 1223 May River Rd., and profited from the same.

8. At all relevant times, D.R. Horton engaged with, and exercised control, responsibility and a shared financial interest with the Dump Truck Operator in a relationship comprised of common interests for the common purpose of (among other things) the development and construction of Cypress Ridge, and profited from the same.

9. On or about March 13, 2018, Plaintiff was operating his vehicle on May River Road in Bluffton, Beaufort County, South Carolina. The Dump Truck Operator was traveling in the opposite direction on May River Road. Said dump truck, unable to stop with brakes, crossed the centerline in effort to avoid colliding with a vehicle in the dump

truck's lane of traffic, and collided with Plaintiff in a head-on collision. At approximately 45 miles per hour. The Plaintiff's vehicle was destroyed. The Plaintiff suffered millions of dollars of medical bills and painful permanent injuries as a result of the collision.

10. Shortly prior to the collision, the dump truck was being operated for the mutual benefit of the Dump Truck Operator, 1223 May River, and D.R. Horton, loading dirt at Cypress Ridge and hauling it to be dumped at 1223 May River.

11. Immediately before the collision, the dump truck was operated for the mutual benefit of the Dump Truck Operator, 1223 May River, and D.R. Horton, returning dumping dirt from Cypress Ridge at 1223 May River Rd., acting in furtherance of the common purpose.

12. At the time of the accident, the Dump Truck Operator was driving the dump truck from 1223 May River Rd. and returning to Cypress Ridge to load more fill dirt to be returned to, and dumped at, 1223 May River Rd., furthering the common purpose of hauling dirt shared by it, 1223 May River, and, D.R. Horton.

13. At the time of the collision, the dump truck at issue was controlled, operated, managed, engaged and/or utilized by D.R. Horton, 1223 May River, and the Dump Truck Operator for their shared, common interest and profit, for the common purpose of the development of 1223 May River and Cypress Ridge, and in hauling goods (i.e. dirt) for compensation over the public roadways of South Carolina, which was the very purpose that the respective relationships between them were established.

14. Defendants negligently owned, leased, supplied, entrusted, contracted, directed, operated, controlled, and/or maintained the dump truck, thereby causing the dump truck to strike Plaintiff's vehicle.

15. Defendants negligently hired, provided, supplied, trained, and/or instructed the dump truck driver in the safe use and operation of the dump truck.

16. At the time of the collision, the dump truck driven by the Dump Truck Operator had several maintenance violations, including those related to brakes, in violation of law.

17. The dump truck that collided with the Plaintiff failed to maintain certain mandatory contracts, in violation of law.

18. The dump truck involved in the accident with Plaintiff constituted an unlawful public safety hazard and/or a dangerous instrument.

19. D.R. Horton and 1223 May River each held certain responsibilities and duties to the Plaintiff to reasonably supervise and control work arising from premises they owned, their projects, jobsites, and/or premises over which they controlled.

20. D.R. Horton and 1223 May River each held certain responsibilities and duties to the Plaintiff to reasonably ensure that work done at their projects on premises that they owned or controlled was lawfully performed.

21. D.R. Horton and 1223 May River each held duties to the Plaintiff to reasonably supervise their projects and reasonably prevent unlawful public safety

hazards and/or dangerous instruments from performing work at locations they owned and/or at their projects.

22. Defendant Ramos Trucking held a duty to provide reasonable services, commercially reasonable parts, and maintenance to the dump truck operated by Dump Truck Operator. Defendant Ramos Trucking breached these duties. It was foreseeable that its breach of duties would cause serious injury to third parties operating vehicles on public highways, including the Plaintiff.

23. Additionally, the Defendants owed Plaintiff a statutory and common law duty of care.

24. That Defendants breached said duties as outlined herein.

FOR A FIRST CAUSE OF ACTION
(Negligent Maintenance – Garage Liability)
(As to Defendant Lotty Trucking, LLC)

25. The Plaintiff repeats all preceding paragraphs of this Complaint as if fully restated verbatim herein.

26. Defendant Lotty Trucking LLC f/k/a Ramos Trucking, LLC, (herein, “*Ramos Trucking*”) upon information and belief, garaged and/or stored the dump truck in question, and performed maintenance and/or supplied parts to the dump truck that collided with the Plaintiff.

27. Ramos Trucking’s principal place of business where the dump truck was stored and garaged was at all relevant times in Jasper County, South Carolina.

28. Upon information and belief, the dump truck driver paid or otherwise provided consideration to Ramos Trucking for the storage and maintenance of the dump truck.

29. Ramos Trucking owed all foreseeable third parties, including the Plaintiff, a duty to exercise reasonable care in the maintenance of the dump truck.

30. Ramos Trucking owed the Plaintiff a duty to exercise reasonable care in supplying parts to the dump truck.

31. Upon information and belief, Ramos Trucking breached these duties of care owed to the Plaintiff. The failure by Ramos Trucking to exercise reasonable care caused and/or contributed to the dump truck operating as a dangerous instrument and public safety hazard, thereby causing the collision and injuries to the Plaintiff.

32. Specifically, at the time of the accident, the dump truck had maintenance violations relating to brake performance, including but not limited to several loose and/or improperly connected slack adjusters, loose brake chamber, several kinked brake hoses, oil covered brake pads, a leaking brake seal, improper brake hose connections, unmaintained push rods, and loose bolts.

33. Upon information and belief, on or about March 13, 2018, the operator of the dump truck unlawfully swerved into oncoming traffic and head-on into the Plaintiff, when the over 25,000lb dump truck's brakes malfunctioned and/or knowing or believing

that the dump truck's brakes would malfunction, in effort to avoid colliding with a slowing or stopped vehicle in their lane of traffic.

34. In addition, upon information and belief, as stated above, the operator of the dump truck, Jacob-AU and Alfredo Uriostegui, and, Ramos Trucking shared a financial interest in the operator of the dump truck's hauling operations.

35. As a direct and proximate result of Ramos Trucking's acts or omissions, which were negligent, grossly negligent, reckless and wanton, the Plaintiff suffered injuries and damages in an amount to be shown at the trial of the matter.

36. The Plaintiff prays for a judgment against Ramos Trucking for actual and consequential damages, and for a reasonable amount of punitive damages in an amount to be determined by the jury at the trial of the matter.

FOR A SECOND CAUSE OF ACTION

(Gross Negligence/Negligence as to D.R. Horton and 1223 May River Road)
(Joint Enterprise Liability)

37. Plaintiff repeats the preceding paragraphs of this Complaint as if fully restated verbatim herein.

38. At all relevant times herein, Defendant D.R. Horton and 1223 May River Road were engaged in a joint enterprise with the Dump Truck Operator relative to the development of their respective projects and in the hauling of dirt from one project to the other.

39. The accident and injuries described herein were caused by the Dump Truck Operator while it acted in furtherance of the joint enterprise of D.R. Horton and the Dump Truck Operator of the development of the Cypress Ridge project, and, in while engaged in the joint enterprise of hauling dirt from Cypress Ridge project during the project's construction and development.

40. The accident and injuries described herein were caused by the Dump Truck Operator while it acted in furtherance of the joint enterprise of 1223 May River and the Dump Truck Operator of the development of the 1223 May River project, and while engaged in the joint enterprise of hauling dirt to the 1223 May River Rd. project during its construction and development.

41. While engaged in and in furtherance of its the joint enterprise with D.R. Horton, the Dump Truck Operator was negligent, grossly negligent, reckless and wanton in the operation and maintenance of the Dump Truck.

42. While engaged in and in furtherance of its joint enterprise with 1223 May River, the Dump Truck Operator was negligent, grossly negligent, reckless and wanton in the operation and maintenance of the Dump Truck.

43. The dump truck was operated in violation of law.

44. Upon information and belief, at all relevant times of their joint enterprise, Defendants were unlawfully operating as a motor carrier.

45. Defendant 1223 May River and D.R. Horton and the Dump Truck Operator are jointly and severally liable for all acts and/or omissions in furtherance of their joint enterprises.

46. That Defendants were negligent, negligent per se, careless, reckless, grossly negligent, willful, and wanton at the time and place above mentioned in the following particulars:

- a. in operating a motor vehicle, a dangerous instrumentality, in an unsafe manner;
- b. in traveling too fast for conditions;
- c. in failing to maintain the proper lane of travel;
- d. in failing to yield the right of way;
- e. in operating a dump truck with multiple safety violations;
- f. in operating a dump truck with inadequate brakes;
- g. in failing to properly maintain the dump truck;
- h. in failing to properly inspect the dump truck;
- i. in failing to keep the dump truck under proper control;
- j. in making an unsafe maneuver;
- k. in failing to supervise work done at premises they own, operate and/or managed;
- l. in failing to ensure work done at premises they owned, operated and or maintained was done lawfully;
- m. in allowing an illegal, dangerous instrument from performing work at their premises;
- n. in failing to supervise servants, agents, and/or employees;

- o. in failing to use the degree of care and caution that a reasonable and prudent person would have exercised under the same or similar circumstances; and
- p. in such other and further particulars as the evidence in trial may show;

all of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Plaintiff herein, said acts being in violation of the statute and common laws of the State of South Carolina.

47. The Plaintiff, in addition to actual and consequential damages, is entitled to a reasonable award of punitive damages in an amount to be determined by the jury at the trial of the case.

FOR A THIRD CAUSE OF ACTION
(Negligent Entrustment)
As to D.R. Horton and 1223 May River Rd.

48. The Plaintiff restates the preceding paragraphs of this Complaint as if fully repeated verbatim herein.

49. The Defendants D.R. Horton and 1223 May River Rd. held a duty to the Plaintiff to exercise reasonable care in entrusting the Dump Truck Operator to haul dirt to and/or from their respective projects.

50. The Defendants D.R. Horton and 1223 May River Rd. knew or reasonably should have known that the operations of the dump truck involve a danger to the public and require mandatory licenses, mandatory safety requirements, and/or other mandatory financial requirements.

51. Defendants D.R. Horton and 1223 May River Rd. knew, or should have known, that the Dump Truck Operator was operating in violation of law and was unfit to transport goods for hire within South Carolina.

52. By entrusting Dump Truck Operator with the dangerous loads and operations to and from their projects, the Defendants D.R. Horton and 1223 May River Rd. breached duties of care owed to the Plaintiff.

53. As a direct and proximate result, the Plaintiff suffered injuries and damages.

54. The acts and omissions by Defendants D.R. Horton and 1223 May River Rd. were grossly negligent, reckless and wanton, and the Plaintiff is entitled to an award of punitive damages in a reasonably amount to be determined by the jury at trial.

FOR A FOURTH CAUSE OF ACTION
(Vicarious Liability)
(as to D.R. Horton and 1223 May River Rd.)

55. The Plaintiff restates the preceding paragraphs of this Complaint as if fully repeated verbatim herein.

56. At all relevant times, the Dump Truck Operator was acting as an agent, servant, or employee of the Defendants at the direction and control of the Defendants within the scope of such agency, service and/or employment.

57. The Defendants D.R. Horton and 1223 May River Rd. are jointly and severally liable for the acts and omissions of their agent, servant, and/or employee.

58. As a direct and proximate result of the Dump Truck Operator's acts or omissions, the Plaintiff suffered injuries and damages.

59. The acts and omissions of the Defendants were negligent, grossly negligent, reckless and wanton, and the Plaintiff is entitled to an award of punitive damages in a reasonably amount to be determined by the jury at trial.

FOR A FIFTH CAUSE OF ACTION

(Negligent Selection)

(As to D.R. Horton and 1223 May River Rd.)

60. The Plaintiff repeats the preceding paragraphs of this Complaint as if fully restated verbatim herein.

61. D.R. Horton and 1223 May River Rd. held a duty to the Plaintiff to exercise reasonable care to engage and/or employ a competent and careful dump truck operator for its respective projects.

62. D.R. Horton and 1223 May River Rd. knew or should have known that the Dump Truck Operator operated unlawfully, failed to lawfully maintain its vehicle, failed to reasonably inspect its vehicle, and otherwise failed to comply with mandatory requirements of South Carolina law.

63. D.R. Horton and 1223 May River Rd. failed to exercise reasonable care in choosing, hiring, selecting, maintaining, engaging, and/or supervising the Dump Truck Operator relative to operations on or material hauled to and from their projects.

64. The Plaintiffs injuries would not have happened but for the Defendants' negligent selection of the Dump Truck Operator.

65. As a direct and proximate result of D.R. Horton and 1223 May River Rd. failing to exercise reasonable care in the selection of the Dump Truck Operator, the Plaintiff suffered injuries and damages. Further the Defendants acts were grossly

negligent, reckless and wanton and the Plaintiff is entitled to a reasonable award of punitive damages to be determined at the trial of the matter.

WHEREFORE, Plaintiff prays for an award against the Defendants for actual and punitive damages in an amount to be determined by the jury at the trial of the case, costs and attorney's fees.

SHELTON LAW FIRM, LLC

/s/ Benjamin T. Shelton

ATTORNEY FOR PLAINTIFF

SC Bar No. 77207

P.O. Box 21069

Hilton Head Island, SC 29925

(843) 802-0087

ben@sheltonlawsc.com

Hilton Head Island, South Carolina

February 17, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
MARK W. MCGILTON.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANTS D.R. HORTON, INC.
1223 MAY RIVER ROAD, LLC;	)	AND 1223 MAY RIVER ROAD, LLC'S
D.R. HORTON, INC.; and LOTTY	)	NOTICE OF MOTION AND MOTION
TRUCKING, LLC f/k/a RAMOS	)	TO TRANSFER VENUE
TRUCKING, LLC,	)	
	)	
Defendants.	)	
	)	

TO: MARK W. MCGILTON, PLAINTIFF, AND HIS ATTORNEY, BENJAMIN T. SHELTON, ESQUIRE:

PLEASE TAKE NOTICE that pursuant to SCRCP 42, 12(b)(8), 12(b)(7), and 18 and 19 Defendants jointly move the Court to transfer venue to Beaufort County, South Carolina to be joined with the previously filed lawsuit Mark W. McGilton v. Alfredo Uriostegui, Jacob-Au Trucking, LLC and Kenneth Scott Builders, Inc., C.A. #2018-CP-07-00607. The basis of this motion is based upon the attached Summons and Complaint filed in 2018 in Beaufort County by Plaintiff for the same accident and injuries and justice, judicial economy, and the likelihood of inconsistent verdicts require that the case be transferred and the cases be consolidated.

This motion is based upon the complaint that has been filed in this action, affidavits filed or to be filed, the South Carolina Rules of Civil Procedure, and upon applicable common and statutory law.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason M. Imhoff (SC Bar # 69355)
704 East McBee Avenue
Greenville, South Carolina 29601
Telephone: (864) 242-4899
Facsimile: (864) 242-4844
imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc

AND

s/ Roopal Ruparelia

Roopal Ruparelia
1201 Main Street, 22nd Floor
P.O. Box 11889 (29211-1889)
Columbia, SC 29201
Telephone: (803) 779-3080
Facsimile: (803) 765-1243
rruparelia@hsblawfirm.com

Counsel for Defendant 1223 May River Road, LLC

April 16, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CASE NO. 2021-CP-27-00069
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
1223 May River Road, LLC, D.R. Horton,	)	
Inc., and Lotty Trucking, LLC f/k/a	)	
Ramos Trucking, LLC,	)	KENNETH SCOTT BUILDERS, LLC’S
	)	ANSWER TO 1223 MAY RIVER ROAD,
Defendants.	)	LLC’S THIRD-PARTY COMPLAINT
	)	
	)	(JURY TRIAL DEMANDED)
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Kenneth Scott Builders, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	

Third-Party Defendant, Kenneth Scott Builders, LLC (referred herein as “Kenneth Scott” or “Third-Party Defendant”), files this Answer to the Third-Party Complaint of 1223 May River Road, LLC (referred herein as “May River”), filed April 15, 2021 (referred herein as “Third-Party Complaint”), Kenneth Scott notes that each and every allegation of the Third-Party Complaint not specifically admitted is denied.

1-37. Paragraphs 1 through 37 of the Third-Party Complaint are May River’s amended answers and affirmative defenses to Plaintiff’s Complaint, do not relate to Kenneth Scott, and require no response. To the extent any of these paragraphs in any manner may be construed as

alleging any wrongdoing, illegal or improper act, breach of any duty or any liability whatsoever on the part of Kenneth Scott, they are denied.

AS TO THE FIRST CAUSE OF ACTION
(Equitable Indemnity)

38. Kenneth Scott has insufficient information to respond to the allegations contained in paragraph 33 [sic] of the Third-Party Complaint.

39. Responding to paragraph 34 [sic] of the Third-Party Complaint, Kenneth Scott admits that it is a limited liability company organized and existing pursuant to the laws of the State of South Carolina and has conducted business in Beaufort County, South Carolina.

40. Paragraph 35 [sic] of the Third-Party Complaint states a conclusion of law which Kenneth Scott is neither required to admit nor deny.

41. Paragraph 36 [sic] of the Third-Party Complaint is denied as written. Kenneth Scott further craves reference to the contract or agreement, if any, and denies any allegations inconsistent therewith.

42. Paragraph 37 [sic] of the Third-Party Complaint states a conclusion of law which Kenneth Scott is required neither to admit nor deny.

43. Kenneth Scott admits, upon information and belief, to the allegations contained in paragraph 38 [sic] of the Third-Party Complaint.

44. Responding to paragraph 39 [sic] of the Third-Party Complaint, Kenneth Scott craves reference to Plaintiff's Complaint, denies any allegations inconsistent therewith, and denies the underlying allegations.

45. Paragraph 40 [sic] of the Third-Party Complaint is a mere statement requiring no response. To the extent it infers any claims against Kenneth Scott, such inferences are denied.

46. Kenneth Scott denies the allegations contained in paragraph 41 [sic] of the Third-Party Complaint as written.

47. Paragraph 42 [sic] of the Third-Party Complaint states a conclusion of law which Kenneth Scott is required neither to admit nor deny.

AS TO THE SECOND CAUSE OF ACTION
(Contribution)

48. Responding to paragraph 43 [sic] of the Third-Party Complaint, Kenneth Scott repeats and realleges each and every answer to the Third-Party Complaint as if fully set forth herein verbatim.

49. Paragraph 44 [sic] of the Third-Party Complaint states a conclusion of law which Kenneth Scott is required neither to admit nor deny.

RESPONDING TO PLAINTIFFS'
AD DAMNUM AND/OR PRAYER FOR RELIEF

50. Defendant denies that May River is entitled to recovery as prayed for in May River's Ad Damnum Clause and/or Prayer for Relief.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Failure to State a Claim)

51. May River's Third-Party Complaint should be dismissed for failure to state a claim pursuant to Rule 12(b)(6), *SCRCP*.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Comparative Negligence)

52. May River's claims, if any, are barred, or should be reduced, by May River's own negligence, comparative negligence and recklessness.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Intervening and Superseding Negligence)

53. Kenneth Scott alleges that any injuries and damages sustained by May River as alleged in the Third-Party Complaint, which are denied, were due to and were caused and occasioned by the sole negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of the May River and/or other parties over whom Kenneth Scott had no supervision or control, and Kenneth Scott does plead such sole negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by May River as alleged in the Third-Party Complaint and, therefore, May River is herein barred from recovery.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

54. May River's damages, if any, were solely the result of negligence, gross negligence, wanton and reckless conduct of other parties and/or entities for which Kenneth Scott is not legally liable.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Intervening Acts of Third Parties)

55. May River's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with Kenneth Scott and not under its domain or control.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(No Responsibility for Non-Employees)

56. Defendant has no responsibility for the actions of Alfredo Uriostegui and/or Jacob-AU Trucking LLC as neither were employees or agents of Kenneth Scott at the time of the alleged incident.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

57. Any damages sustained by May River, which damages are denied, were proximately caused and occasioned by the acts and omissions of May River or others, said acts and omissions being the sole cause of May River's alleged damages. Kenneth Scott pleads the intervening acts and omissions of May River or others as a complete bar to this action.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Statute of Limitations and Statute of Repose)

58. May River's claims are barred in whole or in part, by the applicable statute of limitations and the applicable statute of repose.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Damages Limitation per S.C. Code Ann. § 15-32-520)

59. Kenneth Scott pleads the limitations on damage awards set forth in S.C. Code Ann. § 15-32-520.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Bifurcation per S.C. Code Ann. § 15-32-530)

60. Kenneth Scott reserves the right to request bifurcation in accordance with S.C. Code Ann. § 15-32-530.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Failure to Mitigate)

61. Kenneth Scott would show that the injuries and/or damages alleged in this lawsuit, which are hereby denied, were due to and caused by the failure to mitigate.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Failure to Join Parties)

62. May River's Third-Party Complaint is barred by May River's failure to join as a party to this action a party or parties in whose absence complete relief cannot be accorded among those already parties, thereby subjecting these Defendants (including Kenneth Scott) to a substantial risk of incurring double, multiple or otherwise inconsistent obligations.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Set-Off)

63. If Kenneth Scott is unable to avail itself of its other defenses, then in the alternative, Kenneth Scott is entitled to the set-off provided § 42-1-580, Code of Laws of South Carolina, 1976, as amended.

FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE
(Reliance Upon Other Defendants' Defenses)

64. Further answering the Third-Party Complaint, Kenneth Scott hereby incorporates by reference, as if fully set forth herein, and reserves its right to rely upon, any and all defenses, affirmative and otherwise, raised, pleaded, or otherwise asserted by any and all other defendants and third-party defendants to this action, to the extent that such defenses are not inconsistent with Kenneth Scott's position.

**FURTHER ANSWERING AND FOR
A FURTHER AND AFFIRMATIVE DEFENSE**
(Reliance on Additional Defenses)

65. Kenneth Scott hereby gives notice that it intends to rely upon such other affirmative defenses and specifically does not waive any and all defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Third-Party Complaint, Kenneth Scott Builders, LLC prays that the Third-Party Complaint be dismissed, that Kenneth Scott Builders, LLC be awarded costs including reasonable attorney's fees, and for such other relief as this Honorable Court deems proper. Kenneth Scott Builders, LLC hereby demands trial by jury in this action on all issues so triable.

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/ Stephen L. Brown

Stephen L. Brown (SC Bar No. 66468)

Stephen A. Griffith, Jr. (SC Bar No. 103744)

P.O. Box 993, Charleston, SC 29402

25 Calhoun Street, Suite 400, Charleston, SC 29401

Telephone: (843) 720-5488

sbrown@ycrlaw.com

sgriffith@ycrlaw.com

Attorneys for Kenneth Scott Builders, LLC

Charleston, South Carolina

Dated: May 27, 2021

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC; D.R.
HORTON, INC.; AND LOTTY
TRUCKING, LLC F/K/A RAMOS
TRUCKING, LLC,

Defendants.

1223 MAY RIVER ROAD, LLC

Third Party Plaintiff,

v.

KENNETH SCOTT BUILDER'S, INC.,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.:2021-CP-27-00069

PLAINTIFF'S MOTION TO COMPEL
DEFENDANT D.R. HORTON, AND,
MOTION FOR SANCTIONS PER RULE 37(d),
SCRCP, AGAINST DEFENDANT D.R.
HORTON

PLEASE TAKE NOTE THAT the Plaintiff, by and through the undersigned counsel, will move before the Court, on the tenth day after service hereof or at such other time as is designated by the Court, for an Order compelling Defendant D.R. Horton to respond to Plaintiff's Interrogatories and Requests for Production, and sanctioning D.R. Horton for its discovery misconduct.

Despite being duly served with Interrogatories and Requests for Production on July 22, 2021, D.R. Horton failed to respond or request an extension to respond on or before August 23, 2021. (**Exhibit 1**, Interrogatories and Requests for Production with COS). Thereafter, Plaintiff

requested responses from Defendants on September 3, 2021, and consented to an extension to answer and respond by September 15, 2021. (**Exhibit 2**, email correspondence with Defendant's counsel). When no answers or responses were received on September 15, 2021, Plaintiff sent correspondence to Defendants pursuant to Rule 11, SCRPC. (**Exhibit 3**). When Plaintiff received no response to his Rule 11 letter, Plaintiff again followed up with the Defendant on the matter via email and at the time of filing, has received no response (See **Exhibit 2**).

To date, three and one-half months after discovery requests were first duly served and nearly two months after a consent extension to the discovery deadline has expired, Plaintiff still has not received any answers or responses to his discovery requests from D.R. Horton.

Therefore, Plaintiff seeks just sanctions congruent with the blatant discovery abuse displayed by Defendant D.R. Horton: namely, striking it's Answer pursuant to Rule 37(b)(2)(C), SCRPC as authorized and contemplated pursuant to Rule 37(d), SCRPC, and, for attorney's fees and costs, any and all other sanctions this Honorable Court finds just and proper. This motion is based on the pleadings in this case, the South Carolina Rules of Civil Procedure, relevant case law, and any briefs, memoranda of law, or affidavits as may be filed in support thereof.

Respectfully submitted,

s/ Benjamin T. Shelton

Shelton Law Firm, LLC
10 Hospital Center Commons
Suite 400
(P.O. Box 21069)
Hilton Head Island, SC 29926 (29925)
ben@sheltonlawsc.com
(843) 802-0087
(843) 459-7908 (f)

November 4, 2021

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC; D.R.
HORTON, INC.; AND LOTTY
TRUCKING, LLC F/K/A RAMOS
TRUCKING, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.:2021-CP-27-00069

PLAINTIFF'S FIRST SET OF
INTERROGATORIES
TO DEFENDANT
D.R. HORTON, INC.

1223 MAY RIVER ROAD, LLC

Third Party Plaintiff,

v.

KENNETH SCOTT BUILDER'S,
INC.,

Third Party Defendant.

TO: DEFENDANT D.R. HORTON, INC., AND JASON M. IMHOFF, ESQ.,
ATTORNEY FOR DEFENDANT.

The Plaintiff, Mark W. McGilton, hereby serves his First Interrogatories upon you pursuant to Rule 26 and Rule 33 of the *South Carolina Rules of Civil Procedure* (SCRCP), and requests the Defendant to answer the same, under oath, all the Interrogatories not objected to within the time period prescribed by Rule 33 SCRCP.

These Interrogatories are continuing, and the Defendant is required to file supplementary answers in accordance with Rule 26(e) SCRCPP, if before trial, the Defendant obtains further or different information after the original answer, supplementary answers should include the date upon and manner in which such further or different information came to the attention of the Defendant.

DEFINITIONS

- A. "Document" refers to every writing or record of every type or description that is, or has been, in the possession, custody, or control of the party, or of which the party has knowledge. Document specifically includes, but is not limited to, computer printouts, computer software, correspondence, memoranda, tapes, stenographic and handwritten notes (including handwritten or other notes or other types or copies of documents), drafts, contracts, agreements, studies, publications, brochures, summaries, books, pamphlets, pictures, maps, drawings, charts, photographs, films, microfilms, voice recordings, reports, surveys, minutes, statistical computations and compilations, all forms of electronic checks, invoices, ledgers and journals, including electronic documents (including but not limited to, Documents stored as PDF, JPEG, PNG, GIF, or any other digital file format) originals, electronic copies, carbon copies or other types of copies of the foregoing.
- B. "Person" or "Individual" refers to any natural person, corporation, partnership, proprietorship, association, organization, or other entity or group of persons.
- C. "Identify" with respect to any Person, or any reference to stating the identity of any Person, means to provide a name, home address, telephone

- number, business name, business address, and business telephone number.
- D. "Identify" with respect to any Document, or with respect to the identification of any Document, means to provide, irrespective of whether the parties claim that such document is privileged, the title and date of each such document, the name and address of the persons responsible for the preparation of such document, the name and address of the person who requested or required the preparation of each such document or on whose behalf it was prepared and the name and address of the recipient or recipients of each such document and the names and addresses of any and all persons who have custody or control of each such document or copies thereof.
- E. "You" or "Your" means D.R. Horton, Inc. and/or its Directors, Officers or Manager(s).
- F. "Horizontal land development" means with respect to any acquired property, construction or design work in connection with (i) the remediation of an environmental condition existing as such acquired property prior to the commencement of vertical development, (ii) the design and planning related to the construction of infrastructure and the vertical development, including but not limited to work necessary to (a) change any zoning classification of any portion of such acquired property, (b) seek any variance under any existing zoning ordinance that could result in the use of such acquired property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, (c) allow any portion of such acquired property to be used in any manner that could result in the use of such acquired property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, (d) obtain any entitlements or other permits

necessary to perform construction on such acquired property, (iii) the construction of the infrastructure related to such acquired property, which shall include without limitation cutting the roads, installing the utilities (including without limitation, pipelines for water, crude oil, slurry and sewer, power lines, cable television lines and other telecommunication lines, bridges and tunnels), waterways, port facilities, networks for irrigation sanitation and sewage, grading, drainage, paving the roads, railway tracks, signaling system, stations, sidewalks and gutters, and (iv) performing any demolition or site-clearing work necessary to commence vertical development.

- G. A "Truckload" means a the generally recognized amount contained in one commercial truck load. (e.g. 10-14 cubic yards of dirt would generally be contained in one Truckload of dirt).

STANDARD INTERROGATORIES

INTERROGATORY NO. 1: Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

INTERROGATORY NO. 2: Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER:

INTERROGATORY NO. 3: In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

ANSWER:

INTERROGATORY NO. 4: Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER:

INTERROGATORY NO. 5: Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER:

INTERROGATORY NO. 6: List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER:

INTERROGATORY NO. 7: For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

GENERAL INTERROGATORIES

INTERROGATORY NO. 1: Identify all Directors and Officers of D.R. Horton, Inc.

ANSWER:

INTERROGATORY NO. 2: Identify all Documents (as defined above, including but not limited to all communications, agreements, contracts, invoices, work logs, delivery receipts, schedules, check stubs, etc.) existing between D.R. Horton, Inc., on one hand, and, Kenneth Scott Builders, Inc., on the other, in any way relating to the community and development known as Cypress Ridge, which is generally located at 210 Hulston Landing Rd., Bluffton, South Carolina 29909 (hereinafter "Cypress Ridge").

ANSWER:

INTERROGATORY NO. 3: Identify all Documents in Your possession or control or of which You have knowledge relating to the Plaintiff (including but not limited to any information relating to the motor vehicle collision at issue in this lawsuit).

ANSWER:

INTERROGATORY NO. 4: Identify all Documents in Your possession or control or of which You have knowledge relating to this lawsuit (including but not limited to any documents obtained pursuant to Freedom of Information Act requests, subpoenas, investigator's notes or reports, pictures of the Plaintiff, reports obtained after background checks, or any other Document relating to this Lawsuit).

ANSWER:

INTERROGATORY NO. 5: Identify any articles of incorporation of D.R. Horton, Inc. in effect on March 13, 2018, and:

1. The date it was placed into effect;
2. The date it was executed; and
3. The signatories of the articles of incorporation.

ANSWER:

INTERROGATORY NO. 6: Set forth a detailed description of work performed for D.R. Horton, Inc. or its Directors, Officers or Managers by Kenneth Scott Builders, Inc. between January 1, 2013, and March 13, 2018.

ANSWER:

INTERROGATORY NO. 7: Set forth a list of Individuals and/or entities that performed work relating to the horizontal land development of Cypress Ridge between the dates of March 3, 2015, and June 30, 2018.

ANSWER:

INTERROGATORY NO. 8: Set forth a summary of the bid process, if any, used by D.R. Horton, Inc. relating to work to be done by outside contractors or vendors for the construction, development, or redevelopment of Cypress Ridge.

ANSWER:

INTERROGATORY NO. 9: Set forth a list and summarize all bids for Horizontal land development of Cypress Ridge obtained or received by D.R. Horton, Inc. relative to work done between January 1, 2013 through June 1, 2018.

ANSWER:

INTERROGATORY NO. 10: Set forth a list and summarize all insurance policies, insurance certificates, and, subcontractor, or vendor lists received by D.R. Horton, Inc. during its bid process for work to be done relative to the Horizontal land development of Cypress Ridge between January 1, 2013 and March 13, 2018.

ANSWER:

INTERROGATORY NO. 11: Set forth a list and summarize all requests for insurance policies, insurance certificates, and subcontractor and/or vendor lists made by D.R. Horton, Inc. to any and all contractors, subcontractors, or vendors for work to be done at Cypress Ridge between January 1, 2013 and March 13, 2018.

ANSWER:

INTERROGATORY NO. 12: Set forth the number of Truckloads of dirt delivered to Cypress Ridge during the development and/or construction of Cypress Ridge between the dates of January 1, 2013 and March 13, 2018.

ANSWER:

INTERROGATORY NO. 13: Describe the purpose of D.R. Horton, Inc.'s acquisition and development and construction of Cypress Ridge.

ANSWER:

INTERROGATORY NO. 14: Set forth a list of names of all Individuals or entities (including but not limited to other parties to this action) that D.R. Horton, Inc. or its Directors, Officers or Managers have communicated with about this lawsuit, and, for each Individual identified, describe:

- a. the date of each such communication;
- b. the substance of each communication;

- c. an identification of any documents created as a result of the communication; and
- d. a description of any decisions made as a result of the communication.

ANSWER:

INTERROGATORY NO. 15: For the time period of January 1, 2013 through March 13, 2018, describe the rules, standards, or procedures put in place by You relative to the safety, regulatory compliance, conduct, and/or licensing of entities or Individuals operating at Cypress Ridge during the development and/or construction of Cypress Ridge, and identify any written materials relating to the same.

ANSWER:

INTERROGATORY NO. 16: Set forth a list of each contractor, subcontractor, vendor and/or supplier involved in the Horizontal Land Development of Cypress Ridge between January 1, 2015 through June 1, 2018, and for each contractor, subcontractor, vendor and/or supplier describe the scope of their contracted performance.

ANSWER:

INTERROGATORY NO. 17: As to each affirmative defense raised by Defendants, set forth all facts, and identify all witnesses and documents, which You contend support each defense.

ANSWER:

INTERROGATORY NO. 18: Identify the name, address, and official capacity of all persons furnishing information used to answer these interrogatories and state the source of each person's knowledge, listing the particular interrogatory for which the Individual provided information.

ANSWER:

INTERROGATORY NO. 19: Identify any equipment or materials purchased by Defendant for the development and construction of Cypress Ridge by item, date of purchase, and cost to Defendant.

ANSWER:

INTERROGATORY NO. 20: If Defendant has information or belief that any other Individual or entity may have knowledge or information responsive to any interrogatory propounded herein, please set forth:

1. the name, address, and contact information for that Individual or entity;
2. The respective Interrogatory Number relative to any such knowledge or information; and
3. The basis for any such information or belief held by You.

ANSWER:

INTERROGATORY NO. 21: Set forth a list of all litigation that D.R. Horton, Inc. has been a named Defendant within the past ten (10) years in South Carolina. For each case, state the causes of action alleged against D.R. Horton, Inc., the disposition of the case unless the case is pending, or any settlement agreement reached between the parties.

ANSWER:

INTERROGATORY NO. 22: For the time period from January 1, 2013 through March 13, 2018, set forth a list of all incidents where dirt removed from the development known as Cypress Ridge was delivered to another location (including but not limited to other D.R. Horton job sites) and identify all Documents related to each delivery.

ANSWER:

INTERROGATORY NO. 23: For the time period of January 1, 2013 through March 13, 2018, set forth a list of all payments received by D.R. Horton, Inc. that included, in whole or in part, compensation for dirt delivered from the development known as Cypress Ridge and identify any and all documents relating to those payments (including but not limited to invoices, receipts, agreements or contracts).

ANSWER:

INTERROGATORY NO. 24: For the time period of January 1, 2013 through March 13, 2018, describe the policies, protocols, rules, procedures and/or practice associated with the removal, transport, and delivery of dirt from Cypress Ridge to other locations, including but not limited to locations not owned or operated by D.R. Horton.

ANSWER:

INTERROGATORY NO. 25: Describe the policies, protocols, rules, procedures and/or practice, if any, written or unwritten, associated with verifying the lawful operation of commercial equipment operated on D.R. Horton job sites (including but not limited to Cypress Ridge) in effect between January 1, 2013 through March 13, 2018 and identify any Documents associated with the same.

ANSWER:

INTERROGATORY NO. 26: Set forth a list of all information and material including but not limited Documents relating to or of and concerning Kenneth Scott Builders, Inc., its shareholders, principals, subcontractors, or vendors in the possession of D.R. Horton, Inc.

ANSWER:

INTERROGATORY NO. 27: For the time period beginning March 14, 2008 through March 13, 2018, set forth a list of all payments made to Kenneth Scott Builders, Inc. by D.R. Horton, Inc. and identify all Documents relating to each payment.

ANSWER:

INTERROGATORY NO. 28: For each payment identified in Interrogatory No. 27, above, set forth a summary of services, goods and/or materials furnished by Kenneth Scott Builders, Inc. to D.R. Horton, Inc. for which each payment was made.

ANSWER:

INTERROGATORY NO. 29: Set forth a list of all information and material including but not limited Documents in the possession of D.R. Horton, Inc. relating to Jacob-AU Trucking, LLC, and/or Alfredo Uriostegui.

ANSWER:

INTERROGATORY NO. 30: Set forth a list of each payment made by D.R. Horton to any party as compensation for the removal, moving and/or transport of dirt at Cypress Ridge between the dates of January 1, 2013 through March 13, 2018 and identify any Documents related to those payments.

ANSWER:

INTERROGATORY NO. 31: Set forth an inventory of all equipment owned and/or operated by D.R. Horton, Inc. utilized in the development of Cypress Ridge between the dates of January 1, 2013 through March 13, 2018.

ANSWER:

INTERROGATORY NO. 32: During the time period of January 1, 2013 through March 13, 2018, did D.R. Horton, Inc. have any rules, policies, procedures, standards, and protocols in place to safeguard against unlicensed, uninsured and/or unmaintained commercial equipment from operating on its job sites, including Cypress Ridge?

ANSWER:

INTERROGATORY NO. 33: If your Answer to Interrogatory No. 32 is yes or otherwise affirmative,

- a. fully describe the procedures and/or safeguards referenced in D.R. Horton's answer to Interrogatory No. 32,
- b. indicate whether those policies, procedures, standards, protocols and/or

safeguards were in writing,

c. and set forth a list of documents relating to your answer of Interrogatory No. 32.

ANSWER:

- a.
- b.
- c.

INTERROGATORY NO. 34: On March 13, 2018, did D.R. Horton, Inc. have knowledge that contractors, subcontractors, and/or vendors would remove dirt from its job sites, including but not limited to Cypress Ridge, and deliver dirt to other locations? If Your answer is Yes or otherwise in the affirmative, describe your basis for such knowledge:

ANSWER:

SHELTON LAW FIRM, LLC

s/Benjamin T. Shelton

Benjamin T. Shelton

SC Bar No 77207

SHELTON LAW FIRM, LLC

P.O. Box 21069

Hilton Head Island, South Carolina

29925-4005

Telephone: (843) 802-0087

email: ben@sheltonlawsc.com

Attorney for Plaintiff

Hilton Head Island, South Carolina
July 22, 2021

CERTIFICATE OF SERVICE

This is to certify that I, Brooklyn N. Valentine, paralegal with the law office of Shelton Law Firm, LLC, have this 22d day of July 2021, served a true and correct copy of the foregoing PLAINTIFF'S FIRST SET OF INTERROGATORIES upon Attorney of Record for Defendant, by email as follows:

KENISON, DUDLEY & CRAWFORD, LLC

Jason M. Imhoff, Esq.

imhoff@conlaw.com

Attorney for Defendant D.R. Horton, Inc.



Brooklyn N. Valentine, paralegal

Hilton Head Island, South Carolina

Dated: July 22, 2021

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

MARK W. MCGILTON,

Plaintiff,

vs.

1223 MAY RIVER ROAD, LLC; D.R.
HORTON, INC.; AND LOTTY
TRUCKING, LLC F/K/A RAMOS
TRUCKING, LLC,

Defendants.

1223 MAY RIVER ROAD, LLC

Third Party Plaintiff,

v.

KENNETH SCOTT BUILDER'S,
INC.,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.:2021-CP-27-00069

PLAINTIFF'S FIRST REQUESTS FOR
PRODUCTION
TO DEFENDANT
D.R. HORTON, INC.

TO: DEFENDANT D.R. HORTON, INC., AND JASON M. IMHOFF, ESQ.,
ATTORNEY FOR DEFENDANT.

Plaintiff, Mark W. McGilton, hereby serves his First Requests for Production of Documents upon you pursuant to Rule 26 and Rule 34 of the South Carolina Rules of Civil Procedure (SCRCP), and requests the Defendant to produce and permit inspection, copying and photocopying of each of the following documents and things which may be

in the possession, custody, or control of the Defendant or their attorneys.

DEFINITIONS

A. “Document” refers to every writing or record of every type or description that is, or has been, in the possession, custody, or control of the party, or of which the party has knowledge, “Document” specifically includes, but is not limited to, any original and non-identical copy of any and all written, typed, computer, mechanical, photographic, printed, magnetic, audio, video and other electronic recordings or records and/or other tangible records and forms of recorded information, however produced or reproduced, including but not limited to: all letters, correspondence, interoffice communications, electronic correspondence such as e-mails, PDFs, Multimedia Messaging Service (MMS), internal operating system notes and/or messages, and other communications recorded in any form or medium; records, memoranda, minutes, notes, answers, applications, appointment calendars, attachments, blueprints, books, budget materials, bulletins, cables, CD ROMS, complaints, computer models, computer tapes, computer programs, data processing cards, diagrams, evaluations, guidebooks, hearing transcripts, instructions, invoices, manuals, messages, microfiche, motions, notices, opinions, pamphlets, papers, phone-mail recordings or transcripts thereof, phone records, photographs, pleadings, printed forms, proposals, protests publications, replies, responses, specifications, submissions, telegraphs, telexes, verified statements, telegrams, summaries, computer printouts or disks or any information retained in a computer database which can be reproduced; records of telephone calls and meetings, calendar and diary entries, notebooks, schedules, reports, studies, appraisals, analyses, lists, surveys, deeds; budgets, financial statements, ledgers, returns, financial projections, comparison between budgets, projections and actual results, working papers, financial calculations and other records of financial matters and commercial transactions; contracts, agreements, legal and accounting opinions, research; periodicals, charts, diagrams, graphs, and other drawings; interviews, speeches, transcripts, press releases,

advertisements, brochures and books of account; plans and specifications; publications; photocopies, microfilm, and other copies or reproduction, and computer printouts; and all drafts, outlines and proposals of any such documents, or other types of copies of the foregoing.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: Copies of all documents identified, referred to, or used in your answers to Plaintiff's First Set of Interrogatories.

RESPONSE:

REQUEST NO. 2: Copies of all documents which you intend to offer into evidence at the trial of the case or intend to use in questioning any witness at trial or during any deposition.

RESPONSE:

REQUEST NO. 3: Any and all reports and documents taken or prepared by Defendant regarding the collision described in the Complaint.

RESPONSE:

REQUEST NO. 4: All photographs, slides, videotape, film, data compilations, plats, sketches, diagrams, reports by police or of any other public or private investigations, etc., relating to the collision described in the Complaint or having to do with the present litigation.

RESPONSE:

REQUEST NO. 5: Any and all photographs that Defendant has of the parties or scene in question following the collision described in the Complaint.

RESPONSE:

REQUEST NO. 6: Regarding any expert witness with respect to whom you cannot positively state both that he/she will not testify in this case and that his or her work product will not be reviewed in whole or in part by any expert who may be called as a witness:

- a. All documents prepared by the expert;
- b. All documents sent to the expert;
- c. All documents used, consulted, reviewed, or relied upon by the expert;
- d. All documents that have been or will be shown to the expert prior to the expert's testimony at deposition or trial;
- e. All documents, including a current curriculum vitae or resume, used to establish the expert's qualification for trial purposes; and,

- f. All documents setting forth the compensation agreement between the party and the expert.

RESPONSE:

REQUEST NO. 7: A correct and complete copy of the curriculum vitae or resume of any consulting expert whose work, in whole or in part, has been in any way reviewed by any expert whom may testify in this case.

RESPONSE:

REQUEST NO.8: All documents that refer in any way to the Plaintiff.

RESPONSE:

REQUEST NO. 9: All records and/or documents obtained by Defendant by Subpoena, Authorization, FOIA Request or by simple request.

RESPONSE:

REQUEST NO. 10: If any document requested is no longer in your possession or subject to your custody or control, please state whether each document is missing, lost, destroyed, was transferred to others or was otherwise disposed. For each document no longer in your custody or control, please describe it fully, and give the name and address of any individual currently possessing it or else any individual familiar with its contents.

RESPONSE:

REQUEST NO. 11: A copy of any building permits, zoning permits, or other documents obtained by You to develop at Cypress Ridge, located at 210 Hulston Landing Rd., Bluffton, SC 29909.

RESPONSE:

REQUEST NO. 12: Any and all insurance policies under which any person or entity involved in the development was insured with at the time of the collision.

RESPONSE:

REQUEST NO. 13: Copies of any and all statements previously made by Plaintiff concerning the subject matter of this lawsuit, including any written statement signed or otherwise adopted or approved by the Plaintiff hereto and any stenographic, mechanical, electrical, or other type of recording or any transcription thereof made by Plaintiff hereto and contemporaneously recorded.

RESPONSE:

REQUEST NO. 14: Copies of any witness statements that are related to the litigation.

RESPONSE:

REQUEST NO. 15: Any and all statements that Defendant has of the parties or witnesses related to this litigation, including video, audio or transcribed statements.

RESPONSE:

REQUEST NO. 16: All documents regarding contractors or subcontractors or vendors that performed any dirt delivery or removal at Cypress Ridge between the time of January 1, 2013 and March 13, 2018.

RESPONSE:

REQUEST NO. 17: Any and all other documents and tangible things associated with this litigation which are not requested above, but which said Defendant intends to use in connection with, or as exhibits, in the trial of this case, or to use as impeachment evidence.

RESPONSE:

REQUEST NO. 18: Any document in Your possession or provided by Co-Defendants that would show maintenance records or repair records any equipment operated at Cypress Ridge between January 1, 2013 and March 13, 2018.

RESPONSE:

REQUEST NO. 19: Please provide a detailed list of all contractors and/or subcontractors and/or vendors that operated dump trucks in relation to the development at Cypress Ridge at any time between January 1, 2013 and March 13, 2018. For each, describe any work that the contractor or subcontractor has previously performed or attempted to perform for D.R. Horton, Inc.

RESPONSE:

These Requests shall be deemed continuing so as to require supplemental answers if the party or any representative or counsel obtains further information between the time the answers are served and the time of trial.

SHELTON LAW FIRM, LLC

s/Benjamin T. Shelton

Benjamin T. Shelton

SC Bar No 77207

SHELTON LAW FIRM, LLC

P.O. Box 21069

Hilton Head Island, South Carolina

29925-4005

Telephone: (843) 802-0087

email: ben@sheltonlawsc.com

Attorney for Plaintiff

Hilton Head Island, South Carolina
July 22, 2021

CERTIFICATE OF SERVICE

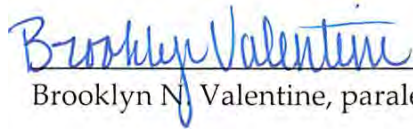
This is to certify that I, Brooklyn N. Valentine, paralegal with the law office of Shelton Law Firm, LLC, have this 22nd day of July 2021, served a true and correct copy of the foregoing PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION upon Attorney of Record for Defendant, by email as follows:

KENISON, DUDLEY & CRAWFORD, LLC

Jason M. Imhoff, Esq.

imhoff@conlaw.com

Attorney for Defendant D.R. Horton, Inc.



Brooklyn N. Valentine, paralegal

Hilton Head Island, South Carolina

Dated: July 22, 2021

EXHIBIT 2

ELECTRONICALLY FILED - 2021 Nov 04 11:54 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069

From: Benjamin Shelton
To: Brooklyn Valentine; Jason Imhoff; Stephanie Simpson
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC
Date: Monday, November 1, 2021 10:57:28 AM
Attachments: msa0002.png
msa0002.png

Hi Jason,

Following up on this one last time.

I hope all is well—

Thank you,

Ben



Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Sent: Friday, September 17, 2021 4:37 PM
To: Jason Imhoff <jimhoff@conlaw.com>; Stephanie Simpson <simpson@conlaw.com>
Cc: Benjamin Shelton <ben@sheltonlawsc.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Dear Attorney Imhoff,

Please see the attached correspondence from Ben Shelton.

With kindest regards,



BROOKLYN VALENTINE WIST

Litigation Paralegal
Shelton Law Firm, LLC
10 Hospital Center Commons, Suite 400
(Mailing: P.O. Box 23090)
Hilton Head Island, SC 29926 (29925)

phone | 843-802-0087
fax | 843-459-7908
email | brooklynval@sheltonlawsc.com
web | www.sheltonlawsc.com

CONFIDENTIALITY NOTICE: THIS E-MAIL TRANSMISSION, INCLUDING ANY ATTACHMENTS, MAY CONTAIN CONFIDENTIAL OR PRIVILEGED INFORMATION AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. RECEIPT OF THIS TRANSMISSION BY ANY PERSON OTHER THAN THE INTENDED RECIPIENT, OR BY A RECIPIENT WHICH IS IN NOT THE INTENDED RECIPIENT BY THE CONTEXT, DOES NOT CONSTITUTE PERMISSION TO EXAMINE, COPY OR DISTRIBUTE THE ACCOMPANYING MATERIAL. IF YOU RECEIVE THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER BY REPLY E-MAIL AND DESTROY ALL COPIES OF THE ORIGINAL MESSAGE.

PROSPECTIVE CLIENTS: NO ATTORNEY-CLIENT ENGAGEMENT IS CREATED WITHOUT EXPRESS INTENT OR UNDERSTANDING OF THE SAME.
UNDERSTANDING OF THE SAME.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Friday, September 3, 2021 2:56 PM
To: Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Yes, of course. Thanks—have a great weekend!

Ben



Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Stephanie Simpson <simpson@conlaw.com>
Sent: Friday, September 3, 2021 2:43 PM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Ben,

Thank you for adding me. Can you please give us an extension until September 15th? We have them due as 8/23 but we have been snowed under.

Thank you for your consideration and have a great weekend!



Stephanie S. Simpson
Paralegal
KINNSON, DUDLEY & CRAWFORD, LLC
201 East McBee Avenue
Greenville, SC 29601
Email: ssimpson@conlaw.com
Main: (864) 242-4899
Mobile: (864) 347-4739
Website: www.conlaw.com

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Kinnsion, Dudley & Crawford, LLC by replying to this email and delete the original and reply emails. Thank you.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Friday, September 03, 2021 2:41 PM
To: Jason Imhoff <jimhoff@conlaw.com>
Cc: Brooklyn Valentine <brooklyn@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>
Subject: FW: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Jason,

Replying all and adding Stephanie to this.

Ben



Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Benjamin Shelton
Sent: Friday, September 3, 2021 2:39 PM
To: jimhoff@conlaw.com
Cc: Brooklyn Valentine <brooklyn@sheltonlawsc.com>; brooklyn@sheltonlawsc.com
Subject: FW: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC
Importance: High

Hi Jason,

I hope all is well. I do not believe we received answers to these discovery requests and do not have an extension noted on my calendar. Please advise, and confirm that answers and responses will be forthcoming soon.

Best regards,

Ben



SHELTON LAW FIRM

Benjamin T. Shelton

ben@sheltonlawsc.com

office | 843-802-0087

mobile | 843-296-0915

fax | 843-459-7908

From: Brooklyn Valentine <brooklyn@sheltonlawsc.com>

Sent: Thursday, July 22, 2021 12:06 PM

To: imhoff@conlaw.com

Cc: Benjamin Shelton <ben@sheltonlawsc.com>; Paralegal <paralegal@sheltonlawsc.com>; skrown@ycclaw.com; sgriffith@ycclaw.com; rupareka@hshlawfirm.com

Subject: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Dear Mr. Imhoff,

I hope this e-mail finds you well. Attached for service upon you by e-mail only is a copy of the First Request for Production and First Set of Interrogatories regarding the above-referenced matter. Hard copies will only be mailed upon request.

Please let us know if you have any questions or concerns.

With kindest regards,



SHELTON LAW FIRM

BROOKLYN VALENTINE WEST

Litigation Paralegal

Shelton Law Firm, LLC

10 Hospital Center Commons, Suite 400

(Mailing: P.O. Box 21093)

Hilton Head Island, SC 29926 (29925)

phone | 843-802-0087

fax | 843-459-7908

email | paralegal@sheltonlawsc.com

web | www.sheltonlawsc.com

CONFIDENTIALITY NOTICE: THIS E-MAIL TRANSMISSION, INCLUDING ANY ATTACHMENTS, MAY CONTAIN CONFIDENTIAL OR PRIVILEGED INFORMATION AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. RECEIPT OF THIS TRANSMISSION BY ANY PERSON OTHER THAN THE INTENDED RECIPIENT, OR BY A RECIPIENT WHICH IS IN NOT THE INTENDED RECIPIENT BY THE CONTEXT, DOES NOT CONSTITUTE PERMISSION TO EXAMINE, COPY OR DISTRIBUTE THE ACCOMPANYING MATERIAL. IF YOU RECEIVE THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER BY REPLY E-MAIL AND DESTROY ALL COPIES OF THE ORIGINAL MESSAGE.

PROSPECTIVE CLIENTS: NO ATTORNEY-CLIENT ENGAGEMENT IS CREATED WITHOUT EXPRESS INTENT OR UNDERSTANDING OF THE SAME.
UNDERSTANDING OF THE SAME.

EXHIBIT 3



September 17, 2021

Via email only

Kenison, Dudley & Crawford, LLC
Attn: Jason M. Imhoff, Esq.
704 East Mcbee Avenue
Greenville, SC 29601
imhoff@conlaw.com

Re: Mark W. McGilton vs. 1223 May River Road, LLC; D.R. Horton, Inc.; and Lotty Trucking, LLC f/k/a Ramos Trucking, LLC | Civil Action No. 2021CP2700069

Dear Attorney Imhoff:

As you are aware, our office served upon you Plaintiff's First Set of Interrogatories and First Request for Production (copies enclosed) on July 22, 2021 with an extension being granted on September 3, 2021 (after no response had been received), to September 15, 2021. I would appreciate receiving a response to the First Set of Interrogatories and First Request for Production by close of business by September 20, 2021 to prevent the necessity of filing a Motion to Compel and/or Rule to Show Cause. Please be advised I will need to move for costs and fees in the event I do have to file a Motion to Compel and/or Rule to Show Cause in this matter.

Additionally, this letter will serve as my good faith effort to resolve this issue as required by Rule 11 of the South Carolina Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Most Sincerely Yours,

A handwritten signature in blue ink, appearing to read "B. T. Shelton", is written over a horizontal line.

Benjamin T. Shelton

Attorney at Law

SC Bar No. 77207

/bvw

Enc. Plaintiff's First Set of Interrogatories
Plaintiff's First Request for Production

BENJAMIN T. SHELTON
SHELTON LAW FIRM, LLC, a South Carolina limited liability company
PO Box 21069
HILTON HEAD ISLAND, SC 29925

ben@sheltonlawsc.com
(843) 802-0087

ELECTRONICALLY FILED - 2021 Nov 04 11:54 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	C.A. NO. 2021-CP-27-00069
MARK W. MCGILTON	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR ORDER OF
	)	DISMISSAL OF 1223 MAY RIVER
1223 MAY RIVER ROAD, LLC, D.R.	)	ROAD, LLC AND KENNETH SCOTT
HORTON, INC., and LOTTY	)	BUILDERS, LLC
TRUCKING, LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	RULE 41(a)(2), SCRC
	)	
Defendants.	)	
	)	
	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
KENNETH SCOTTS BUILDERS, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	

WHEREAS, the Plaintiff, Mark W. McGilton, and Defendants 1223 May River Road, LLC and Third-Party Defendant Kenneth Scott Builders, LLC (herein, "Settling Defendants") have settled and compromised their differences as to the matter referenced above. Whereas, Plaintiff has attempted to obtain consent from all parties of record to voluntarily dismiss the Settling Defendants pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure. However, Defendant D.R. Horton, Inc. has failed to respond to multiple inquiries and requests to obtain its consent to the voluntary dismissal. Further, D.R. Horton, Inc. has filed no claims against the Settling Defendants.

Therefore, because D.R. Horton, Inc. fails to respond to requests for consent for the voluntary dismissal of the Settling Parties, Plaintiff moves for an Order dismissing Defendant 1223

May River Road, LLC and Third-Party Defendant Kenneth Scott Builders, LLC from the above captioned action.

This 26th Day of April 2022.

ISO MOVE!

SHELTON LAW FIRM, LLC

/s/Benjamin T. Shelton

Benjamin T. Shelton, (S.C. Bar No. 77207)

P.O. Box 21069

Hilton Head Island, SC 29925

(843) 802-0087

ben@sheltonlawsc.com

Attorney for Plaintiff

WE CONSENT:

HAYNSWORTH, SINKLER, BOYD, P.A.

/s/Roopal S. Ruparelia

Roopal S. Ruparelia, (S.C. Bar No. 16003)

1201 Main Street, 22nd Floor

(P.O. Box 11889)

Columbia, SC 29201 (29211-1889)

(803) 779-3080

rruparelia@hsblawfirm.com

Attorney for 1223 May River Road, LLC

WE CONSENT:

CLEMENT RIVERS, LLP

/s/Stephen L. Brown

Stephen L. Brown (S.C. Bar No. 66468)

25 Calhoun Street, Ste. 400

(P.O. Box 993)

Charleston, SC 29401 (29402)

(843) 720-5488

sbrown@ycrlaw.com

Attorney for Kenneth Scott Builders, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	DEFENDANT D.R. HORTON, INC.'S
	)	NOTICE OF MOTION AND MOTION
	)	TO STAY DISCOVERY
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	
	)	

TO: ALL COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE THAT Defendant D.R. Horton, Inc. (“D.R. Horton”) by and through its undersigned counsel, will move this Court for an Order to Stay Discovery pursuant to S.C. Rules of Civil Procedure (“SCRCP”) 26(c) on the grounds set forth in this Motion. Said Motion will be heard within ten (10) days or at such time and place as may be set by the Court thereafter in the Court of Common Pleas, State of South Carolina, County of Jasper, of which you will be notified.

STAY DISCOVERY UNTIL RULING ON PENDING MOTIONS

D.R. Horton moves pursuant to Rule 26(c), SCRCP, for an Order staying discovery pending the resolution of the Motion to Dismiss and the Motion to Transfer Venue.

1. On February 17, 2021, Plaintiff Mark W. McGilton (“Plaintiff”) filed the Summons and Complaint (the “Complaint”) with the Court.

2. On March 16, 2021, Plaintiff served D.R. Horton with a copy of the Summons and Complaint.

3. On April 14, 2021, D.R. Horton filed its Answer, which included defenses by way of Motion to Dismiss.

4. On April 16, 2021, D.R. Horton and 1223 May River Road, LLC filed a Motion to Transfer Venue pursuant to SCRCP 42, 12(b)(8), 12(b)(7), 18 and 19.

5. On July 22, 2021, despite receipt of D.R. Horton’s Answer, which included defenses by way of Motion to Dismiss, and D.R. Horton and 1223 May River Road, LLC’s Motion to Transfer (hereinafter collectively referred to as the “Motions”), Plaintiff served D.R. Horton with a copy of Plaintiff’s First Set of Interrogatories, Plaintiff’s First Set of Requests for Production of Documents, and Plaintiff’s First Set of Requests to Admit.

6. On September 17, 2021, despite receipt of the Motions, Plaintiff sent a letter (“Rule 11 Letter”) demanding the discovery responses.

7. On November 4, 2021, Plaintiff filed a Motion to Compel D.R. Horton and Motion for Sanctions Against D.R. Horton, despite the fact that the Motions were still pending before the Court. Plaintiff provided no reasoning for the filing of this Motion.

8. Despite the pending Motions, D.R. Horton answered Plaintiff’s discovery requests on July 15, 2022, and has received no response from Plaintiff or his counsel.

9. If D.R. Horton's Motion to Dismiss and/or Motion to Transfer are granted, it would be inefficient and inappropriate to engage in discovery at this juncture. Moreover, Plaintiff should not be allowed to engage in discovery without properly complying with the South Carolina venue provisions and SCRCP 42, 12(b)(7), 12(b)(8), 12(b)(17), and 12(b)(18). D.R. Horton will incur needless expenses and exercise considerable effort in responding to these discovery requests. Staying of discovery until after the Court rules on the pending Motions will not harm any party in this action.

10. Rule 26(c) empowers and provides the Court to order "discovery not be had[.]" See Rule 26(c), SCRCP. It also provides the Court with a method from protecting defendants, such as D.R. Horton, from the undue burden and expense that is required in responding to discovery requests.

11. Compounding the reasons provided in this Motion, along with the aforementioned Answer, which included defenses by way of Motion to Dismiss, and Motion to Transfer, this Court should Order a Stay of Discovery as discovery is not required in this matter at this time.

WHEREFORE, pursuant to the South Carolina Rules of Civil Procedure, Defendant D.R. Horton respectfully prays that this Court stay all discovery, now and in the future, pertaining to Defendant D.R. Horton, until the pending Answer, which included defenses by way of Motion to Dismiss, and Motion to Transfer are heard and ruled upon.

This Motion is supported by the pleadings on file with this Court, both federal and state laws and statutes, and whatever memoranda of law or certified documents that may be submitted to this Court.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

August 3, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	DEFENDANT D.R. HORTON, INC.'S
	)	MOTION TO AMEND ANSWER
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	
	)	

YOU WILL PLEASE TAKE NOTICE that Defendant D.R. Horton, Inc. (“Defendant” or “D.R. Horton”), by and through its undersigned attorneys hereby moves the Court pursuant to Rule 14 (a) and 15(a), SCRPC, for leave to file an Amended Answer and Crossclaim, a proposed copy of which is attached hereto as Exhibit A. Said Motion will be heard within ten (10) days or such time and place as may be set by the Court of Common Pleas, State of South Carolina, County of Jasper, of which you will be notified.

D.R. Horton’s proposed amendments arise from the same acts, occurrences, and transactions as the other claims asserted in this action. The other parties in this action will not be prejudiced by this amendment.

D.R. Horton's Motion is supported by the South Carolina Rules of Civil Procedure and such legal memoranda and arguments as D.R. Horton may present to the Court at or prior to the hearing on this motion.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

August 4, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	
	)	SUMMONS TO CROSSCLAIM
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	

TO: NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Crossclaim contained in the Amended Answer of D.R. Horton, Inc., to Plaintiff's Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Crossclaim on the subscriber hereto at this office at 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Crossclaim within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Crossclaim.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford Jr. (SC Bar # 69682)

Jason Imhoff (S.C. Bar # 69355)

704 E. McBee Ave.

Greenville, SC 29601

(864) 242-4899

(864) 242-4844 (fax)

Crawford@conlaw.com

Imhoff@conlaw.com

Attorneys for Defendant D.R. Horton, Inc.

August __, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	DEFENDANT D.R. HORTON, INC.'S
	)	AMENDED ANSWER AND
	)	CROSSCLAIM
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	

TO: ALL COUNSEL OF RECORD:

Pursuant to Rule 15, SCRCP, Defendant D.R. Horton, Inc. (hereinafter “Defendant” or “D.R. Horton”), hereby amends its answer and asserts Crossclaims and answers the Complaint of Plaintiff, Mark W. McGilton (“Plaintiff”), as set forth below by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further respond as follows:

Each and every allegation set forth in Plaintiff’s Complaint, not expressly admitted herein, is hereby denied.

FOR A FIRST DEFENSE
(Answer to Complaint)

1. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 1 of Plaintiff's Complaint, and therefore denies the same.

2. D.R. Horton denies the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 3 of Plaintiff's Complaint, and therefore denies the same.

4. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 4 of Plaintiff's Complaint, and therefore denies the same.

5. D.R. Horton admits so much of Paragraph 5 of Plaintiff's Complaint as alleges that D.R. Horton was a builder in Cypress Ridge community. D.R. Horton denies the remaining allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. The allegations contained in Paragraph 6 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

7. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 7 of Plaintiff's Complaint, and therefore denies the same.

8. D.R. Horton denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 9 of Plaintiff's Complaint, and therefore denies the same.

10. D.R. Horton denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. D.R. Horton denies the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12. D.R. Horton denies the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. D.R. Horton denies the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. D.R. Horton denies the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. D.R. Horton denies the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 16 of Plaintiff's Complaint, and therefore denies the same.

17. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 17 of Plaintiff's Complaint, and therefore denies the same.

18. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 18 of Plaintiff's Complaint, and therefore denies the same.

19. The allegations contained in Paragraph 19 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

20. The allegations contained in Paragraph 20 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

21. The allegations contained in Paragraph 21 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

22. D.R. Horton is without sufficient information to form a belief as to the allegations contained in Paragraph 22 of Plaintiff's Complaint, and therefore denies the same.

23. The allegations contained in Paragraph 23 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

24. D.R. Horton denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Paragraph 25 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

26. The allegations contained in Paragraph 26 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 26 of Plaintiff's Complaint and, therefore, denies the same.

27. The allegations contained in Paragraph 27 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 27 of Plaintiff's Complaint and, therefore, denies the same.

28. The allegations contained in Paragraph 28 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required,

D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28 of Plaintiff's Complaint and, therefore, denies the same.

29. The allegations contained in Paragraph 29 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29 of Plaintiff's Complaint and, therefore, denies the same.

30. The allegations contained in Paragraph 30 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 of Plaintiff's Complaint and, therefore, denies the same.

31. The allegations contained in Paragraph 31 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 31 of Plaintiff's Complaint and, therefore, denies the same.

32. The allegations contained in Paragraph 32 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 32 of Plaintiff's Complaint and, therefore, denies the same.

33. The allegations contained in Paragraph 33 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33 of Plaintiff's Complaint and, therefore, denies the same.

34. The allegations contained in Paragraph 34 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 34 of Plaintiff's Complaint and, therefore, denies the same.

35. The allegations contained in Paragraph 35 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35 of Plaintiff's Complaint and, therefore, denies the same.

36. The allegations contained in Paragraph 36 of Plaintiff's Complaint are not directed to D.R. Horton; therefore, a response is not required. However, to the extent a response is required, D.R. Horton lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint and, therefore, denies the same.

37. Paragraph 37 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

38. D.R. Horton denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39. D.R. Horton denies the allegations contained in Paragraph 39 of Plaintiff's Complaint.

40. D.R. Horton denies the allegations contained in Paragraph 40 of Plaintiff's Complaint.

41. D.R. Horton denies the allegations contained in Paragraph 41 of Plaintiff's Complaint.

42. D.R. Horton denies the allegations contained in Paragraph 42 of Plaintiff's Complaint.

43. D.R. Horton denies the allegations contained in Paragraph 43 of Plaintiff's Complaint.

44. D.R. Horton denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

45. D.R. Horton denies the allegations contained in Paragraph 45 of Plaintiff's Complaint.

46. D.R. Horton denies the allegations contained in Paragraph 46 of Plaintiff's Complaint.

47. D.R. Horton denies the allegations contained in Paragraph 47 of Plaintiff's Complaint.

48. Paragraph 48 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

49. D.R. Horton denies the allegations contained in Paragraph 49 of Plaintiff's Complaint.

50. D.R. Horton denies the allegations contained in Paragraph 50 of Plaintiff's Complaint.

51. D.R. Horton denies the allegations contained in Paragraph 51 of Plaintiff's Complaint.

52. D.R. Horton denies the allegations contained in Paragraph 52 of Plaintiff's Complaint.

53. D.R. Horton denies the allegations contained in Paragraph 53 of Plaintiff's Complaint.

54. D.R. Horton denies the allegations contained in Paragraph 54 of Plaintiff's Complaint.

55. Paragraph 55 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

56. D.R. Horton denies the allegations contained in Paragraph 56 of Plaintiff's Complaint.

57. D.R. Horton denies the allegations contained in Paragraph 57 of Plaintiff's Complaint.

58. D.R. Horton denies the allegations contained in Paragraph 58 of Plaintiff's Complaint.

59. D.R. Horton denies the allegations contained in Paragraph 59 of Plaintiff's Complaint.

60. Paragraph 60 of Plaintiff's Complaint can neither be admitted nor denied, and D.R. Horton herein reasserts and realleges its answers and defenses to the prior allegations of Plaintiff's Complaint as set forth above.

61. The allegations contained in Paragraph 61 of Plaintiff's Complaint are legal conclusions to which no response is required; however, to the extent an answer is required of D.R. Horton, D.R. Horton denies the same.

62. D.R. Horton denies the allegations contained in Paragraph 62 of Plaintiff's Complaint.

63. D.R. Horton denies the allegations contained in Paragraph 63 of Plaintiff's Complaint.

64. D.R. Horton denies the allegations contained in Paragraph 64 of Plaintiff's Complaint.

65. D.R. Horton denies the allegations contained in Paragraph 65 of Plaintiff's Complaint.

66. With respect to the WHEREFORE Paragraph of Plaintiff's Complaint, D.R. Horton denies that Plaintiff is entitled to any relief it seeks by and through the Complaint.

FOR A SECOND DEFENSE

67. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

68. D.R. Horton alleges that insofar as Plaintiff's Complaint seeks punitive damages, such damages are violative of both the United States and South Carolina Constitutions. As such, Plaintiff's claim for punitive damages is barred.

FOR A THIRD DEFENSE
AND BY WAY OF MOTION TO DISMISS

69. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

70. Plaintiff has failed to join other parties as is necessitated by Rule SCRCP 42, 12(b)(8), 12(b)(7), and 18 and 19 of the South Carolina Rules of Civil Procedure and should be dismissed.

FOR A FOURTH DEFENSE
AND BY WAY OF MOTION TO DISMISS

71. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

72. This case is pending in an improper venue and needs to be transferred to Beaufort County and further consolidated with another action that Plaintiff filed arising out of the same accident pursuant to SCRCP 42, 12(b)(8), 12(b)(7), and 18 and 19.

FOR A FIFTH DEFENSE
AND BY WAY OF MOTION TO DISMISS

73. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

74. This matter should be dismissed under Rules 12 (b)(7) and 12(b)(8) of the South Carolina Rules of Civil Procedure because another action is pending in Beaufort County for the same accident.

FOR A SIXTH DEFENSE

75. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

76. Defendant reserves and does not waive any additional further defenses that may be revealed by additional information that may be acquired in discovery or otherwise.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF CROSS-CLAIM
AGAINST DEFENDANT KENNETH SCOTT BUILDERS, INC.

77. D.R. Horton incorporates herein the allegations of their first defense not inconsistent herewith.

78. D.R. Horton asserts crossclaims against Defendant, Kenneth Scott Builders, Inc., (“KSB”).

79. To the extent the allegations contained in the Plaintiff's Complaint are not subject to binding arbitration, the Circuit Court has jurisdiction over the claims asserted in the Crossclaims because the claims asserted herein are so related to the claims in the action within the Court's original jurisdiction that they form part of the same case or controversy.

80. Plaintiff, in the underlying litigation, has filed a Complaint against D.R. Horton seeking damages related to a collision on May River Road in Bluffton, Beaufort County, South Carolina ("Collision").

81. D.R. Horton contracted with KSB such that KSB was obligated to supply certain labor, materials, and designs used or incorporated into the construction one or more of the Cypress Ridge development.

82. KSB entered into an agreement (the "Agreement") with D.R. Horton regarding its work (attached as Exhibit A).

83. The Agreement speaks for itself, and D.R. Horton craves reference to the terms of the agreements, the same being are incorporated herein.

84. As provided in the Agreement, KSB was to supply certain labor, materials, and/or designs regarding one or more of the improvements, including but not limited to the Cypress Ridge development.

85. KSB implicitly and expressly agreed to perform its work in a good and workmanlike manner.

86. KSB was aware of the need and the importance of providing competent and licensed drivers and employees, vehicles, and safety measures, including but not limited to licensed, safe drivers with appropriately maintained and inspected vehicles and liability insurance.

87. D.R. Horton contends that KSB failed to meet its requirements of the Agreement, including, but not limited to, providing competent and licensed drivers and employees, vehicles, and safety measures, including but not limited to licensed, safe drivers with appropriately maintained and inspected vehicles and liability insurance.

88. As part of the Agreement, KSB agreed to indemnify and hold harmless D.R. Horton and provide liability insurance for D.R. Horton on behalf of itself and any subcontractors.

89. D.R. Horton fully satisfied and performed all requirements associated with and with respect to the Agreement.

90. D.R. Horton alleges KSB and its subcontractor was negligent, improperly licensed, and operating a vehicle that was not road worthy, maintained, or inspected without insurance.

91. Although D.R. Horton is without fault, by virtue of the alleged acts and omissions of KSB, D.R. Horton has been subjected to suit and to the costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FIRST CAUSE OF ACTION
(Contractual Indemnification as to Co-Defendant)

92. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

93. Plaintiff has sued D.R. Horton claiming damages related to the Collision.

94. KSB contracted with D.R. Horton to perform certain construction services and/or furnish certain materials on the Property and within the Community.

95. Plaintiff has alleged that damages were incurred in the Collision by the acts of KSB and its subcontractor.

96. D.R. Horton is informed and believes that if, in fact, Plaintiff is entitled to recover under the allegations of the Complaint, that the allegations are the result of the wrongful acts

omissions, negligence, gross negligence, and/or representations of KSB, all of which are contrary to the agreements and common laws of the State of South Carolina.

97. To the extent, if any, that D.R. Horton is held liable to Plaintiff in this action, such liability would be the direct and proximate result of the wrongful acts, errors, and/or omissions, negligence and/or gross negligence of KSB, which have damaged D.R. Horton as it has been subjected to liability and has incurred consequential damages in incurring the attorneys' fees and costs necessary to defend this action.

98. KSB is contractually obligated to indemnify and hold D.R. Horton harmless from damages arising out of KSB's respective work pursuant to the Agreement as well as provide liability insurance to D.R. Horton.

99. The alleged acts or omissions of KSB are the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, if any, and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

100. D.R. Horton is entitled to a judgment for full contractual indemnification from any liability D.R. Horton is found to have to Plaintiff for the allegations and relief sought in the Complaint, and D.R. Horton would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of KSB that D.R. Horton, as described hereinabove, entitling D.R. Horton to recover from KSB, the attorneys' fees, costs, and any and all other expenses incurred by D.R. Horton associated with defending this action as well as any sums for which it may be held liable to Plaintiff, whether by judgment, compromise, settlement, or otherwise.

FOR A SECOND CAUSE OF ACTION
(Equitable Indemnification as to Co-Defendant)

101. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

102. Plaintiff has sued D.R. Horton seeking damages related to a collision on May River Road in Bluffton, Beaufort County, South Carolina.

103. D.R. Horton has denied all substantive allegations against it that were made by Plaintiff.

104. A sufficient special relationship exists between D.R. Horton and KSB.

105. D.R. Horton is informed and believes that if, in fact, Plaintiff is entitled to recover under its allegations, that the allegations are the result of the wrongful acts, omissions, negligence, gross negligence, and/or representations of KSB, all of which are contrary to the statutory and common laws of the State of South Carolina.

106. To the extent, if any, that D.R. Horton is held liable to Plaintiff in this action, such liability would be the direct and proximate result of the alleged wrongful acts, errors, and/or omissions, negligence and/or gross negligence of KSB, which has damaged D.R. Horton as it has been subjected to liability and has incurred consequential damages in incurring the attorneys' fees and costs necessary to defend this action.

107. To the extent, if any, D.R. Horton is held liable to Plaintiff in this action, the alleged acts or omissions of KSB is the independent, active, primary, superseding, and/or intervening cause of damages allegedly suffered by Plaintiff, and any wrongful acts or omissions by D.R. Horton, which are expressly denied, were passive and secondary only.

108. D.R. Horton is entitled to a judgment for full common law or equitable indemnification from KSB for any liability D.R. Horton is found to have to Plaintiff for the

allegations and relief sought in the Complaint, and D.R. Horton would be entitled to damages for the acts, errors, and/or omissions, negligence and/or gross negligence of KSB as afore described, entitling D.R. Horton to recover from KSB its attorneys' fees, costs, and any and all other expenses associated with defending this action as well as any sums for which D.R. Horton may be held liable to Plaintiff, whether by judgment, compromise, settlement, or otherwise.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Co-Defendant)

109. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

110. KSB was contractually responsible for performing the requirements in the Agreement correctly.

111. To the extent that Plaintiff proves that KSB was responsible for the damages incurred in the Collision, KSB materially breached the Agreement as set forth above.

112. D.R. Horton is entitled to judgment against KSB for breach of contract plus costs, expenses, attorneys' fees, and other damages associated therewith.

FOR A FOURTH CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness as to Co-Defendant)

113. D.R. Horton re-alleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

114. Upon information and belief, KSB owed a duty to use due care in ensuring that proper subcontractors and vehicles were used in its work.

115. If due care was not used in ensuring safety was achieved, then KSB breached its duty of care owed pursuant to the requirements under the Agreement and under the laws of South Carolina.

116. D.R. Horton has been damaged as a direct and foreseeable and proximate result of KSB negligence/gross negligence/recklessness, and D.R. Horton is entitled to judgment against KSB for its damages, including costs, expense, attorneys' fees, and other damages associated therewith.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant, D.R. Horton, Inc. prays for:

- (a) Dismissal of the Complaint and all causes of action contained therein, with prejudice, and an award to D.R. Horton for the attorney fees, costs, and other expenses incurred by D.R. Horton in defending this action;
- (b) On D.R. Horton's First and Second Causes of Action, judgment in favor of D.R. Horton and against KSB in the amount of any liability D.R. Horton is found to have to the Plaintiff and requiring Co-Defendant to defend and indemnify D.R. Horton against any liability which D.R. Horton may be liable with regard to safety or insurance for which KSB was responsible;
- (c) On D.R. Horton's Third Cause of Action, judgment in favor of D.R. Horton and against KSB for any costs, losses, or damages D.R. Horton may incur as it relates to KSB's breach of contract, including, attorneys' fees, costs, and any and all other expenses incurred in defending the Plaintiff's Complaint;
- (d) On D.R. Horton's Fourth Cause of Action, judgment in favor of D.R. Horton and against KSB awarding actual, special, consequential and punitive damages in an amount to be determined at trial;
- (e) Attorneys' fees;
- (f) Costs of this action; and
- (g) Such other and further relief that this Court deems just and proper.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

August __, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	C.A. NO. 2021-CP-27-00069
MARK W. MCGILTON	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO MOTION TO
1223 MAY RIVER ROAD, LLC, D.R.	)	CHANGE VENUE
HORTON, INC., and LOTT	)	
TRUCKING, LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	
	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
KENNETH SCOTT BUILDERS, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	

NOW COMES Plaintiff Mark W. McGilton ("Plaintiff") and hereby files this Memorandum in Opposition to Defendants 1223 May River Road, LLC and D.R. Horton, Inc.'s ("Defendant") Motion to Change Venue.

PREAMBLE OF AUTHORITY

"[W]here there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such a case, the plaintiff ordinarily has the right of election as to the county in which an action will be brought." *Jeter v. S.C. Dept. of Transp.*, 369 S.C. 433, 442,

633 S.E.2d 143, 148 (2006) (citing *Mack v. Nationwide Mut. Ins. Co.*, 245 S.C. 619, 623–24, 142 S.E.2d 50, 53 (1965); *Rankin Lumber Co. v. Graveley*, 112 S.C. 128, 99 S.E. 349 (1919)).

INTRODUCTION

This matter arises out of a devastating car collision wherein Plaintiff's truck was hit head-on by a dump truck that was operating unlawfully and for the mutual benefit of the Defendants, and for their common purpose of hauling dirt from one project site to another. Plaintiff elects to bring this action in Jasper County because it is uncontroverted that Defendant Lotty Trucking, LLC's principal place of business is on highway 170 in Jasper County, seeking damages for his devastating permanent injuries that result of the collision. This action is the result of the discovery of the common benefit which the dump truck operator was providing to D.R. Horton and that is responsible for the operator's actions under joint enterprise liability (Compl. ¶¶ 38—47), that Defendant D.R Horton negligently entrusted the dump truck operator with the responsibility to haul dirt (Id. ¶¶ 49-54), that D.R. Horton was exercising a degree of control over the dump truck driver (Id. ¶¶ 56-59), and that D.R. Horton negligently selected the dump truck operator (Id. ¶¶ 61-65). While action is the second action filed by the Plaintiff that arises out of this collision (the first action having been brought in Beaufort County, South Carolina), the first action has been settled against all parties not in default, and all that remains is this action pending in Jasper County.¹

¹ The Beaufort County action has not yet been dismissed, but a settlement agreement has been fully executed by all active parties and the action has been dismissed against Kenneth Scott Builders, LLC. The only remaining defendants are the truck driver, Alfredo Uriostegui, and his company, Jakob Au Trucking, LLC, who are both in default in the case.

ARGUMENT AND CITATION OF AUTHORITY

As it is undisputed that Defendant Lotty Trucking, LLC's principal place of business is located in Jasper County, the Defendants' motion to change venue should be denied. Further, Defendants' motion should be denied as this matter is not the same matter as the Beaufort County case as the parties are different and plaintiff's causes of action and theories of liability are different in the instant case than in the Beaufort County case.

Jasper County is the Proper Venue

It is a long-standing legal principal in South Carolina that a Plaintiff is the master of his complaint, meaning that the plaintiff is generally in control of the parameters of the lawsuit, including the venue in which the lawsuit is filed and litigated. South Carolina has even codified part of this legal principal in its venue statute. S.C. Code Ann. § 15-7-30 allows a plaintiff to file his complaint, generally, in the county in which the "(1) defendant resides at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred." S.C. Code Ann. § 15-7-30(C). Specifically, in this matter and in cases brought against multiple defendants, including a domestic limited liability company, the venue statute provides that

a civil action tried pursuant to this section against a . . . domestic limited liability company . . . must be brought and tried in the county in which the: (1) . . . limited liability company . . . has its principal place of business at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

S.C. Code Ann. § 15-7-30(E).

This statutory scheme embodies the legal principal that a plaintiff is master of his complaint, because it gives the plaintiff a choice of where to file his complaint. The South Carolina Supreme Court has applied this plaintiff's choice of venue rule in ruling that "where there are

multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such a case, the plaintiff ordinarily has the right of election as the county in which an action will be brought.” *Jeter v. S.C. Dept. of Transp.*, 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006) (citing *Mack v. Nationwide Mut. Ins. Co.*, 245 S.C. 619, 623–24, 142 S.E.2d 50, 53 (1965); *Rankin Lumber Co. v. Graveley*, 112 S.C. 128, 99 S.E. 349 (1919)). Further, “the general rule is that where an action is properly instituted in a county other than that of the defendant’s residence, a defendant has no right to request a change of venue to the county of his or her residence on the ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.” *Jeter*, 369 S.C. at 442, 633 S.E.2d at 148 (citations omitted).

It is undisputed in this matter that Defendant Lotty Trucking’s principal place of business is located in Jasper County. Thus, Jasper County is a proper venue for the action as it is the location of a defendant’s principal place of business. Plaintiff chose Jasper County as the venue for this action, and the venue should remain in Jasper County despite the Defendants objection.

Another Action Between the Same Parties for the Same Claim is Not Pending in Beaufort County

Defendants’ motion to change venue based on Rule 12(b)(8), SCRCP, must be denied because the action pending in Beaufort County is not between the same parties and it does not involve the same claims for relief by the Plaintiff.

“In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105, 674 S.E.2d 524, 531 (Ct. App. 2009) (citing Rule 12(b)(8), SCRCP). Courts are to interpret this rule narrowly, and dismissal is only proper when there is “identity of

parties, causes of action and relief.” *Id.* (citing *S.C. Public Serv. Comm’n v. City of Rock Hill*, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977) (“we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings. . . .”).

It is clear that this action is not the same as the Beaufort County action. While the actions arise from the same collision, the parties, causes of action, and relief sought are not similar. Specifically, the defendants in the Beaufort County action are Alfredo Uriostegui, Jacob-Au Trucking, LLC, and Kenneth Scott Builders, Inc. None of those defendants were defendants in this action at the commencement of this action, but Kenneth Scott Builders was added as a third-party defendant in this action by Defendant 1223 May River Road. Further, since the Plaintiff filed his Complaint in the instant action, he settled with Kenneth Scott Builders, Inc. and dismissed it as a party in the Beaufort County action. Regardless, there is not complete similarity of defendants between the actions. Further, there is a pending motion to dismiss Kenneth Scott Builders and 1223 May River Road by the Plaintiff in this action.²

Additionally, the causes of action are not similar between the two matters. The Beaufort County action was a case for negligence and gross negligence against the respective defendants. In the instant matter, Plaintiff has pled causes of action for negligence, negligent maintenance, gross negligence, joint enterprise liability, negligent entrustment, vicarious liability, and negligent selection. It is clear that the causes of action are not the same between the two matters.

² Plaintiff’s counsel first circulated a consent order to all counsel of record dismissing Kenneth Scott Builders, Inc. and 1223 May River Road, LLC on February 15, 2022. D.R. Horton’s counsel did not respond to follow-up emails on February 17, 2022, March 28, 2022, and April 10, 2022 requesting consent for this motion and order. Still receiving no response, the undersigned sent a letter to counsel for D.R. Horton to confirm consent or otherwise object to the consent order of dismissal. Still receiving no response from D.R. Horton, Plaintiff filed a motion to dismiss two of D.R. Horton’s co-defendants, being unable to obtain a response from D.R. Horton. Later, only after the instant motion was scheduled by the Court, D.R. Horton filed a motion to amend its answer to assert claims against Kenneth Scott Builders, Inc. on August 4, 2022.

Finally, the relief sought is not similar. While the Plaintiff is seeking monetary damages against the defendants in both cases, in the instant case the Plaintiff seeks punitive damages against different defendants to deter the grossly negligent conduct of the defendant in the instant case. The nature of the allegations between the defendants is not similar between the cases and neither can be the punitive relief sought.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests this court to dismiss the Defendants' Motion to Change Venue with prejudice and for all other relief that this court deems just and proper.

Respectfully Submitted,

SHELTON LAW FIRM, LLC

/s/Benjamin T. Shelton

Benjamin T. Shelton, (S.C. Bar No. 77207)

P.O. Box 21069

Hilton Head Island, SC 29925

(843) 802-0087

ben@sheltonlawsc.com

Attorney for Plaintiff

August 15, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	DEFENDANT D.R. HORTON, INC.'S
	)	MEMORANDUM IN SUPPORT OF ITS
	)	MOTION TO AMEND
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	
	)	

This matter is before the Court on Defendant D.R. Horton, Inc.'s Motion to Amend its Answer to assert a Crossclaim against an additional third party.

PROCEDURAL HISTORY AND FACTS

Plaintiff's Summons and Complaint was filed February 17, 2021; D.R. Horton's Answer, which included defenses by way of Motion to Dismiss was filed on April 14, 2021; D.R. Horton and 1223 May River Road, LLC filed their Motion to Transfer Venue pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 42, 12(b)(8), 12(b)(7), 18 and 19 on April 16, 2021; and D.R. Horton filed its Motion to Amend to assert Crossclaims against Kenneth Scott Builders ("KSB") on August 4, 2022.

LEGAL STANDARD

Rule 15 of the South Carolina Rules of Civil Procedure expressly provides that consent by the trial court to amend a pleading “shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(b) provides that a motion to amend a complaint “may be made upon motion of any party at any time, even after judgment.” “This rule strongly favors amendments and the court is encouraged to freely grant leave to amend.” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005) (citing Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987). “[A] motion to amend is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice.” Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (S.C. 2004). “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” Pool v. Pool, 329 S.C. 324, 328-9, 494 S.E.2d 820, 823 (1998) (citing Soil & Material Eng'rs, Inc. v. Folly Assocs., 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct.App.1987)).

ARGUMENT

I. Justice Requires Amendment of D.R. Horton’s Pleading.

Justice would be served by allowing amendment of D.R. Horton’s Answer in this case. South Carolina Rules of Civil Procedure 15 (a) provides “the party may amend its pleadings only by leave of court or by written consent of the adverse parties; leave shall be freely given when justice so requires.” South Carolina Civil Procedure 15(a). In this case, Plaintiff has alleged that D.R. Horton will be liable for gross negligence, negligence, negligent entrustment, vicarious liability, and negligent selection.

An equitable indemnity claim arises when a party (Plaintiff Mark McGilton) makes a claim against the indemnity plaintiff (D.R. Horton) for damages the party sustained as a result of another party's tortious conduct (Kenneth Scott Builders). See Addy v. Bolton, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971). The South Carolina Supreme Court has recognized that a general contractor's relationship with a subcontractor in a residential construction context is sufficient to support the general contractor's right to equitable indemnity against the subcontractor. First General Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 443, 445 S.E.2d 446, 448 (1994). South Carolina law is well settled that special damages arising from another's wrongful conduct are recoverable at law. South Carolina courts have held:

if the wrongful act of the defendant has involved the plaintiff in litigation with others or placed him in such relation with others as makes it necessary to incur expenses to protect his interest, such expenses should be treated as the legal consequence of the original wrongful act and may be recovered. We further held that recovery may be had at law in the form of special damages, or in equity in the form of equitable indemnity.

Griffin v. Van Norman, 302 S.C. 520, 523, 397 S.E.2d 378, 380 (Ct. App. 1990) citing Town of Winnsboro v. Wiedeman-Singleton, Inc., 303 S.C. 52, 398 S.E.2d 500 (1990) and Addy v. Bolton, 257 S.C. 28, 183 S.E.2d 708 (1971).

To recover damages on its equitable indemnity claim, D.R. Horton must prove (1) KSB was at fault in causing damages; (2) D.R. Horton has no fault for those damages; and (3) D.R. Horton incurred expenses that were necessary to protect its interest in defending against Plaintiff's claims. See Inglese v. Beal, 403 S.C. 290, 299, 742 S.E.2d 687, 692 (Ct. App. 2013).

In this case, if Plaintiff can make an argument for the Court to allow liability to attach to D.R. Horton for work D.R. Horton did not contract, perform, oversee, or supervise then, in equity, D.R. Horton should be allowed to make claims against those subcontractors whose work is the

entire basis of that liability. Therefore, justice requires that these crossclaims be added because all of the allegations arise from the same nucleus of facts and were the basis for the original Complaint. There are no new allegations added to the crossclaims, only new causes of action against parties based upon the same set of facts and circumstances.

II. There Is No Prejudice To Plaintiff.

There is no prejudice to Plaintiff by adding new causes of action. South Carolina Rules of Civil 15(a) states that leave to amend shall be freely given “when justice so requires and there is no prejudice to other parties.” In this case, there is no prejudice to Plaintiff. All of the allegations were stated in the original Complaint and D.R. Horton’s Answer. The Amended Answer and Counterclaim would only add additional causes of action based upon the same facts and additional parties identified by discovery and investigation.

Discovery is ongoing, no depositions have occurred, no 30(b)(6) depositions have occurred, no defense experts have been deposed, and there is currently no scheduling order or other deadline applicable to discovery.

CONCLUSION

The South Carolina Rules of Civil Procedure allows amendment of pleadings in the interest of justice as long as it will not prejudice a party. In this case, justice will be served by allowing the amendment of D.R. Horton’s Answer to assert a counterclaim and no party will be prejudiced. Therefore, based upon the foregoing authority and arguments, the Defendant D.R. Horton, Inc. respectfully request that the Court allow amendment of its Answer to assert a Counterclaim pursuant to South Carolina Rules of Civil Procedure 15(a).

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford, Jr. (SC Bar # 69682)

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

crawford@conlaw.com

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

August 16, 2022



SOUTH CAROLINA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kenneth Tesley DBA Kenneth Scott Builders ("Contractor")
 _____ Sole Proprietorship _____ Partnership ☒ Corporation _____ L.L.C _____ Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 27-0393282
 Name of Owner(s)/Officer(s): Kenneth J. Tesley
 Division Name: COASTAL CAROLINA Area Name: HILTON HEAD / SAVANNAH Assigned Vendor No.: 2016181
 Address for All Notices: PO Box 1590
 City: Hilton State: SC Zip Code: 29910
 Telephone: 843-247-1025 Fax: 843-813-3491 E-Mail Address: Ken@KennethScottBuilders.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 17 day of February 2016 between DR Horton, INC ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

~~CONTRACTOR SPECIFICALLY WAIVES THE RIGHTS AND REMEDIES SET FORTH AT S.C. CODE ANN. §§ 15-42 AND 15-43 CONCERNING THE TIMING OF PAYMENTS AND INTEREST ON DELAYED PAYMENTS. CONTRACTOR ACKNOWLEDGES THAT THE TERMS OF THIS AGREEMENT CONTRADICT AS TO THE TIMING OF PAYMENTS AND THAT NO PROVISION FOR INTEREST DUE TO CONTRACTOR IN THE CASE OF DELAYED PAYMENTS IS MADE HEREIN. CONTRACTOR~~

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 17 day of February 2016.

Owner:
By: [Signature]
Name: DR Horton
Title: Assistant Vice-President

Contractor:
By: [Signature]
Name: Kenneth Tesley
Title: Owner

INITIALS: OWNER [Signature] CONTRACTOR [Signature]

AGREES THAT OWNER DOES, AND WILL, NOT OWE INTEREST ON ANY TERMS WHATSOEVER IN THE CASE OF ANY DELAYED PAYMENT.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Order, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments made) of all liens for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and those joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("Purchase Order"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work at Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "Requirements"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("Inspector") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("Change Order") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which

INITIALS: OWNER  CONTRACTOR 

the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("Waste"), caused by its operations and shall remove all of Contractor's materials at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drugs" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

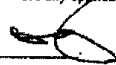
8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers; (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home; and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1)-year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

INITIALS: OWNER  CONTRACTOR 

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY INDEMNITEE AGAINST LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY OR PROPERTY DAMAGE PROXIMATELY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

INITIALS: OWNER  CONTRACTOR 

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL policy shall not contain a deductible or self-insured retention of more than \$25,000.00, and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (c) Commercial Automobile Liability Insurance coverage with limits of not less than \$500,000 per person for bodily injury and \$500,000 property damage per occurrence specifying "all autos" coverage or "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner, D.R. Horton, Inc., and all affiliates and subsidiaries of D.R. Horton, Inc., (collectively "Horton") as named, Additional Insureds, specifically identifying Horton, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 1185 or, if unavailable, both forms CG 2010 1001 and CG 2037 1001). Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYEES OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise; (b) did not pay the insurance premium directly or indirectly; and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs to complete, repair, or replace, plus any related costs or damage including re-inspection fees, with any excess to be paid to Contractor. If such costs exceed the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens

INITIALS: OWNER  CONTRACTOR 

are filed against the job location as a result of Contractor's acts or omissions, (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Disputes") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

INITIALS: OWNER  CONTRACTOR 

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

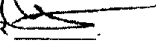
16.6 Choice of Law. This Agreement shall be governed by the law of the State of South Carolina.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

SOUTH CAROLINA VERSION (REV. 22 JUNE 2015)

INITIALS: OWNER  CONTRACTOR 



GEORGIA INDEPENDENT CONTRACTOR AGREEMENT

NAME OF CONTRACTOR Kenneth Tashy DBA Kenneth Scott Builders,
 ("Contractor")
 Sole Proprietorship Partnership ☒ Corporation L.L.C Other (ATTACH W-9)
 Social Security No. or Tax ID No.: 27-0393282
 Name of Owner(s)/Officer(s): Kenneth S. Tashy HT-201618
 Address for All Notices: PO Box 1590
 City: Blackshear State: SC Zip Code: 29910
 Telephone: 803 247-1025 Fax: 803 815-3410 E-Mail Address: Ken@KennethScottBuilders.com
 Insurance Carriers: ATTACH INSURANCE CERTIFICATES, OR THERE WILL AUTOMATICALLY BE WITHHOLDING AND DEDUCTIONS.
 This agreement (the "Agreement") is entered into on this 17 day of February, 2016, between
DR Horton, INC ("Owner") and Contractor.

1. SCOPE OF WORK. This Agreement is entered on a blanket basis. The terms of this Agreement shall govern all current and future work of Contractor for Owner. The work to be performed under this Agreement shall include all work performed and materials supplied by Contractor, directly or indirectly, to Owner, including but not limited to the labor, services and/or materials, equipment, transportation, or facilities used or required to complete the construction-related activities of Owner authorized by written purchase order, or similar document by Owner's authorized field personnel (the "Work"). The applicable quantities and pricing for the Work shall be reflected in the price sheet, proposal, bid, or purchase order issued by Owner, or in other documentation most recently accepted and approved in writing by Owner (the "Pricing Schedule"). The Pricing Schedule or any other writing shall not modify any of the terms of this Agreement unless executed in the form of an amendment to this Agreement. Owner is not obligated to award any work on specific property to Contractor regardless of the Pricing Schedule, does not guarantee any quantity of work to Contractor, and may at its sole option retain others to perform the Work or similar work at any job location in addition to, or in place of, Contractor.

2. INDEPENDENT CONTRACTOR STATUS. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, method and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that all personnel performing the Work are qualified and competent to perform their assigned tasks and have all necessary licenses. Contractor further shall provide written notification to all of its present and future employees of Contractor's provision for Workers Compensation Insurance. Any provisions in this Agreement which may appear to give Owner the right to direct Contractor as to the details of doing the Work or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only.

3. CONTRACT PRICE.

3.1 Pricing Schedule. The Pricing Schedule shall be applicable to all Work performed under this Agreement. The Pricing Schedule shall reflect the maximum total payment due to Contractor.

3.2 Taxes. Contractor shall be solely responsible for and will pay all withholding, Social Security, state unemployment and all other similar taxes for Contractor's employees, agents or subcontractors. In addition, Contractor shall pay all applicable sales or use taxes on labor provided and materials furnished or otherwise required by law in connection with the Work, unless Owner furnishes Contractor with a Resale Certificate or Exemption Certificate. If Contractor performs under a fixed-price contract (one price for materials and incorporated skill and labor), the contract price includes all sales and use taxes.

3.3 Price Increases. NO PRICE INCREASE SHALL BE BINDING UPON OWNER UNTIL CONTRACTOR GIVES OWNER ONE HUNDRED TWENTY (120) DAYS WRITTEN NOTICE BEFORE ANY PRICE INCREASE IS IMPLEMENTED. Notwithstanding anything contained on any new Pricing Schedule implementing a price increase, the superseded Pricing Schedule shall remain in effect for Purchase Orders, as defined herein, issued after the date of any new Pricing Schedule until the expiration of the notice period.

4. PAYMENT.

4.1 Invoices. Contractor shall invoice Owner no later than the earlier of (i) ninety (90) days after completion of the Work or (ii) thirty (30) days from the date of closing from Owner to a purchaser of the house incorporating the Work. To the extent permitted by law, Contractor waives its right to payment for any Work not invoiced in a timely manner. Owner shall timely pay Contractor for completed Work, provided that Contractor has performed in accordance with and has fully complied with all terms and conditions of this Agreement. If the Work is to be performed in stages, payments may be made for each stage at Owner's option. All Work described on a Purchase Order shall be considered separate and distinct from Work described on any other Purchase Order, as defined herein.

4.2 Contractor Payments. No payments shall be due under this Agreement until Contractor's invoice (or Purchase Orders, as defined herein, if applicable) for the Work has been submitted to Owner for payment. This action shall constitute a representation and confirmation by Contractor that all Work (or a specified portion of the Work) to be performed on a specific job location has been completed satisfactorily and that all material suppliers, laborers and subcontractors have been paid in full. In exchange for progress payments, Owner may require a partial release (to the extent of all payments

THIS AGREEMENT CONSISTS OF SEVEN (7) PAGES AND ADDENDA, IF ANY.

Executed this 17 day of February, 2016

Owner:

By:

Name:

Title:

Assistant Vice-President

INITIALS: OWNER

Contractor:

By:

Name:

Title:

Owner

CONTRACTOR

Page 1 of 7

made) of all items for materials furnished and labor performed by Contractor, its employees and agents and all third parties furnishing labor or materials in connection with the Work so performed, and an affidavit that no person has a right to any lien for materials or labor. Unless otherwise agreed by Owner and Contractor, payment to Contractor shall be made by check. Owner may, at any time, in its discretion, make checks payable jointly to Contractor and one or more third parties; and these joint payments shall satisfy amounts owed by Owner to Contractor, whether or not all parties endorse the checks.

4.3 Acceptance of Work. Acceptance by Contractor of the final payment of the contract price shall waive and release all claims against Owner under this Agreement, but shall not waive any claims of Owner arising out of or resulting from the Work and shall not release Contractor from any obligations under this Agreement, including but not limited to liability for warranties, warranty service, or any other liability for alleged defects in the Work. No certificate issued, nor payment made to Contractor, nor partial or entire use or occupancy of the Work by Owner or its agents or customers or assigns shall constitute an acceptance of the Work or materials not in compliance with this Agreement, or be used in any way as evidence of acceptance by Owner.

5. SCHEDULE OF WORK.

5.1 Construction Schedule. Contractor acknowledges that **TIME IS OF THE ESSENCE** in the performance of all Work and obligations under this Agreement. Owner may alter the time, order and priority for performance of all components of the Work and all matters relative to the timely and orderly conduct of the Work without increase in price or liability of any kind to Contractor or others. Contractor shall coordinate with Owner all Work scheduled and cooperate with other contractors.

5.2 Authorization and Commencement of the Work. Authorization for any Work shall be in writing, either pursuant to a written purchase order, work invoice, or similar document ("**Purchase Order**"). Contractor shall have no authority to commence the Work at any specific job location until Owner has issued instructions to proceed. Contractor shall commence the Work no later than three (3) days after notice to proceed from Owner, and if such Work is interrupted at the direction of Owner, Contractor shall resume such Work within two (2) working days of Owner's direction to resume.

5.3 Changes in Construction Schedule. Owner shall have the right to make changes to the schedule of Work as Owner's sole discretion, and Contractor shall comply with such changes. Contractor shall not be entitled to any additional compensation for such schedule changes.

6. PERFORMANCE OF THE WORK.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common law), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements). In the event of conflicting provisions, specifications will take precedence over the drawings; the more specific provision will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive; later modifications or changes will supersede or take precedence over earlier provisions. Contractor shall immediately notify Owner in writing of any allegedly conflicting provisions.

6.2 Representative(s). Contractor shall have a competent representative at the job site at all times during performance of the Work who shall have absolute authority to act, in all respects, on behalf of and for Contractor.

6.3 Contractor's Acknowledgements Regarding Work. Contractor's commencement of the Work shall be deemed as Contractor's agreement to complete the Work by the completion date specified by an authorized employee of Owner and shall be deemed as Contractor's acknowledgment that Contractor has inspected the job location, is thoroughly familiar with the plans and specifications, and that the plans and specifications are clear and unambiguous, and that Contractor has accepted and agreed to be bound by all such requirements.

6.4 Government Requirements. Contractor shall comply with all applicable federal, state, and local laws and statutes, ordinances, rules, regulations, orders, codes, licensing requirements and standards relating in any way to the performance of the Work, including but not limited to the requirements of the Occupational Safety and Health Act of 1970 as amended, the training and record-keeping requirements of the Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and the procurement and posting of all required permits and notices (the "**Requirements**"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of or noncompliance with the Requirements, and shall, to the fullest extent permitted by law, **INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS** from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation of or noncompliance with the Requirements by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, regardless of any alleged fault of Owner. In addition, Contractor shall not discriminate illegally in its hiring or employment and shall comply with all state and federal employment laws or regulations. Contractor shall perform background checks and ensure only suitable persons perform warranty or repair work after a house is occupied.

6.5 Observation, Inspection and Testing. Owner and any government agency inspector ("**Inspector**") shall have the right, but not the obligation, to observe, inspect or test the Work at any time during or after construction, but that observation, inspection or testing is solely for the benefit of Owner and is not for Contractor's benefit. Contractor shall cooperate with Owner and Inspector during any such inspection. The failure by Owner or Inspector to note defects in the Work during an inspection shall not waive or vary any of Contractor's obligations, representations or warranties related to the Work.

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any Work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

6.7 Licenses, Permits, and Approvals. Contractor shall secure and maintain all permits, licenses, approvals, and as-built drawings necessary for, or applicable to, the performance of the Work. Contractor shall provide copies to Owner immediately upon request.

6.8 Change Orders. Owner and Contractor agree that no additional charge or increased price shall be charged by Contractor for any change or alteration unless set forth in a written variance agreement or change order ("**Change Order**") or Purchase Order signed by Owner and Contractor before the commencement of such changes. Contractor shall comply with any Change Order requested by Owner, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Pricing Schedule.

6.9 Subdivision Rules. Contractor shall comply fully with all rules, regulations, and restrictive covenants governing the subdivision in which the Work is performed, including without limitation, rules, regulations and restrictions (i) establishing hours and/or days that Work may be performed; (ii) governing storage of materials on the job location; (iii) regulating trash pick-up and waste collection at the job location; and (iv) Work Site safety requirements. Contractor shall be subject to subdivision rules which provide for fines payable to Owner by Contractor for failure to comply with such rules, which may be deducted by Owner from any sums owed by Owner to Contractor.

6.10 Clean-up. Contractor shall at all times keep the job site free from accumulation of waste or other discarded materials, including but not limited to trash, unused building materials, garbage, refuse or rubbish ("**Waste**"), caused by its operations and shall remove all of Contractor's materials

INITIALS: OWNER m CONTRACTOR VS

at the conclusion of the Work. If materials are furnished by Owner, Contractor shall move all usable materials at the conclusion of the Work to a location designated by Owner. In addition to removal of all Waste upon the conclusion of the Work, Contractor shall leave the inside of any home under construction in "broom clean" condition. Contractor shall dispose of all Waste properly, and may place it in any receptacles intended for that purpose or at other locations designated by Owner. Contractor's failure to comply with this provision shall authorize Owner to undertake any necessary clean-up. The cost of any such clean-up shall be payable by Contractor immediately upon demand by Owner and may be deducted by Owner from any sums owed to Contractor.

7. SAFETY.

7.1 Contractor Responsibility for Safety. Contractor shall, at its own expense, be solely responsible for protecting its employees, subcontractors, material suppliers and all other persons from risk of death, injury or bodily harm arising from, or in any way related to, the Work or the construction site on which the Work is being performed (the "Work Site"), and ensuring full compliance with all government safety and OSHA rules and regulations. Contractor shall have an ongoing safety program and conduct inspections to ensure that safe working conditions and equipment exist and safe practices are observed. Contractor shall have a competent person on the Work Site at all times in charge of Contractor's safety program. UNDER NO CIRCUMSTANCES SHALL THE ACTIONS OF OWNER IN REQUIRING IMPLEMENTATION OF A SAFETY PROGRAM BE CONSTRUED AS OWNER HAVING CONTROL OVER CONTRACTOR'S SAFETY PROGRAM. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE CONTENT AND IMPLEMENTATION OF ITS SAFETY PROGRAM WHICH SHALL MEET OR EXCEED APPLICABLE LEGAL STANDARDS. CONTRACTOR AGREES THAT OWNER HAS NO RESPONSIBILITY OR LIABILITY FOR THE PHYSICAL CONDITION OR SAFETY OF THE WORK SITE. Contractor shall immediately notify Owner's construction supervisors of any unsafe conditions or practices observed on the Work Site and promptly send Owner a written notice if the condition or practice is not immediately remedied. Further, Contractor shall immediately notify in writing Owner and Contractor's insurer of any accidents or injuries on the Work Site. Contractor shall prohibit and prevent the presence on the Work Site of persons under age eighteen (18) and all persons not involved in the Work.

7.2 Safety Laws. Contractor shall fully comply with all laws, orders, citations, rules, regulations, standards and statutes concerning occupational health and safety, accident prevention, safety equipment and practices, including but not limited to federal and state OSHA regulations ("Safety Law"). In addition to its obligations under Section 10 of this Agreement, Contractor shall immediately pay all fines or penalties assessed upon Contractor or Owner relating to the Work for any violation of, or noncompliance with, the Safety Law, and shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from and against any and all claims, demands, liability, losses, costs, damages or expenses including attorneys' fees and costs incurred, lawsuits, actions, causes of action, citations or work stoppages, or other litigation of every kind and character in any way incident to, in connection with, or arising out of any alleged violation or noncompliance by Contractor, or any individual or entity acting on behalf of or at the direction of Contractor, of the Safety Law, or safety citation, regardless of any alleged fault of Owner. Contractor shall provide Owner with written verification of compliance with Hazard Communication Standard, 29 C.F.R. §1926.59 et seq., and, if required by law, provide written notice to Owner of the contact person responsible for Contractor's safety compliance.

7.3 Hazardous Materials. Contractor shall not permit any Hazardous Substances, defined below, to be brought onto or stored at any job site or used in the construction of the Work, except for commonly used construction materials, provided however, that all such material shall be handled in full compliance with all laws, ordinances and regulations. All notices required to be given with respect to such products shall be given by Contractor. Contractor shall not release or dispose, nor allow any other person to release or dispose, of Hazardous Substances or waste at any job site or into the soil, drains, surface or ground water, or air. "Hazardous Substance" means any substance or material which any state, federal or local governmental authority determines or designates as capable of posing a risk of injury to health, safety, property or the environment.

7.4 No Alcohol or Drugs. Contractor shall prohibit and prevent the presence or use of alcohol or drugs by its employees, agents, subcontractors or suppliers at a job location, or performance of the Work by any person under the influence of alcohol or drugs. "Drug" shall include any substance, whether or not illegal, which upon exposure, ingestion, inhalation, injection or by any other introduction, may impair one's ability to safely perform the Work.

8. CONTRACTOR'S WARRANTIES.

8.1 Against Defective Work. For the longer of ten years or the period of any applicable statute of limitation or repose, Contractor unconditionally warrants to Owner, its parent, subsidiary or affiliate entities, or successors and assigns, that all Work shall conform to the specifications of this Agreement (including but not limited to the standards referenced in Subsection 6.1), shall be free from any defects or deficiencies in workmanship or materials, shall comply with the requirements of all applicable governing authorities, laws, regulations and ordinances, shall meet or exceed the FHIA/VA minimum property standards, and shall comply with the Home Owners' Warranty, defined below and its applicable warranty standards (which Contractor has read and understands). All Work not conforming to these requirements shall be considered to be defective. All material shall be new and of best quality within the scope of the Pricing Schedule and free from defects. Contractor shall be liable to make good or promptly repair all Work not complying with the standards set forth in this Section at its own expense.

8.2 Home Owners Warranty. In addition to the warranty in Subsection 8.1, Contractor warrants that the Work shall remain free of defects for the following warranty periods beginning on the earlier of the date of occupancy by, or transfer of title from Owner to, any initial home purchaser of property subject to the Work: (i) for a period of ten (10) years all structural elements, including but not limited to roof framing members (rafters and trusses), floor framing members (joists and trusses), bearing walls, columns, lintels (other than lintels supporting veneers), girders, load-bearing beams, and foundation and footing systems; (ii) for a period of two (2) years all: (a) heating/ventilating/air conditioning duct work, refrigerant lines, steam and water pipes, registers, convectors and dampers, (b) plumbing pipes (supply and waste) and their fittings, as well as gas supply lines and vent pipes located within the home, and (c) electrical wiring, electrical boxes and connections up to the public utility connections, installed by Contractor; and (iii) all other elements for a period of one (1) year but in no event shall a warranty period or coverage for the system, element or other portion of the Work be less than the applicable warranty period or coverage for such system, element, or other portion of the Work under (a) any statutory warranty or (b) residential warranty program from any residential warranty company for the residential warranty policy to be provided by Owner to any Homeowner, including but not limited to the Residential Warranty Corporation Program (a "Home Owners' Warranty"). Owner shall use its best efforts to provide Contractor with notice of any warranty period under any Home Owners Warranty that is longer than the warranty periods stated above; provided, however, failure to give that notice will not affect the extension of the warranty period to the applicable warranty period under the Home Owners Warranty.

8.3 Repair by Owner Does Not Waive Warranty. The performance/fulfillment of any warranty repair responsibilities by Owner or any other third party will not affect, minimize, or in any way obviate Contractor's warranty or indemnity obligations hereunder, nor shall it affect Owner's right to require Contractor to perform warranty services thereafter.

8.4 Transfer of Manufacturers Warranties. Contractor shall furnish, transfer and assign all warranties, relevant product information, and guarantees by manufacturers on components of the Work, including any appliances or equipment, and shall furnish all certificates required by any third parties such as any municipality, the VA, or the FHA. These warranties, guarantees, and certificates are in addition to all other warranties or obligations of Contractor provided by law or otherwise and shall not limit or reduce any applicable statutes of limitation.

8.5 Transfer of Title and Ownership to Work and Other Documents. Contractor warrants and hereby transfers title to all Work, including, but not limited to all materials, products, samples, as-built drawings and shop drawings, to Owner, either upon incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. To the extent subject to copyright law, all Work shall be considered a "work made for hire." Upon request of Owner, Contractor shall also provide any other documents necessary to transfer any and all ownership rights to the Work, including, but not limited to any copyright rights, to Owner.

INITIALS: OWNER  CONTRACTOR 

9. LIENS AND RETAINAGE.

9.1 Contractor's Lien Waiver. TO THE EXTENT PERMITTED BY LAW, CONTRACTOR, FOR ITSELF, ITS EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS, HEREBY WAIVES ITS STATUTORY, CONSTITUTIONAL AND COMMON LAW RIGHTS TO ASSERT LIENS OR SIMILAR CLAIMS AGAINST OWNER OR ITS PROPERTY.

9.2 Retainage. At all times during the performance of this Agreement and for thirty (30) days afterwards, Owner shall be entitled to hold, for all Work in progress, the greater of ten percent (10%) or any allowable retainage and any statutory sums in accordance with the laws of the state in which the Work is located.

9.3 Lien Claim Indemnity. If any liens, affidavits of claim, stop payment notices, or lis pendens arising out of the Work are filed or provided to Owner, Contractor agrees that Owner shall be entitled to withhold all further payments to Contractor until Contractor causes such liens, affidavits of claim, stop payment notices, or lis pendens to be removed and released of record. In addition to its obligations under Section 10 of this Agreement, Contractor shall, to the fullest extent permitted by law, INDEMNIFY, DEFEND, and HOLD OWNER HARMLESS from any loss, expense, including legal fees and disbursements, damage or injury caused or occasioned, directly or indirectly, by any such liens, affidavits of claim, stop payment notices, or lis pendens, and further agrees immediately upon Owners' request to: (i) procure a bond to indemnify Owner and any purchaser of property including the Work, in an amount sufficient to discharge any and all liens, affidavits of claim, stop payment notices, or lis pendens, or (ii) pay to Owner all monies, including any additional amount necessary to cover all attorneys' fees, expenses and court costs paid by Owner or any home purchaser in discharging the liens, affidavits of claim, stop payment notices, or lis pendens whichever remedy Owner elects in its sole and absolute discretion. The provisions of this paragraph shall be in addition to any rights Owner may have under applicable law with respect to such liens, affidavits of claim, stop payment notices, or lis pendens.

10. CONTRACTOR'S INDEMNITY.

10.1 GENERALLY. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD OWNER AND OWNER'S PARENT CORPORATION, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, AND EACH OF THESE ENTITIES' RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND INSURERS (INDIVIDUALLY OR COLLECTIVELY "INDEMNITEE"), FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS OR OTHER LITIGATION, ACTIONS, CAUSES OF ACTION, OR OTHER LIABILITIES, OF EVERY KIND AND CHARACTER (INCLUDING ALL COSTS THEREOF, ATTORNEYS' FEES AND INTEREST), WHETHER ASSERTED BY A PURCHASER OR OWNER, CONTRACTOR, OR ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO PERSONNEL FURNISHED BY CONTRACTOR, ITS SUPPLIERS AND SUBCONTRACTORS OF ANY TIER), ON ACCOUNT OF BODILY OR PERSONAL INJURY, DEATH, OR DAMAGE TO OR LOSS OF TANGIBLE OR INTANGIBLE PROPERTY INCLUDING THE LOSS OF USE THEREOF IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH: (1) A BREACH OF ANY WARRANTIES, REPRESENTATIONS, COVENANTS, OR OTHER OBLIGATIONS OF CONTRACTOR SET FORTH IN THIS AGREEMENT; (2) THE WORK, AS DEFINED IN SECTION 1, INCLUDING BUT NOT LIMITED TO WORK PERFORMED OR TO BE PERFORMED OR MATERIAL SUPPLIED BY CONTRACTOR OR BY CONTRACTOR'S AGENTS OR EMPLOYEES, OR BY ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES; (3) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS, REGARDLESS OF WHETHER CAUSED IN PART BY INDEMNITEE; OR (4) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION OF INDEMNITEE RELATED IN ANY WAY TO THE WORK, EXCEPTING ONLY LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR'S DUTY TO DEFEND IS A SEPARATE, DISTINCT, AND INDEPENDENT OBLIGATION FROM ITS DUTY TO INDEMNIFY AND IS TRIGGERED IMMEDIATELY WHEN ANY CLAIM, DEMAND, OR OTHER ASSERTION OF LIABILITY IS MADE AGAINST INDEMNITEE WHICH POTENTIALLY OR ARGUABLY IS SUBJECT TO CONTRACTOR'S DUTY TO INDEMNIFY, REGARDLESS OF CONTRACTOR'S ULTIMATE LIABILITY FOR INDEMNITY. CONTRACTOR MUST DEFEND INDEMNITEE EVEN WHERE THE ALLEGATIONS AGAINST INDEMNITEE ARE AMBIGUOUS OR INCOMPLETE WITH RESPECT TO THE ISSUE OF CONTRACTOR'S DUTY TO INDEMNIFY. ONCE THE DUTY TO DEFEND IS TRIGGERED, CONTRACTOR IS OBLIGATED TO DEFEND THE ENTIRE ACTION, LAWSUIT, ARBITRATION, OR OTHER LITIGATION, INCLUDING ANY CLAIMS THEREIN NOT SUBJECT TO INDEMNITY BY CONTRACTOR. NOTWITHSTANDING THE FOREGOING, NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO DEFEND, INSURE, INDEMNIFY OR HOLD INDEMNITEE HARMLESS FOR LIABILITY OR CLAIMS ARISING OUT OF BODILY INJURY TO PERSONS, DEATH, OR DAMAGE TO PROPERTY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OR SOLE INTENTIONAL ACT OR OMISSION OF INDEMNITEE. CONTRACTOR AGREES THAT ITS OBLIGATIONS SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. PAYMENT FOR THE WORK IS NOT A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION.

10.2 INDEMNITY NOT EXCLUSIVE REMEDY. ANY PAYMENTS BY CONTRACTOR UNDER SECTION 10 TO OR ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY. INDEMNITEE SHALL HAVE THE RIGHT, IF IT SO CHOOSES IN ITS ABSOLUTE DISCRETION, TO DEFEND ALL CLAIMS WHICH MAY BE ASSERTED, AND CONTRACTOR WILL REIMBURSE INDEMNITEE FOR ALL EXPENDITURES THAT OWNER MAY INCUR ON ACCOUNT OF THE CLAIM.

10.3 NO BAILMENT. CONTRACTOR AND CONTRACTOR'S EMPLOYEES, PERSONNEL, AGENTS, ALL SUBCONTRACTORS, AND SUPPLIERS SHALL BE SOLELY RESPONSIBLE FOR THEIR RESPECTIVE TOOLS, MATERIALS, AND EQUIPMENT, AND HEREBY WAIVE ANY RIGHT OF RECOVERY AGAINST THE INDEMNITEE WITH RESPECT TO: (1) ANY LOSS OF SUCH TOOLS, MATERIALS, OR EQUIPMENT, OR (2) ANY DAMAGE TO SUCH TOOLS, MATERIALS OR EQUIPMENT.

10.4 Subcontractors and Suppliers Indemnity Obligations. Contractor shall require each of its subcontractors to agree to indemnify Indemnitee to the same extent that Contractor is required to indemnify Indemnitee in this Agreement. Before a subcontractor begins its Work, Contractor shall obtain a signed agreement from that subcontractor indemnifying Indemnitee to the extent required and provide that agreement and evidence of satisfactory insurance to Owner. In addition, to the extent permitted by law, Contractor shall require that each supplier or subcontractor indemnify Indemnitee from all losses arising from any materials or labor incorporated into the Work. Contractor shall require subcontractors and material suppliers to agree to submit to binding arbitration on the terms set forth in Section 13 of this Agreement. For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the acts and omissions of any subcontractor or supplier who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed also to be the obligation of the subcontractors or suppliers to Owner, for which Contractor shall be fully responsible to Owner.

11. INSURANCE.

11.1 General Liability. Contractor agrees to carry a Broad Form Commercial General Liability Insurance on an Occurrence Form (the "CGL Policy"), with products-completed operations coverage, which contains a per occurrence limit of no less than One Million Dollars (\$1,000,000.00), and an aggregate limit of no less than Two Million Dollars (\$2,000,000.00) protecting against bodily injury, broad form property damage, and personal injury claims arising from the exposures of: (i) premises-operations; (ii) products-completed operations including materials designed, furnished, and/or modified in any way by Contractor (with a separate aggregate limit at least equal to the general aggregate limit); (iii) independent subcontractors; (iv)

INITIALS: OWNER  CONTRACTOR 

contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, property damage resulting from explosion, collapse, or underground (x, c, u) exposures. The CGL Policy shall not exclude from coverage the type, nature, or volume of the Work or limit the type of structure or number of units on which the Work is to be performed. The CGL Policy shall not contain a deductible or self-insured retention of more than Twenty Five Thousand Dollars (\$25,000.00), and shall allow the satisfaction of any and all deductible or self-insured retention through payments made by any third party, including but not limited to Owner or any additional insured, co-insureds, co-insurers, or insureds other than the primary or first named insured. Contractor shall continuously maintain a CGL Policy covering products-completed operations for any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work.

11.2 Other Insurance. Contractor agrees to carry (a) Workers Compensation Insurance that provides statutory benefits and coverage imposed by applicable state or federal law for Contractor's personnel, employees or agents and Contractor shall satisfy all Workers Compensation obligations imposed by law; (b) Employer's Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for each accident for bodily injury, Five Hundred Thousand Dollars (\$500,000.00) policy limit for bodily injury by disease, and Five Hundred Thousand Dollars (\$500,000.00) for each employee for bodily injury by disease; (c) if Contractor's Work includes design services, Contractor Professional Liability Insurance or Professional Liability Insurance for Architects, Engineers, Surveyors, and other Professional Service Organizations, that provides a per claim limit of no less than One Million Dollars (\$1,000,000.00) and an aggregate of no less than One Million Dollars (\$1,000,000.00) protecting against faulty design and faulty professional judgment; and (d) Commercial Automobile Liability Insurance coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per person for bodily injury and Five Hundred Thousand Dollars (\$500,000.00) for property damage per occurrence specifying "all owned, leased, hired or non-owned autos."

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner, D.R. Horton, Inc., and all affiliates and subsidiaries of D.R. Horton, Inc., collectively "Horton" as named, Additional Insureds, specifically identifying Horton, on the CGL Policy and policies required above covering both ongoing operations and completed operations (equivalent in scope to form CG 2010 0704 and CG 2037 0704). Coverage obtained by Contractor with Horton as an additional insured shall be primary, with any insurance of Horton being excess coverage. Insurance coverages required by this Agreement shall contain unqualified provisions to the effect that the policy shall: (i) not be subject to cancellation, non-renewal, adverse change, or reduction of amounts of coverage without thirty (30) days prior written notice to Owner; (ii) be carried continuously from the date of commencement of the Work until expiration of any applicable warranty period, statute of limitation, or statute of repose, whichever is longer, for the filing or asserting of claims, lawsuits or other actions arising out of or relating to the Work; (iii) provide for a waiver of subrogation; (iv) indicate that coverage applies in the state where the Work is being performed; and (v) be with a carrier licensed to do business in the jurisdiction of the Work with a minimum financial strength rating of A and a financial size rating of VII as determined by A.M. Best with insurance companies acceptable to Owner in its sole and absolute discretion. The amounts and types of insurance required by this Agreement are the minimums required by Owner and shall not be substituted for an independent determination by Contractor of the amounts and other types of insurance that Contractor shall determine to be reasonably necessary to protect itself, the Work, and its obligations under this Agreement. In the event that Contractor obtains insurance coverage that is broader than the minimums required by this Agreement, this Agreement shall be deemed to require the broader coverage, including but not limited to any greater limits and any excess or umbrella coverages. Contractor shall immediately notify Owner in writing of any incident, occurrence, injury, or situation related in any way with the Work which may give rise to any claim or loss under any of the insurance coverages required by this Section 11.

11.4 Proof of Insured Status. Contractor shall provide evidence that all required insurance is in full force by furnishing Owner with a Certificate of Insurance, portions of policies (including but not limited to declarations pages and endorsements), or certified copies of the required policies, as requested by Owner.

11.5 Reduction of Price for Non-Compliance. NOTWITHSTANDING THE FOREGOING, IF THE CONTRACTOR FAILS TO PROVIDE OWNER WITH THE REQUIRED EVIDENCE OF INSURANCE, IN ADDITION TO ALL OTHER REMEDIES, OWNER, AT ITS SOLE OPTION, SHALL BE ENTITLED TO: (A) REDUCE THE AMOUNT DUE CONTRACTOR BY THE AMOUNT (ESTABLISHED BY OWNER BY OWNER POLICY WITH RESPECT TO PARTICULAR TRADE CATEGORIES IN ITS SOLE AND ABSOLUTE DISCRETION IN EFFECT AT THE TIME WORK IS PERFORMED) TO COMPENSATE OWNER REASONABLY FOR ANY ADDITIONAL COSTS OF ITS WORKERS COMPENSATION AND GENERAL LIABILITY INSURANCE PREMIUMS AND OWNER'S INCREASED RISKS AND ADMINISTRATIVE COSTS ASSOCIATED WITH DOING BUSINESS WITH UNINSURED CONTRACTORS, THEIR EMPLOYERS OR AGENTS. THIS WITHHOLDING IS NOT PAYMENT FOR INSURANCE AND OWNER IS IN NO WAY AN INSURER OF CONTRACTOR, AND/OR ITS EMPLOYEES OR SUBCONTRACTORS. CONTRACTOR REMAINS OBLIGATED TO PROVIDE INSURANCE FOR ITSELF AND ITS EMPLOYEES UNDER THIS AGREEMENT AND THE AMOUNT WITHHELD MAY EXCEED THE ACTUAL COSTS INCURRED BY OWNER; OR (B) ACCEPT FROM CONTRACTOR A WAIVER OF INSURANCE TO THE EXTENT PERMITTED AND MADE IN ACCORDANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATUTES OR REGULATIONS.

11.6 Subcontractor and Supplier Insurance Obligations. If Contractor subcontracts any of the Work, Contractor warrants and guarantees that each subcontractor shall carry the same insurance required to be carried by Contractor in this Section 11, and that each subcontractor shall name Horton as an additional insured on the required liability policy or policies to the same extent that Contractor is required to do so. Further, Contractor shall require subcontractors and material suppliers to provide to Owner evidence of satisfactory insurance in accordance with the terms of this Agreement.

11.7 Subrogation. Contractor hereby waives, releases and discharges all claims and/or rights of recovery by subrogation or otherwise (including but not limited to claims relating to deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, insolvency of any insurer, limitations or exclusions of coverage) against Owner or any Indemnitee, and any of their consultants, subcontractors, agents, employees and representatives. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

12. REMEDIES.

12.1 Owner's Remedies. If Work performed by Contractor pursuant to this Agreement is defective or incomplete, or if another contractor's work, or other property, is damaged by an act or omission of Contractor, its employees, agents, suppliers, or subcontractors, Owner shall have the right to elect, at its sole discretion to: (i) notify Contractor, at which time Contractor shall promptly correct all or any portion of the Work designated by Owner, and replace or repair any other damaged work or property designated by Owner, at Contractor's expense, within twenty-four (24) hours of notice in an emergency (as determined by Owner in its sole discretion) and within forty-eight (48) hours of notice on a non-emergency basis; or (ii) correct all or any portion of the Work, and replace or repair all or any portion of the other damaged work or property. Owner may retain any sums otherwise due Contractor under any Purchase Order or invoice and apply these sums against such costs of completion, any related costs or damage, including re-inspection fees, with any excess to be paid to Contractor. If the cost of the remedial work exceeds the funds withheld, Contractor shall be fully responsible for the deficiency, together with any damages and costs, including costs of court and attorneys' fees incurred by Owner, and shall pay this amount to Owner immediately upon demand.

12.2 Right to Withhold or Offset. In addition to the remedies in Subsection 12.1, Owner may withhold payment otherwise due Contractor and offset that payment against any damages or expenses incurred by Owner, if: (i) Contractor does not make prompt and proper payments to its employees, agents, and/or subcontractors, or fails to pay for any labor, materials or equipment furnished to Contractor by third parties; (ii) claims or liens are filed against the job location as a result of Contractor's acts or omissions; (iii) in Owner's discretion, Owner reasonably believes that Contractor's Work is not progressing satisfactorily or that the Work cannot or may not be completed in accordance with the terms of this Agreement; (iv) Contractor

INITIALS: OWNER  CONTRACTOR 

fails to perform, or to pay the costs and expenses of warranty service, any indemnity claim, taxes or legal order owed by Contractor under this Agreement; (v) Contractor fails to timely provide the evidence of insurance required pursuant to this Agreement and Owner has not expressly waived that insurance; (vi) Contractor fails to promptly pay any fines or penalties imposed against Owner or Contractor related directly or indirectly to the Work; (vii) Contractor has not provided necessary or adequate tools, material, or equipment for, or cleaned up after, the Work; or (viii) Contractor fails to comply with any other provision of this Agreement, or any agreement between Contractor and Owner's parent company, any subsidiary or affiliate. Without limiting the generality of the foregoing, Owner may set off from amounts owing to Contractor hereunder any amounts owing by Contractor to Owner's parent company, any subsidiary or affiliate, under any agreement between Contractor and any such entity.

12.3 Remedies Not Exclusive. The duties and obligations imposed by this Agreement, and rights and remedies available under this Agreement, shall be independent and cumulative so that no one of them is exclusive, and each is in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies allowed.

12.4 Right to Attorneys' Fees and Expenses. Contractor shall pay any and all attorneys' fees and other expenses incurred by Owner in enforcing Contractor's obligations under this Agreement.

13. ALTERNATIVE DISPUTE RESOLUTION.

13.1 Disputes. All disputes, whether existing now or arising in the future between them, related in any way to this Agreement, to Contractor's Work, or to any dispute that Owner or Contractor shall have with any third party related to the Work ("Dispute") shall be subject to Alternative Dispute Resolution. These disputes shall include claims related to the construction or sale of any home or property incorporating the Work, including any claims asserting any alleged defects in the Work or any alleged representations and/or warranties, express or implied, relating to the property and/or the improvements. Contractor shall incorporate all of Section 13 in its agreements with subcontractors and suppliers, requiring them to participate in the dispute resolution process described in to the same extent Contractor is required to participate.

13.2 Mediation. If a Dispute cannot be settled through negotiation, Owner and Contractor may agree in good faith to settle the Dispute by mediation. Cost of mediation shall be shared equally by the parties. Notwithstanding the foregoing, a party need not resort to mediation before seeking other relief.

13.3 Arbitration. If the parties are unable to resolve any Dispute by agreement, regardless of any other choice of law provision in any underlying contract or this Agreement, the Dispute shall be submitted to binding arbitration under the Federal Arbitration Act, 9 U.S.C. 1 et seq. ("FAA"). All demands for arbitration shall be made before the expiration of the applicable statutes of limitations or repose, except that any claim by Owner shall not accrue for purposes of any time limitation for claims until Owner has discovered the claim, or could have discovered it by reasonable diligence. The award rendered by the arbitrator(s) shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction, but the award may be vacated, modified or corrected only as permitted by the FAA.

13.4 Choice of Mediator and Arbitrator; Number of Arbitrators. Any mediation or arbitration shall be administered and conducted by a mediator or arbitrator(s) mutually agreeable to the parties. Three neutral arbitrators shall be appointed if the Dispute, or the aggregate amount of all Disputes against Owner, is for \$1,000,000 or more, but only one arbitrator shall be appointed if the Dispute is for less than \$1,000,000. If the Dispute or Disputes is to be decided by three arbitrators, then each party shall select a neutral arbitrator within fourteen (14) calendar days of the demand for arbitration is served and the two party-appointed arbitrators shall select a third neutral arbitrator within fourteen (14) calendar days after the two party-appointed arbitrators are selected. If Owner and Contractor cannot agree on the selection of an arbitrator, or if either Owner or Contractor does not appoint an arbitrator or the two party-appointed arbitrators do not select a third arbitrator within the specified time periods, then either Owner or Contractor may file an action with the appropriate court with proper venue and jurisdiction over the dispute to appoint an arbitrator. The AAA/ABA Code of Ethics for Arbitrators in Commercial Disputes (effective March 1, 2004) is applicable to all arbitrations. Any mediation or arbitration shall be conducted in the county where the Work is performed.

13.5 Rules. To the extent not in conflict with the FAA, any mediation and arbitration shall be conducted in accordance with Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") and shall follow settled law in rendering a decision, except that any mediation or arbitration shall be administered by the mediator or the arbitrator(s) and not by the AAA.

13.6 Consolidation and Joinder. Notwithstanding any provision in Section 13 to the contrary, Owner in its sole discretion may join Contractor in any litigation, mediation, or arbitration initiated by Owner, or against Owner by a third person, so that the rights of all parties (Owner, Contractor, subcontractor, or any third person) can be subject to resolution in a single forum in the same proceeding. Contractor shall be bound by any arbitration procedures and rules accepted by Owner. If multiple lawsuits or arbitrations are commenced, Owner in its sole discretion may consolidate them into a single proceeding. Notwithstanding any other provision of this Section 13, if Owner determines in its sole discretion that a subcontractor or material supplier of Contractor, or any other third party whose presence is required for a just adjudication of the Dispute, cannot be forced to mediate or arbitrate, Owner may elect unilaterally to waive mediation or arbitration and to litigate the Dispute in court with Contractor.

14. TERMINATION.

14.1 Termination by Owner. This Agreement shall remain in full force and effect until terminated in writing by Owner by mailing notice to Contractor. Owner may terminate this Agreement at any time, whether or not Contractor is in default or breach of the Agreement. If the Agreement is terminated by Owner, notwithstanding any other agreement to the contrary, the sole amount due to Contractor shall be that due for all authorized Work performed and materials supplied before termination, subject to deductions and charges authorized by this Agreement.

14.2 Termination by Contractor. Contractor shall provide one hundred twenty (120) days written notice to Owner before the effective date of any termination by Contractor, and shall perform fully under this Agreement during that notice period.

14.3 Survival. All obligations, duties and warranties by Contractor under this Agreement shall survive termination of this Agreement.

15. CONTRACTOR'S REPRESENTATIONS. Contractor represents to Owner that: (i) the person executing this Agreement on behalf of Contractor is duly authorized and has full power to execute and deliver this Agreement; (ii) all corporate, partnership, or other action requisite for the due execution of this Agreement has been duly and effectively taken or shall be taken before the execution and delivery of this Agreement; (iii) this Agreement is or will be (when executed) a binding obligations of Contractor, enforceable in accordance with its terms; (iv) this Agreement and Contractor's performance, does not and will not violate any provisions of Contractor's constituent or organizational documents, or any contract, agreement, or governmental requirement to which Contractor is subject, and the same do not require the consent or approval of any governmental authority; (v) Contractor has, and each Contractor's employees, agents or subcontractors shall have, the requisite skills, expertise, experience, licenses, and knowledge to perform the Work in compliance with this Agreement; (vi) Contractor is in compliance with all governmental requirements to which it is subject; and (vii) Contractor has the financial ability and resources to perform the Work and all other obligations, duties, and covenants of Contractor under this Agreement.

16. GENERAL CONTRACT PROVISIONS.

16.1 Entire Agreement. This Agreement shall be the entire agreement between Owner and Contractor related to the Work and shall be deemed to amend and supersede all prior Independent Contractor Agreements (other than any Master National Independent Contractor Agreement) or other prior understandings or written or oral agreements, specifically including but not limited to all prior pre-printed standard contractor/subcontractor

INITIALS: OWNER M CONTRACTOR [Signature]

agreements (including attached exhibits) entered into between Owner and Contractor for the provision of goods or services or both by Contractor relating to the subject matter herein. All current Pricing Schedules and Purchase Orders shall remain valid and binding for the Work and shall be deemed subject to the terms of this Agreement. Any future Pricing Schedules or Purchase Orders entered into hereafter shall also be deemed to be subject to the terms of this Agreement. Past and future Pricing Schedules and Purchase Orders shall control only for the purpose of establishing prices and quantities of sale only. Nothing in any subsequent agreement or document, unless a new Independent Contractor Agreement, shall alter the terms set forth in this Agreement. To the extent possible, this Agreement shall be deemed to supplement the terms of any other agreement or document, unless a new Independent Contractor Agreement. In the event of any conflict between this Agreement and other such documents, this Agreement shall be deemed to control and prevail. Except as otherwise provided in this Agreement, no amendment or supplement to this Agreement shall be valid or binding unless in writing and signed by both Owner and Contractor. Notwithstanding anything in this Subsection to the contrary, this Agreement shall not amend or supersede any Master National Independent Contractor Agreement, but shall supplement its terms. In the event of a conflict, to the extent permitted by law, the Master National Independent Contractor Agreement shall control.

16.2 Severability. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion of it shall not affect the validity or enforceability of any other provision or portion.

16.3 Assignability. Contractors' rights, responsibilities, and obligations under this Agreement are not assignable or transferable without the express written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. Any attempted assignment shall be null and void. This restriction includes, without limitation, the delegation or subcontracting of any Work or any amounts which may become due to Contractor as a result of the Work. Contractor shall remain fully liable under this Agreement regardless of any consent by Owner to any assignment or delegation of duties by Contractor, including but not limited to any work by a subcontractor. Contractor shall ensure that any subcontractor receives a copy of this Agreement and agrees in writing to be fully responsible for all obligations of Contractor under this Agreement, including but not limited to the insurance and indemnity provisions. Contractor shall also ensure that Owner is an intended third party beneficiary of any subcontractor agreement by including a specific provision to that effect. Contractor shall be responsible for enforcing any warranties given by its subcontractors, suppliers or manufacturers. Nothing contained herein, however, shall create any contractual relationship between Owner and any subcontractor, nor create any obligation on the part of Owner to make payment of any sums to any subcontractor. Subject to the restrictions and prohibitions on assignment set forth in this Subsection, the terms of this Agreement shall be binding on Owner, Contractor, and their respective successors, representatives, heirs and assigns. Owner may freely assign this Agreement, in whole or in part.

16.4 Conflicts with Purchase Orders or Other Agreements. If this Agreement conflicts with the terms of any Purchase Order or any other agreement or document pertaining to the Work, the terms of this Agreement shall control.

16.5 Waiver. No act or conduct other than a specific, written waiver of a right shall be deemed a waiver by Owner. No delay or failure by Owner to exercise any right under this Agreement, and no partial or single exercise of that right, will waive that or any other right except by written agreement executed by Owner.

16.6 Choice of Law. This Agreement shall be governed by the law of the State of Georgia.

17. CONFIDENTIALITY. Contractor shall treat all information obtained by Contractor relating to the project to which the Work relates and all information and documents provided to Contractor by or on behalf of Owner as confidential and proprietary information of Owner, and shall not disclose or permit the release of any of that information to any third party. Immediately upon request by Owner, Contractor shall return any and all confidential material or proprietary property or documents to Owner.

18. NOTICES. All notices required or permitted pursuant to this Agreement or otherwise shall be in writing and shall be delivered as follows: to Contractor at Contractor's business address as shown on page one (1) of this Agreement; to Owner through Owner's official Registered Agent for service of legal process in the state where the Work is performed at that Registered Agent's registered office. Notices may be given by personal delivery, facsimile, commercial overnight delivery service, personal delivery or ordinary mail and shall be deemed to be received three (3) business days after deposit, postage prepaid, in the U.S. Mail when sent registered or certified mail, return receipt requested, the following day if sent timely by commercial overnight delivery service, and upon confirmation if sent by facsimile transmission or by personal delivery. Rejection, refusal to accept or the inability to deliver because of changed address shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

19. MISCELLANEOUS. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular. Any reference to gender shall include the masculine, feminine, and neuter. All captions and titles used in this Agreement are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of its paragraphs, sections or subsections.

GEORGIA VERSION (REV. February 11, 2015)

INITIALS: OWNER *M* , CONTRACTOR *S*



Exhibit "A" Part I-General Scope Of Work

General & Miscellaneous

- Mobilization
- Layout and staking
- Build construction entrance
- Asbuilts
- Installation of stop and street signs
- Installation of conduit

Clearing and Demolition

- Clear and grub site

Drainage

- Installation of RCP
- Insulation of HDPE
- Install catch basins, curb inlets, and junction boxes

Erosion Control

- Tree protection
- Temporary gravel
- Silt fence
- Seeding and sod
- Rip-rap sediment basin

Initials: Contractor

A handwritten signature in black ink, appearing to be "J. Horton", written over a horizontal line.

DR Horton

A handwritten signature in black ink, appearing to be "J. Horton", written over a horizontal line.

Earthwork

- Strip/respreads topsoil
- Off-site fill
- Demucking and backfill
- Rough grade

Grading

- Fine grade for curb and base
- Fine grade shoulders and easements

Asphalt Paving & Pavement Marking

- Asphalt surface and binder

Concrete

- Concrete curb
- Installation of handicap ramps

Utilities

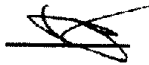
- Utility layout and record drawings

Sanitary Sewer

- Installation of sewer
- Pump stations

Water Distribution

- Installation of water

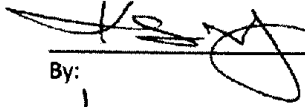
Initials: Contractor 

DR Horton 

Contractor

Owner

Kenneth Tasly DBA Kenneth Scott Builders D.R. Horton, Inc.
Company Name:


By:

Kenn S. Tasly
Name:

owner
Title:

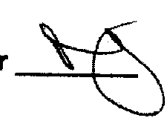
2/12/16
Date:


By:

Ron Bunn
Name:

A.V.P
Title:

2/22/16
Date:

Initials: Contractor 

DR Horton 

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
Mark W. McGilton,)
Plaintiff,)
v.)
1223 May River Road, LLC;)
D.R. Horton, Inc.; and Lotty Trucking, LLC)
f/k/a Ramos Trucking, LLC,)
Defendants.)

1223 May River Road, LLC,)
Third-Party Plaintiff,)
v.)
Kenneth Scott Builders, Inc.,)
Third-Party Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2021-CP-27-00069

**DEFENDANT D.R. HORTON, INC.’S
MEMORANDUM IN SUPPORT OF ITS
MOTION TO STAY DISCOVERY AND
IN OPPOSITION TO PLAINTIFF’S
MOTION TO COMPEL AND FOR
SANCTIONS**

Defendant D.R. Horton, Inc. (“D.R. Horton”) hereby files this Memorandum in Support of D.R. Horton’s Motion to Stay Discovery and in Opposition to Plaintiff’s Motion to Compel and for Sanctions showing this honorable Court as follows:

I. STATEMENT OF FACTS

A. Timeline/Chronology

Plaintiff filed this action on February 17, 2021.

On April 14, 2021, D.R. Horton filed its Answer, which included defenses by way of a Motion to Dismiss.

Two days later, on April 16, 2021, D.R. Horton and 1223 May River Road, LLC filed a

Motion to Transfer Venue pursuant to South Carolina Rule of Civil Procedure (“SCRCP”) 42, 12(b)(8), 12(b)(7), 18 and 19.

Despite these pending motions, Plaintiff served D.R. Horton with Plaintiff’s First Set of Interrogatories, Plaintiff’s First Set of Requests for Production of Documents, and Plaintiff’s First Set of Request to Admit (hereinafter “Plaintiff’s Discovery Requests”) on July 22, 2021. (*See* Exhibit 1 to Plaintiff’s Motion to Compel and for Sanctions).

Despite the pending motions, Plaintiff sent a Rule 11 letter on September 17, 2021 (the “Rule 11 Letter”). (*See* Exhibit 3 to Plaintiff’s Motion to Compel and for Sanctions).

On November 4, 2021, Plaintiff filed a Motion to Compel and Motion for Sanctions asking the Court to strike D.R. Horton’s Answer, for attorney’s fees and costs, and all other sanctions the Court finds just and proper.

On August 3, 2022, D.R. Horton filed a Motion to Stay Discovery seeking a stay until the Court rules on the pending motions.

B. The Beaufort Matter

On May 20, 2018, Plaintiff filed a lawsuit against Alredo Uristegui, Jacob-Au Trucking, LLC and Kenneth Scott Builders, Inc. in Beaufort County, South Carolina (the “Beaufort Action”).¹ The Beaufort Action arose out of a motor vehicle accident that took place in Bluffton, South Carolina. On May 13, 2018, Mr. Uristegui was operating a dump truck owned by Jacob-Au Trucking, LLC and crossed the centerline, colliding with the Plaintiff. An Amended Complaint was filed on April 12, 2018, naming Kenneth Scott Builders Inc., employer of Mr. Uristegui, as a Defendant in the action.

On February 17, 2021, almost two years after filing the Beaufort Action, Plaintiff then filed

¹ Mark W. McGilton v. Alfredo Uriostegui, Jacob-AU Trucking, LLC and Kenneth Scott Builders, Inc., Beaufort County Court of Common Pleas, Civil Action No. 2018-CP-07-00607.

the present matter in Jasper County, South Carolina involving the same facts and injuries in the Beaufort Action. On April 15, 2021, Defendant 1223 May River Road filed an Amended Answer and Third-Party Plaintiff's Complaint against Kenneth Scott Builders, Inc. Both of these matters arise out of the March 13, 2018, accident that took place in Beaufort County. In order to prevent injustice, multiplicity of litigation, and unnecessary costs and court time, D.R. Horton has filed a request that this matter be transferred to Beaufort County and joined with the Beaufort Action.

For the reasons set forth below, Plaintiff's Motion to Compel and for Sanctions must be denied, and D.R. Horton's Motion to Stay should be granted.

II. ARGUMENT & CITATION OF AUTHORITY

A. D.R. Horton's Motion to Stay Discovery

As noted above, D.R. Horton has moved to dismiss this lawsuit by including a Motion to Dismiss in its Answer. Further, D.R. Horton has filed a Motion to Transfer Venue asking the Court to transfer and join this lawsuit with the Beaufort Action. A ruling on D.R. Horton's Motion to Dismiss would do away with the need for discovery against D.R. Horton. In the alternative, if the Court grants D.R. Horton's Motion to Transfer, it would be more efficient for discovery to be conducted after the case is transferred and consolidated with the Beaufort Action.

Rule 26 of the SCRCF provides, in relevant part, as follows:

Upon motion by a party or by the person from whom discovery is sought, and ***for good cause shown***, the court in which the action is pending ... may make an order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense including one or more of the following:
(1) that the discovery not be had[.]

SCRCF 26(c). (Emphasis added). The Court has broad discretion in limiting or staying discovery.

See Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 854 (1994). See also Allstate Ins. Co. v. Electrolux Home Prods., Civil Action No. 4:16-cv-03666-RBH, 2019 U.S.

Dist. LEXIS 24756, at *5 (D.S.C. Feb. 15, 2019) (“Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.”) (Citation omitted).²

In the present case, D.R. Horton has moved to dismiss Plaintiff’s claims on the following grounds: (1) Plaintiff has failed to join other parties as is necessitated by SCRCRCP Rules 42, 12(b)(8), 12(b)(7), 18, and 19; and improper venue pursuant to SCRCRCP 42, 12(b)(8), 12(b)(7), 18 and 19. In the alternative, D.R. Horton has moved to transfer this matter and consolidate it with the Beaufort Action pursuant to Rule 42, SCRCRCP. As outlined in D.R. Horton’s Memorandum in Support of its Motion to Transfer Venue, this matter and the Beaufort Action must be consolidated in order to prevent an unnecessary burden on the Defendants and the Courts, and the parties named in the Beaufort Action are vital to the determination of proportional negligence.³

As noted by the District Court of South Carolina,

[U]nder the rules, a court may stay discovery during the pendency of a dispositive motion if there is good cause to do so. Herring v. Lapolla Indus., Inc., No. 2:12-cv-02705-RMG, 2013 U.S. Dist. LEXIS 201527, 2013 WL 12148769, at *1 (D.S.C. Aug. 30, 2013); *see also* Tilly v. United States, 270 F. Supp. 2d 731, 734 (M.D.N.C. 2003) (staying discovery until disposition of a motion for summary judgment). The moving party bears the burden of demonstrating good cause and reasonableness. Simpson v. Specialty Retail Concepts, Inc., 121 F.R.D. 261, 263 (M.D.N.C. 1988).

Boudreaux Grp., Inc. v. Nexsen, Civil Action No. 8:18-cv-1498-TMC, 2018 U.S. Dist. LEXIS 228859, at *10 (D.S.C. Nov. 20, 2018).

Federal courts have also found good cause to stay discovery where there is a pending

² SCRCRCP 26(c) is substantially the same as its federal counterpart. Where the state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive. *See* Roberts v. Peterson, 292 S.C. 149, 355 S.E.2d 280 (Ct. App. 1987), Dawkins v. Fields, 545 S.E.2d 515, 345 S.C. 23 (S.C. App. 2001); Garrison v. Target Corp., 429 S.C. 324, 838 S.E.2d 18 (S.C. App. 2020).

³ Pursuant to SCRCRCP 10(c), D.R. Horton incorporates the arguments submitted in its Brief in Support of Motion to Transfer Venue filed contemporaneously herewith.

motion to transfer venue. *See, e.g., Enplanar, Inc. v. Marsh*, 11 F.3d 1284, 1291 (5th Cir. 1994) (holding that the district court did not abuse its discretion in denying merits-related discovery pending a ruling on a motion to transfer venue); *Thakkar v. Proctoru, Inc.*, No. 21-2051, 2021 U.S. Dist. LEXIS 120246, at *1-3 (C.D. Ill. May 24, 2021); *Klein v. Silversea Cruises, Ltd.*, No. 3:14-cv-2699-G-BN, 2014 U.S. Dist. LEXIS 174645, at *2 (N.D. Tex. Dec. 16, 2014). If the Motion to Transfer is granted, discovery will not be denied but merely delayed. If this lawsuit is consolidated with the Beaufort Action, a stay of discovery would conserve the resources of the court and the parties by limiting unnecessary discovery and discovery related motions. Moreover, none of the parties will be harmed by the Court staying discovery until the pending motions are ruled upon.

B. Plaintiff's Motion to Compel and for Sanctions

For the reasons set forth above, D.R. Horton respectfully asks the Court to grant its Motion to Stay Discovery. If so, Plaintiff's Motion to Compel and for Sanctions should be denied. However, even if D.R. Horton's Motion to Stay Discovery is denied, Plaintiff is not entitled to sanctions. Plaintiff asks the Court to strike D.R. Horton's Answer as permitted by Rule 37(b)(2)(C) and 37(d), for attorney's fees and costs, and for any and all other sanctions as the Court deems just and proper. However, D.R. Horton's actions have not been willful, obstructive or prejudicial. Instead, there is a good faith dispute as to whether discovery should be conducted at this time. Therefore, D.R. Horton's failure to respond to Plaintiff's Discovery Requests was substantially justified and an award of sanctions would be unjust.

Rule 37 of the SCRCP permits courts to order a variety of sanctions against a party who fails to respond to discovery. Specifically, Rule 37(d) provides that a court may take the actions authorized under paragraphs (A)(B) and (C) of subsection (b)(2) of the rule. Additionally, in lieu of or in addition thereto, the court is authorized to order the party who failed to respond or that

party's attorney "to pay the reasonable expenses, including attorney's fees, caused by the failure, ***unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.***" Rule 37(d), SCRCP. (Emphasis added). Subsection (b)(2)(C) authorizes the courts to strike pleadings or parts thereof.

While the Court has discretion in determining what orders are just under the circumstances, "a sanction amounting to a judgment of default or dismissal has been deemed 'too severe' without a showing of intentional misconduct or willful disobedience." Rickerson v. Karl, 412 S.C. 215, 222, 770 S.E.2d 767, 771 (Ct. App. 2015). *See also* Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 199, 511 S.E.2d 716, 719 (Ct. App. 1999) ("Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction.") (Citation omitted).

Instead, any "sanction imposed should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case." Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990). Moreover, in determining the appropriateness of a sanction, the Court must consider four factors: the nature of the discovery sought, the discovery stage of the case, willfulness, and the degree of prejudice to the other party. CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 82, 716 S.E.2d 877, 885 (2011); Richardson v. Twenty-One Thousand & no/100 Dollars (\$21,000.00) United States Currency & Various Jewelry, 430 S.C. 594, 600, 846 S.E.2d 14, 17 (Ct. App. 2020). The failure to consider these facts is an abuse of discretion. Richardson at 600 (citing Teseniar v. Profl Plastering & Stucco, Inc., 407 S.C. 83, 94, 754 S.E.2d 267, 273 (Ct. App. 2014)).

There is no evidence that D.R. Horton has acted in bad faith, willful disobedience or gross indifference. Accordingly, the harsh sanction of striking D.R. Horton's Answer, as sought by

Plaintiff, pursuant to Rule 37(b)(2)(C) would be inappropriate. Moreover, it is the early stages of litigation. If the case is not dismissed, Plaintiff will still be entitled to discovery. Plaintiff will not be prejudiced by the delay in response.

III. CONCLUSION

Based on the foregoing, D.R. Horton respectfully requests that the Court grant its Motion to Stay Discovery and deny Plaintiff's Motion to Compel and for Sanctions.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford, Jr. (SC Bar # 69682)

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

crawford@conlaw.com

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

August 16, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	DEFENDANT D.R. HORTON, INC.'S
	)	MEMORANDUM IN SUPPORT OF ITS
	)	MOTION TO TRANSFER VENUE
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	
	)	

Pursuant to Rule 42, 12(b)(8), 12(b)(7) and 18 and 19 of South Carolina Rule of Civil Procedure (“SCRCP”), Defendant D.R. Horton, Inc. (hereinafter referred to as the “Defendant” or “D.R. Horton”) moves the Court to transfer the venue of this action to Beaufort County, South Carolina and consolidate C.A. #2018-CP-07-00607 and C.A. #2021-CP-27-00069 due to the causes of actions involving the same accident and injuries and to ensure justice and judicial economy.

I. INTRODUCTION

On May 20, 2018, Plaintiff filed a lawsuit against Alredo Uristegui, Jacob-Au Trucking, LLC and Kenneth Scott Builders, Inc. (Case No. 2018-CP-07-00607) in Beaufort County, South

Carolina. This action arose out of a motor vehicle accident that took place in Bluffton, South Carolina. On May 13, 2018, Mr. Uristegui was operating a dump truck owned by Jacob-Au Trucking, LLC and crossed the centerline, colliding with the Plaintiff. (See Complaint ¶2.) An Amended Complaint was filed on April 12, 2018, naming Kenneth Scott Builders Inc., employer of Mr. Uristegui, as a Defendant in the action. Almost two (2) years after the initial filing, Plaintiff then filed an action in Jasper County, South Carolina on February 17, 2021, against Defendant 1223 May River Road, LLC, Defendant D.R. Horton, Inc. and Defendant Lotty Trucking, LLC (Case No. 2021-CP-27-00069) involving the same facts and injuries in the Beaufort County action. On April 15, 2021, Defendant 1223 May River Road filed an Amended Answer and Third-Party Plaintiff's Complaint against Kenneth Scott Builders, Inc. Both actions arose out of the March 13, 2018, accident that took place in Beaufort County, South Carolina. Plaintiff has alleged that a D.R. Horton subcontractor driving a dump truck from a D.R. Horton development in Beaufort County was at fault for the accident. In order to prevent injustice, multiplicity of litigation, unnecessary costs, and court time, Defendant requests that this action be joined with the 2018 action and the venue to be transferred to Beaufort County based on the following precedent.

II. CASE LAW AND ANALYSIS

A. Under Rule 42 Of SCRPC, These Cases Must Be Joined In Order To Prevent An Unnecessary Burden On The Defendants And South Carolina Courts.

Consolidation under Rule 42(a) of the SCRPC may be ordered whenever actions involving a common question of law or fact are pending before the Court. Keels v. Pierce, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (1993) (citing Ellis by Ellis v. Oliver, 307 S.C. 365, 415 S.E.2d 400 (1991)). Consolidation is within the broad discretion of the trial court. *Id.* "The purpose of consolidation is to prevent multiplicity of litigation, save unnecessary costs, conserve court time and space and to clear congested court dockets." Alcorn v. Ford Motor Co., 276 S.C. 180, 182, 276 S.E.2d 925, 926

(1981).

Similar to Alcorn v. Ford Motor Co., the Beaufort County and Jasper County cases involve the same questions of law and fact regarding negligence of the parties involved and duties and obligations imposed on those parties, specifically regarding the March 13, 2018, accident. This Court should approve the consolidation and change of venue regarding these causes of action for three reasons. First, by permitting these cases to be move forward in their respective counties, the parties will incur the unnecessary costs of having to litigation two different cases involving the same questions of law and fact. Secondly, by not joining these cases there is a potential for inconsistent decisions, given that the trier of fact is unable to consider other possible Defendants and their duties and obligations to the Plaintiff. Thirdly, allowing both actions to move forward without consolidation would be an ineffective use of the courts time and resources.

Both actions arise out of the same incident and involve the same parties. The parties in one action are pertinent fact witnesses in both actions. Further, the notes in Rule 42, SCRCP, dictate that actions arising out of the same event should be consolidated. See Rule 42(a) (notes) (stating consolidation for trial can save much time and cost, as when all claims arise out of one auto accident, or several claims are barred upon identical contracts). This motion is further based upon the grounds that consolidation of the pending actions may avoid unnecessary costs and delay, the possibility of inconsistent decisions, and will promote the efficient use of judicial time by requiring the issue to be tried only once to the Court or Jury. Therefore, these cases must be joined, and the venue changed to Beaufort County, South Carolina. However, if the Court finds that the cases should not be join, the Defendant request that the action be dismissed for the failure to join indispensable parties.

B. The Parties Named In The Beaufort County Case Are Vital To The Determination Of Proportional Negligence And Therefore This Case Should Be Dismissed For Failure To Join Indispensable Parties Under South Carolina Rules Of Civil Procedure 12(B)(7), 18 And 19.

“Once the defense of Rule 12(b)(7) is asserted, the proper course for the trial court is to determine the necessity of adding a new party under Rule 19 to insure a full adjudication of the controversy.” BancOhio Nat. Bank v. Neville, 310 S.C. 323, 328 (1993). If adding a new party is necessary under Rule 19, the Court may dismiss the action with leave to join the necessary party. See Spanish Wells Prop. Owners Ass’n, Inc. v. Bd. Of Adjustment of Town of Hilton Head Island, 295 S.C. 67, 68 (1988) (granting defendant’s motion to dismiss under 12(b)(7), SCRPC, for failure to join a party under Rule 19, SCRPC, but allowing the plaintiff fifteen days leave to join the additional party. Rule 19(a) provides that:

[a] person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

S.C.R. Civ. Pro. 19(a).

When persons meet the requirement of Rule 19 (a) and thus are necessary parties but have not been joined as parties to an action, Rule 19 requires our courts to consider four factors to determine whether those non-joined persons are indispensable to the action. Those Four facts are:

[F]irst, to what extent a judgment rendered in the person’s absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person’s absence will be adequate; fourth, whether the plaintiff will have an

adequate remedy if the action is dismissed for nonjoinder.

Additionally, Rule 12(b)(8) requires the claim be “substantially the same in both proceedings” for dismissal to be warranted. Capital City Ins. Co v. BP. Staff, Inc., 382 S.C. 92, 105-06, 674 S.E.2d 524, 531-32, Ct. App. 2009).

Here, Mr. Uriostegul, the driver of the dump truck, is a defendant in the Beaufort County Case, however, was not named as a defendant in the Jasper County case. Given that his initial actions brought about the questions of law and fact regarding liability and negligence of the Defendants, it would be prejudicial for him not be considered by the trier of fact. Additionally, Kenneth Scott Builders, Inc. was the employer for Mr. Uriostegul and was contracted with Defendant 1223 May River Road, LLC and was only brought into the Jasper County action as a result of a Third-Party claims. Overall, in order for the trier of fact to determine liability, whether concurrent or comparative, all indispensable responsible parties must be presented to the Court.

III. CONCLUSION

Based on the foregoing, Defendant D.R. Horton, Inc. respectfully requests that the Court grant its Motion to Transfer Venue of this action to Beaufort County, South Carolina and consolidate C.A. #2018-CP-07-00607 and C.A. #2021-CP-27-00069.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford, Jr. (SC Bar # 69682)

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

crawford@conlaw.com

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

August 16, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	C.A. NO.: 2021-CP-27-00069
	)	
Mark W. McGilton,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
1223 May River Road, LLC;	)	
D.R. Horton, Inc.; and Lotty Trucking, LLC	)	
f/k/a Ramos Trucking, LLC,	)	
	)	
Defendants.	)	DEFENDANT D.R. HORTON, INC.'S
	)	AMENDED MEMORANDUM IN
	)	SUPPORT OF ITS MOTION TO
	)	TRANSFER VENUE
	)	
1223 May River Road, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
Kenneth Scott Builders, Inc.,	)	
	)	
Third-Party Defendant.	)	
	)	

Pursuant to Rule 42, 12(b)(8), 12(b)(7) and 18 and 19 of South Carolina Rule of Civil Procedure (“SCRCP”), Defendant D.R. Horton, Inc. (hereinafter referred to as the “Defendant” or “D.R. Horton”) moves the Court to transfer the venue of this action to Beaufort County, South Carolina and consolidate C.A. #2018-CP-07-00607 and C.A. #2021-CP-27-00069 due to the causes of actions involving the same accident and injuries and to ensure justice and judicial economy.

I. INTRODUCTION

On May 20, 2018, Plaintiff filed a lawsuit against Alredo Uristegui, Jacob-Au Trucking, LLC and Kenneth Scott Builders, Inc. (Case No. 2018-CP-07-00607) in Beaufort County, South

Carolina. This action arose out of a motor vehicle accident that took place in Bluffton, South Carolina. On May 13, 2018, Mr. Uristegui was operating a dump truck owned by Jacob-Au Trucking, LLC and crossed the centerline, colliding with the Plaintiff. (See Complaint ¶2.) An Amended Complaint was filed on April 12, 2018, naming Kenneth Scott Builders Inc., employer of Mr. Uristegui, as a Defendant in the action. Almost two (2) years after the initial filing, Plaintiff then filed an action in Jasper County, South Carolina on February 17, 2021, against Defendant 1223 May River Road, LLC, Defendant D.R. Horton, Inc. and Defendant Lotty Trucking, LLC (Case No. 2021-CP-27-00069) involving the same facts and injuries in the Beaufort County action. On April 15, 2021, Defendant 1223 May River Road filed an Amended Answer and Third-Party Plaintiff's Complaint against Kenneth Scott Builders, Inc. Both actions arose out of the March 13, 2018, accident that took place in Beaufort County, South Carolina. Plaintiff has alleged that a D.R. Horton subcontractor driving a dump truck from a D.R. Horton development in Beaufort County was at fault for the accident. In order to prevent injustice, multiplicity of litigation, unnecessary costs, and court time, Defendant requests that this action be joined with the 2018 action and the venue to be transferred to Beaufort County based on the following precedent.

II. CASE LAW AND ANALYSIS

A. Under South Carolina Law, Venue Cannot Be Established In Jasper County As There Are No Substantial Connections.

Identified as a vital component in establishing jurisdiction, venue has been defined by South Carolina courts as “the place or geographical location of trial.” Dove v. Gold Kist, Inc., 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994). “Where there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such a case, the plaintiff ordinarily has the right of election as to the county in which an action will be brought.” Jeter v.

S.C. DOT, 396 S.C. 433, 442, 633 S.E.2d 143, 147 (2006) (citing Mack v. Nationwide Mut. Ins. Co., 245 S.C. 619, 623-24, 142 S.E.2d 50, 53 (1965); Rankin Lumber Co. v. Graveley, 112 S.C. 128, 99 S.E. 349 (1919)). However, this does not permit plaintiffs to cherry pick locations. Essentially, an action is removable to other proper venues only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue" Jeter, 396 S.C. at 148.

The South Carolina Supreme Court has previously established that, for purposes of venue, a foreign corporation resides in any county where it has an office and agent for the transaction of business. Sanders v. Allis Chalmers Mfg. Co., 235 S.C. 259, 111 S.E.2d 201 (1959); Hancock v. S. Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1947); Tucker v. Ingram, 187 S.C. 525, 198 S.E. 25 (1938); Campbell v. Mut. Benefit Health Corp. & Accident Ass'n, 161 S.C. 49, 159 S.E. 490 (1931). On the other hand, domestic corporations have been held to reside (1) in any county where the corporation maintains an agent and transacts its corporate business or (2) in the county where the corporation maintains its principal place of business. See McGrath v. Piedmont Mut. Ins. Co., 74 S.C. 69, 72, 54 S.E. 218, 218-19 (1906); Tobin v. Chester & L. Narrowgauge R.R. Co., 47 S.C. 387, 25 S.E. 283 (1896). In Miller, the Supreme Court held that venue is proper in any county where a domestic corporation "owns property and transacts business." Miller v. Boyle Constr. Co., 198 S.C. 166, 172, 17 S.E.2d 312, 314-15 (1941). Later, the Supreme Court had the opportunity to extend the "owns property and transacts business" test to foreign corporations, but the Court declined to do so. See Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 437, 45 S.E.2d 850, 853 (1947).

Here, the Plaintiff has been unsuccessful in establish a nexus between Jasper County, South Carolina and any of the Defendants, the alleged accident on March 13, 2018, or the Plaintiff himself. Therefore, the venue is improper, and this Court should transfer the venue of this action

to Beaufort County, South Carolina and consolidate cases. First, the alleged accident occurred on May River Road in Bluffton, South Carolina located in Beaufort County. Additionally, the Plaintiff is a resident of Beaufort County and Defendants' 1223 May River Road, LLC, Lotty Trucking, LLC and Kenneth Scoot Builders, Inc.'s principal places of business are in Beaufort County. Moreover, Defendant D.R. Horton developed the subdivision Cypress Ridge in Bluffton, South Carolina. The Plaintiff has failed to establish that Jasper County is the proper venue for this case and Defendant D.R. Horton requests that this Court transfer the venue of this action to Beaufort County and consolidate the relevant cases.

B. Under Rule 42 Of SCRPC, These Cases Must Be Joined In Order To Prevent An Unnecessary Burden On The Defendants And South Carolina Courts.

Consolidation under Rule 42(a) of the SCRPC may be ordered whenever actions involving a common question of law or fact are pending before the Court. Keels v. Pierce, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (1993) (citing Ellis by Ellis v. Oliver, 307 S.C. 365, 415 S.E.2d 400 (1991)). Consolidation is within the broad discretion of the trial court. *Id.* "The purpose of consolidation is to prevent multiplicity of litigation, save unnecessary costs, conserve court time and space and to clear congested court dockets." Alcorn v. Ford Motor Co., 276 S.C. 180, 182, 276 S.E.2d 925, 926 (1981).

Similar to Alcorn v. Ford Motor Co., the Beaufort County and Jasper County cases involve the same questions of law and fact regarding negligence of the parties involved and duties and obligations imposed on those parties, specifically regarding the March 13, 2018, accident. This Court should approve the consolidation and change of venue regarding these causes of action for three reasons. First, by permitting these cases to be move forward in their respective counties, the parties will incur the unnecessary costs of having to litigation two different cases involving the same questions of law and fact. Secondly, by not joining these cases there is a potential for

inconsistent decisions, given that the trier of fact is unable to consider other possible Defendants and their duties and obligations to the Plaintiff. Thirdly, allowing both actions to move forward without consolidation would be an ineffective use of the courts time and resources.

Both actions arise out of the same incident and involve the same parties. The parties in one action are pertinent fact witnesses in both actions. Further, the notes in Rule 42, SCRCPP, dictate that actions arising out of the same event should be consolidated. See Rule 42(a) (notes) (stating consolidation for trial can save much time and cost, as when all claims arise out of one auto accident, or several claims are barred upon identical contracts). This motion is further based upon the grounds that consolidation of the pending actions may avoid unnecessary costs and delay, the possibility of inconsistent decisions, and will promote the efficient use of judicial time by requiring the issue to be tried only once to the Court or Jury. Therefore, these cases must be joined, and the venue changed to Beaufort County, South Carolina. However, if the Court finds that the cases should not be join, the Defendant request that the action be dismissed for the failure to join indispensable parties.

B. The Parties Named In The Beaufort County Case Are Vital To The Determination Of Proportional Negligence And Therefore This Case Should Be Dismissed For Failure To Join Indispensable Parties Under South Carolina Rules Of Civil Procedure 12(B)(7), 18 And 19.

“Once the defense of Rule 12(b)(7) is asserted, the proper course for the trial court is to determine the necessity of adding a new party under Rule 19 to insure a full adjudication of the controversy.” BancOhio Nat. Bank v. Neville, 310 S.C. 323, 328 (1993). If adding a new party is necessary under Rule 19, the Court may dismiss the action with leave to join the necessary party. See Spanish Wells Prop. Owners Ass’n, Inc. v. Bd. Of Adjustment of Town of Hilton Head Island, 295 S.C. 67, 68 (1988) (granting defendant’s motion to dismiss under 12(b)(7), SCRCPP, for failure to join a party under Rule 19, SCRCPP, but allowing the plaintiff fifteen days leave to join the

additional party. Rule 19(a) provides that:

[a] person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

S.C.R. Civ. Pro. 19(a).

When persons meet the requirement of Rule 19 (a) and thus are necessary parties but have not been joined as parties to an action, Rule 19 requires our courts to consider four factors to determine whether those non-joined persons are indispensable to the action. Those Four facts are:

[F]irst, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Additionally, Rule 12(b)(8) requires the claim be “substantially the same in both proceedings” for dismissal to be warranted. Capital City Ins. Co v. BP. Staff, Inc., 382 S.C. 92, 105-06, 674 S.E.2d 524, 531-32, Ct. App. 2009).

Here, Mr. Uriostegul, the driver of the dump truck, is a defendant in the Beaufort County Case, however, was not named as a defendant in the Jasper County case. Given that his initial actions brought about the questions of law and fact regarding liability and negligence of the Defendants, it would be prejudicial for him not be considered by the trier of fact. Additionally, Kenneth Scott Builders, Inc. was the employer for Mr. Uriostegul and was contracted with Defendant 1223 May River Road, LLC and was only brought into the Jasper County action as a

result of a Third-Party claims. Overall, in order for the trier of fact to determine liability, whether concurrent or comparative, all indispensable responsible parties must be presented to the Court.

III. CONCLUSION

Based on the foregoing, Defendant D.R. Horton, Inc. respectfully requests that the Court grant its Motion to Transfer Venue of this action to Beaufort County, South Carolina and consolidate C.A. #2018-CP-07-00607 and C.A. #2021-CP-27-00069.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

John T. Crawford, Jr. (SC Bar # 69682)

Jason M. Imhoff (SC Bar # 69355)

Kathryn Harden

704 East McBee Avenue

Greenville, South Carolina 29601

Telephone: (864) 242-4899

Facsimile: (864) 242-4844

crawford@conlaw.com

imhoff@conlaw.com

Counsel for Defendant D.R. Horton, Inc.

August 16, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	C.A. NO. 2021-CP-27-00069
MARK W. MCGILTON	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S MEMORANDUM IN
	)	SUPPORT OF MOTION TO COMPEL
1223 MAY RIVER ROAD, LLC, D.R.	)	AND FOR SANCTIONS
HORTON, INC., and LOTTY	)	
TRUCKING, LLC f/k/a RAMOS	)	
TRUCKING, LLC,	)	
	)	
Defendants.	)	
	)	
1223 MAY RIVER ROAD, LLC,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
KENNETH SCOTT BUILDERS, LLC,	)	
	)	
Third-Party Defendant.	)	
	)	

NOW COMES Plaintiff Mark W. McGilton ("Plaintiff") and hereby files this Memorandum in support for his Motion for Sanctions, pursuant to Rule 37(d), SCRCP.

PREAMBLE OF AUTHORITY

But if a party simply fails to respond to discovery, the discovering party need not proceed under Rule 37(a) and (b); instead a remedy awaits in Rule 37(d), which allows "the court ... on motion" to "make such orders in regard to the failure as are just." Rule 37(d), SCRCP. The sanctions authorized by Rule 37(d) are therefore available even to a discovering party who has not spoken up about his adversary's silence.

Richardson v. Twenty-One Thousand & no/100 Dollars (\$21,000.00) U.S. Currency, 430 S.C. 594, 599, 846 S.E.2d 14 (Ct. App. 2020).

INTRODUCTION

The Plaintiff incorporates by reference and (other than the date Requests for Admission were served) affirms the timeline contained in paragraphs 1 through 8 of Defendant D.R. Horton, Inc.'s Motion to Stay, filed on August 3, 2022. Specifically, D.R. Horton was duly served with discovery requests by the Plaintiff on July 22, 2021. Instead of timely filing a Motion for a Protective Order or Motion to Stay, D.R. Horton simply ignored the requests. To aggravate matters further, D.R. Horton ignored the Plaintiff's discovery requests after multiple Rule 11 communications were made with its counsel in effort to obtain discovery from D.R. Horton. (See Exs. 1-3, Plaintiff's Motion for Sanctions).

Then, even after the Plaintiff filed a Motion to Compel and for Sanctions on November 4, 2021, D.R. Horton still failed to respond to Plaintiff's discovery requests. Instead, D.R. Horton finally provided its initial response to Plaintiff's First Set of Interrogatories and Requests for Production 359 days after it was initially served, on *July 15, 2022*, and only after the present motion was docketed for a hearing by the Jasper County Clerk of Court's Office.

Thereafter, on August 3, 2022, over a year after the Plaintiff served his discovery requests and 14 days before the instant hearing, D.R. Horton, Inc. filed its Motion to Stay, under Rule 26(c), SCRCP.

ARGUMENT AND CITATION OF AUTHORITY

The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court. *Downey v. Dixon*, 294 S.C. 42, 362 S.E.2d 317 (Ct. App. 1987). In deciding on an appropriate sanction, the court should consider a sanction that will "serve to protect the rights of discovery provided by the Rules." *Id.* (citing *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1126 (5th Cir.), *cert. denied*, 400 U.S. 878, 91 S.Ct. 118, 27 L.Ed.2d 115 (1970) ("[O]ver-

leniency [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery."); C. Wright, *The Law of Federal Courts* § 90 at 596 (4th ed. 1983) ("Without adequate sanctions, the procedure for discovery would be ineffectual."); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S.Ct. 2778, 2781, 49 L.Ed.2d 747 (1976) (dictum) ("[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.").

"Rule 37 expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party's failure to respond to certain discovery requests." *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542-43, 489 S.E.2d 679, 682 (Ct. App. 1997) (citing Rule 37(b)(2)(C)(d), SCRCF). While the sanction of striking a defendant's answer is severe, South Carolina courts have done so when the situation necessitates the "harsh medicine" of default for discovery abuses. *Id.*, see also *McNair v. Fairfield Cnty*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008) (holding the circuit court did not abuse its discretion by striking the defendant's answer because the defendant failed to (1) produce documents requested during discovery, (2) coherently organize the documents it did produce, and (3) provide complete responses to interrogatories, and the court told defendant to correct the discovery issues several times and warned the defendant "it was inclined to strike [defendant's] answer."). "However, severe sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights." *McNair*, 379 S.C. at 466, 665 S.E.2d at 832.

In the instant case, Defendant D.R. Horton has shown nothing but gross indifference to the rights of Plaintiff and bad faith. Their gross indifference is demonstrated by the failure to respond to Plaintiff's discovery requests for a year (7 days short thereof), despite Plaintiff following up with defense counsel and filing motions to compel same. Further, D.R. Horton's bad faith is demonstrated by the timeline of events leading up to the hearing on Plaintiff's motion for sanctions. That is, D.R. Horton refusing to give its project file to its counsel (Exhibit 6 (email correspondence showing that D.R. Horton would not give materials to its counsel), D.R. Horton filing multiple motions once Plaintiff's motion for sanctions was placed on the motions roster to attempt to conceal and explain away its bad faith conduct, D.R. Horton providing inadequate and incomplete responses to Plaintiff's discovery requests once Plaintiff's motion for sanctions was placed on the motions roster (Exh. 7, Pl.'s Rule 11 Letter dated August 8, 2022), and, finally, D.R. Horton dumping hundreds of pages of documents (albeit, only appearing to consist of its insurance policy) on Plaintiff the day before the hearing on the instant motion (over one year after being served with requests) in a feeble attempt to mitigate their standing with the court in regards to their discovery misconduct. Plaintiff's discovery efforts and case has been hamstrung by D.R. Horton's indifference to the rules of this court and his rights for over a year. D.R. Horton knows of the proper method of objecting to discovery requests—by filing a Motion to Stay and/or for a Motion for a Protective Order (indeed, it did so over a year after receiving Plaintiff's requests and approximately two weeks before the hearing date). Instead, it is determined that it may create its own rules of procedure, ignoring those mandated by this judicial system. This is not hyperbole—Plaintiff's Exhibits to this memorandum show that similar discovery practice is standard procedure for D.R. Horton in various other cases within South Carolina. *See* Exh. 1-5.

In requesting the court to strike D.R. Horton, Inc.'s answer, Plaintiff acknowledges that he is asking for is for a "severe" sanction and "harsh medicine;" however, this is not an instance where D.R. Horton merely inadequately answered Interrogatories duly posed by the Plaintiff after blowing a discovery deadline by a few weeks or even a few months. Instead, D.R. Horton simply ignored Plaintiff's discovery requests for nearly one year, and then provided inadequate answers only after this sanctions motion was scheduled by the court. Further, D.R. Horton has been sanctioned for similar conduct in other cases, and it has not led to any change of its discovery practices. The Plaintiff submits that striking a party's pleading *is* an appropriate and even necessary sanction when the party has shown time and time again that it believes that it may create and abide by its set own rules (and not the court's) as a deterrent against future similar abuses.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests this court to strike Defendant D.R. Horton's Answer as an appropriate sanction for its gross discovery misconduct. If the court is not inclined to do so, the Plaintiff prays for an Order identifying D.R. Horton's discovery violations and otherwise non-responsive conduct in this matter, establishing thatthat default will be considered a proper sanction for further discovery abuses by D.R. Horton, Inc. in this litigation.

Respectfully Submitted,

SHELTON LAW FIRM, LLC

/s/Benjamin T. Shelton

Benjamin T. Shelton, (S.C. Bar No. 77207)

P.O. Box 21069

Hilton Head Island, SC 29925

(843) 802-0087

ben@sheltonlawsc.com

Attorney for Plaintiff

August 16, 2022

EE60F6B0D0A4LY7EEBBD22022A7u637.0039MAMANB5R5BNCOMMONPHEAS.CASSE#2210C2P000069.2

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NO.: 2019-CP-04-01942

)

)

)

)
)
)

)

)

)

)

)

[illegible]

Pastures, Inc. a/k/a Greener Pastures of Aiken,)
 LLC; Installed Building Products, LLC a/k/a)
 Installed Building Products II, LLC; JLS)
 Masonry, Inc.; Kings Landscaping, LLC;)
 Landshapers, LLC; Lade-Danlar, Inc.; Lansing)
 Building Products, Inc.; Long Heating & Air)
 Conditioning, Inc.; L & M Electric, Inc.;)
 Manale Landscaping, LLC; MJ Cowboys,)
 LLC; M & L General Construction, LLC a/k/a)
 M & I General Construction, Inc. M&L Reyna)
 Constructions, LLC; M&M Foundations, LLC;)
 Nazareth Builders, LLC; NB Contractors,)
 LLC; Poinsett Development, LLC; Poinsett)
 Homes, LLC; P&T Construction, Inc. a/k/a P)
 & T Construction, Inc.; P & L Enterprises,)
 LLC; ProBuild Company, LLC a/k/a ProBuild)
 Holdings, Inc.; Rite Rug Company, Inc. a/k/a)
 Rite Rug Co.; Rodney Howard Grading Inc.)
 a/k/a Rodney Howard Grading Co.; Sandlapper)
 Concrete, LLC; Sodfather Inc.; Landscape)
 Contractors; Stock Building Supply, LLC;)
 TopBuild Home Services, Inc. a/k/a Gale)
 Contractors Service; Tucker Materials, Inc.)
 a/k/a Gypsum; UTM Enterprises, Inc.; and)
 Willow Tree Landscaping, Inc.,)
)
)
)
 Third-Party Defendants.)
)

This matter came before the Court on April 14, 2021, on Plaintiff Zitek’s Motion to Compel Discovery (“Motion”). At the time this Motion was filed, Defendant, D.R. Horton, Inc. (“Horton”), had not responded to Plaintiff Zitek’s discovery requests. Horton has since responded and provided an initial production. Plaintiff Zitek sent Horton a list of perceived deficiencies in its responses and production on April 9, 2021 (“April 9th List”); and, Horton has agreed to cure many of these. Therefore, Horton is Ordered to supplement its discovery responses in accordance with Plaintiff Zitek’s April 9th List (subject to Horton’s objections and to the extent that these documents exist), within a reasonable amount of time not to exceed sixty (60) days from the date of this Order.

AND IT IS SO ORDERED!

Presiding Judge for the 10th Circuit

Anderson, South Carolina
April ____, 2021

WE CONSENT:

JUSTIN O'TOOLE LUCEY, P.A.

s/ Dabny Lynn
Justin O'Toole Lucey, Esq.
Dabny Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com
Attorneys for Plaintiff

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason Imhoff
Jason Imhoff (SC Bar #69355)
John T. Crawford Jr. (SC Bar # 69682)
Kyle McGann (SC Bar # 103113)
F. James Warmoth (SC Bar # 101072)
Thomas E. Dudley (SC Bar # 66154)
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899 phone
(864) 242-4844 fax
jimhoff@conlaw.com
Crawford@conlaw.com
McGann@conlaw.com
Warmoth@conlaw.com
Dudley@conlaw.com
Attorneys for D.R. Horton



Anderson Common Pleas

Case Caption: Natalie Zitek VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Consent Order

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-04-13 14:53:49 page 4 of 4

EEECORONALY FILED 2022 APR 13 0039 AM ANDERSON COMMON PLEAS CASE#202019CP0401942

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-0401942

Natalie Zitek et. al.

D.R. Horton, Inc., et. al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Natalie Zitek, individually and on behalf of)
all other similarly situated,)
Plaintiff,)
vs.)
D.R. Horton, Inc.,)
Defendants.)

D.R. Horton, Inc.,)
Third-Party Plaintiff,)
v.)
AJ Landscaping & Grading, LLC a/k/a A J)
Landscaping & Grading, LLC, *et. al.*,)
Third-Party Defendants.)

ProBuild Company, LLC, *et. al.*,)
Fourth-Party Plaintiffs,)
v.)
Harrelson Painting, LLC, *et. al.*,)
Fourth-Party Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-04-01942

ORDER

This matter was before the Court pursuant to the Plaintiff's Motion for Compliance. The Court heard arguments from counsel and allowed the Defendant D.R. Horton to submit a memorandum. The Court also allowed the Plaintiff to reply to the Defendant's memorandum.

The controversy surrounds discovery. The parties entered into a consent order dated April 13, 2021 wherein the Defendant Horton was ordered to provide a number of pieces of information and/or documents within sixty (60) days. What was sought was clearly outlined in an attachment to the consent order. The Defendant D.R. Horton consented to this order.

The Plaintiff filed this motion because the Defendant D.R. Horton had not produced all of the information and/or documents requested. Neither had the Defendant D.R. Horton submitted answers to the Plaintiff outlining which of these materials were not in existence or unable to be located. There were several telephone conferences and email exchanges between the attorneys. It appears as though over 30,000 documents have been provided, although the parties dispute the relevancy of many of those. The Defendant D.R. Horton also asserted privilege in some of its formal answers, although no privilege log was submitted to the Court. At the hearing, counsel for the Defendant D.R. Horton did not assert privilege to any particular document or piece of information requested by the Plaintiff. Counsel for the Plaintiff characterizes the failure to produce the information as willful with the intent of obfuscating the facts of the case and making it difficult for the Plaintiff to proceed. Defense counsel characterizes the situation as just a complicated and time-consuming process of wading through thousands of documents where counsel for both sides have been in constant communication.

Rule 37(b)(2) of the S.C. Rules of Civil Procedure gives this Court authority to sanction parties for failure to comply with a discovery order. The parties in this case were subject to a consent discovery order pursuant to Rule 26 (f) of the S.C. Rules of Civil Procedure.

After careful review of the file, the submissions and arguments of counsel, along with the applicable law, the Court makes the following findings:

1. That the Defendant D.R. Horton is in willful violation of this Court's order regarding discovery.
2. That the Defendant D.R. Horton shall, within thirty (30) days, submit amended written answers to the Plaintiff clearly outlining what has been produced from the consent order list and what does not exist or cannot be located.
3. If there is an indication that the item or information cannot be located, the Defendant D.R. Horton shall be under a continuing duty to diligently search for, and then promptly provide such information to the Plaintiff should it be located.
4. That the materials labelled "privileged" in previous discovery responses are specifically deemed non-privileged by this order due to no privilege log, or even any specific identification of such alleged "privileged" information being submitted to the Court.
5. That, due to the Defendant D.R. Horton's non-compliance with this Court's order making sanctions appropriate under Rule 37 S.C.R.C.P., the Court awards \$5,000.00 in attorney fees to the Plaintiff. This amount shall be paid within thirty (30) days. The Court notes that a substantially higher amount was submitted by Plaintiff's counsel. The Court agrees with defense counsel's argument that much of the time expended by Plaintiff's counsel involved review of the voluminous amount of documents, which would have been necessary regardless of whether they had been produced on time or not. In awarding a much smaller amount of attorney fees, the Court finds that the Defendant D.R. Horton's violations appear to be more the product of negligence in gathering the ordered information rather than a set plan to frustrate discovery. The organized and clearly

readable brief submitted by defense counsel after the hearing sets forth the discovery items missing and the attempts to locate them in a manner that should have been done during the time frame allowed by the order. Simply sending thousands of documents as a response, with silence regarding what could not be located and no guide to what had been produced was not the manner in which the Defendant D.R. Horton should have answered the discovery requests. This negligent and cavalier response made it more difficult for the Plaintiff to proceed and increased the cost and time necessary for the litigation.

6. Should the Defendant D.R. Horton continue in non-compliance, the Plaintiff may have this matter brought back before the Court. The Court reminds the parties that there are harsher sanctions for non-compliance under Rule 37 S.C.R.C.P. than what the Court has chosen to impose here.

AND IT IS SO ORDERED.

Judge, Tenth Judicial Circuit

_____, 2021
Walhalla, South Carolina



Anderson Common Pleas

Case Caption: Natalie Zitek VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-10-06 11:01:05 page 7 of 7

ELECTRONICALLY FILED-D2020220606 17:03:39 MM ANANDERSO NC COMMON PLEAS SC CASE#20190401942

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-1942
	)	
Natalie Zitek, individually, and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	PLAINTIFF’S MOTION TO
	)	COMPEL
v.	)	
	)	
D.R. Horton, Inc.; Jane Doe #1-10; and John Doe #1-50,	)	
	)	
Defendants.	)	

Plaintiff, Natalie Zitek (“Plaintiff”), by and through the undersigned attorneys, hereby moves this Court to compel Defendant, D.R. Horton, Inc. (“Horton”), to respond to Plaintiff’s First Set of Interrogatories and First Requests for Production (“Discovery Requests”). In support of her Motion, Plaintiff will show:

1. On October 20, 2020, Plaintiff served the Discovery Requests on Horton. *See* (Discovery Requests, Ex. A).
2. On November 13, 2020, Horton filed a Rule 26 Motion seeking protection from responding to these Requests due to its then pending Motion to Compel Arbitration.
3. On December 9, 2020, the parties argued their respective Motions, but Horton failed to raise or argue its Rule 26 Motion at this hearing.
4. On January 6, 2021, the Court announced the denial of Horton’s Motion to Compel Arbitration. *See* (Court’s 1/6/2021 Email, Ex. B).
5. Horton’s Motion by its own terms has become moot, as the Motion simply sought to stay discovery “pending resolution of the potentially dispositive motion to dismiss.”
6. As such, Horton’s responses to Plaintiff’s Discovery Requests are due.
7. On January 19, 2021, Plaintiff sent Horton a Rule 11 letter that asking Horton a to confirm by January 22, 2021 that it would answer the Discovery Requests by February 1, 2021. *See* (Rule 11 letter, Ex. C).

8. On January 22, 2021, Horton sent a letter declining to answer the Discovery Requests by February 1, 2021. *See* (Horton 1/22/2020 Letter, Ex. D).
9. On January 27, 2021, the Court entered its Order formally denying Horton's Motion to Compel Arbitration.
10. Horton's responses to the Discovery Requests remain inexcusably tardy.

Therefore, Plaintiff requests this Court issue an Order compelling Horton to fully respond to Plaintiff's Discovery Requests. Pursuant to Rule 11(a), SCRPC, and as described above, Plaintiff's counsel affirms that Horton's Counsel was contacted in good faith in an attempt to resolve this dispute.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

/s/ Dabny Lynn

Justin O'Toole Lucey
Dabny Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com
Attorneys for Plaintiff

March 4, 2021
Mount Pleasant, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-01942
	)	
Natalie Zitek, individually, and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	PLAINTIFF'S FIRST SET OF
	)	INTERROGATORIES TO
v.	)	DEFENDANT
	)	
D.R. Horton, Inc.; Jane Doe #1-10; and, John	)	
Doe #1-50,	)	
	)	
Defendants.	)	

TO: DEFENDANT D.R. HORTON, INC.

You are required to respond to the following Interrogatories within thirty (30) days. Your responses must be served upon:

Dabny Lynn and Sohayla Townes
 Lucey Law Firm
 415 Mill Street
 Mt. Pleasant, SC 29464

INSTRUCTIONS

- A. Respond to these Interrogatories as required by the South Carolina Rules of Civil Procedure.
- B. Provide the basis for any privilege claimed or objection asserted by You in answering these Interrogatories.

DEFINITIONS

- A. "Rose Hill" means all homes (except the 24 or so built by Poinsett Homes), lots, and common areas within the Rose Hill subdivision located in Easley, South Carolina, 29462.
- B. "You", "Your", "Defendant", or "D.R. Horton" means D.R. Horton, Inc. and/or its agents, employees, consultants, attorneys, other representatives, or affiliated entities.
- C. The term "Evidence" means all documents, electronically stored information (ESI) and tangible items. Evidence includes, but is not limited to, the following exemplars:

- Photographs, recordings (audio/video), Excel spreadsheets, PowerPoint presentations, PDFs, Word documents, physical materials, books, news articles, computer printouts, etc.
 - Communications (e-mails, letters, faxes, text messages, telephone logs, internet postings, etc.)
 - Marketing/Homeowner Materials (advertisements, promotions, purchasing incentives, warranties, brochures, homeowner selection sheets, manuals, purchase contracts, punchwork/walkthrough lists, real estate disclosures, listing agreements, preferred lender/attorney information, etc.)
 - Construction/Design Materials (drawings, as-builts, specifications, submittals, change orders, purchase orders, budgets, RFIs, punch lists, contracts, subcontracts, field notes, work sheets, time cards, third-party consultant reports, inspection reports, draws, mock-ups, building products, permit applications, permits, certificates of occupancy, variance requests, design/construction commentary from municipalities, licenses, quality control procedures/checklists, inspection notes, etc.)
 - Product Information (installation/application instructions, cut sheets, manufacturer recommendations, test reports, certifications, technical bulletins/literature, etc.)
 - Financial Records (job accounting ledgers, company profit and loss statements, budgets, balance sheets, purchase orders, invoices, receipts, labor records, and the like)
- D. The term “relate to” or “relating to” means concerning, discussing, describing, involving, regarding, pertaining to, or connected with the subject matter of the request in any way.
- E. Use of the singular (each) includes the plural (every) and vice versa.

INTERROGATORIES

1. Provide the name, address, telephone number and occupation of each person known to You or Your counsel to be a witness concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witness and indicate who has possession of such statements.
2. For each person known to You or Your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

3. Provide the name, address, telephone number and occupation of each person (and companies) who participated in Rose Hill's design, development, construction, marketing, sale, and/or repair such as:

- a. subcontractors, material suppliers, and manufacturers;
- b. designers, engineers, and architects;
- c. foreman, project managers, assistant project managers, supervisors (i.e., site/construction supervisors, warranty/repair supervisors, sales/marketing supervisors, etc.), and assistant supervisors;
- d. managers or officers in the chain of command above Your supervisors;
- e. salespeople, marketers, promoters;
- f. customer care representatives, complaint/warranty processors,
- g. repairers, and warranty service technicians; and,
- h. record custodians.

4. Set forth a list of all Evidence in your possession or available to you which relate to the claims or defenses in the case, including but not limited to photographs, recordings, communications, construction/design materials, plats, sketches, notes, homeowner/marketing materials, product information, financial records and any other Evidence relating to Rose Hill, from the time of construction to the present.

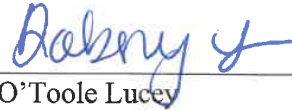
5. Set forth the names and addresses of all insurance companies, agents, producers and/or brokers which provided or helped provide commercial general liability, products completed operations, and excess/umbrella insurance coverage to you, and set forth the number(s) of the policy(ies), their term(s) and amount(s) of coverage. The insurance policies requested include all policies in place from 2010 to the present. If you are self-insured, please indicate as such.

6. List the names and addresses of all expert witnesses, engineers, architects, contractors, inspectors, consultants or testing laboratories engages by You and/or Your agents at any time to inspect, investigate, examine, test, or analyze Rose Hill in connection with each, give the following information:

- a. their full name and address:

- b. their qualifications and/or field of expertise;
- c. the subject matter on which they are expected to testify;
- d. the substance of the facts and/or opinions to which they are expected to testify;
- e. a complete summary of the grounds for each such opinion; and
- f. a list of all Evidence provided to them.

JUSTIN O'TOOLE LUCEY, P.A.



Justin O'Toole Lucey
Dabny Lynn
Sohayla R. Townes
415 Mill Street (29464)
P.O. Box 806
Mt. Pleasant, SC 29465
(843) 849-8400 (Phone)
(843) 849-8406 (Fax)
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com
Attorneys for Plaintiffs

October 20, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO.: 2019-CP-04-01942
	)	
Natalie Zitek, individually, and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff,	)	PLAINTIFF'S FIRST REQUESTS
	)	FOR PRODUCTION TO
v.	)	DEFENDANT
	)	
D.R. Horton, Inc.; Jane Doe #1-10; and, John	)	
Doe #1-50,	)	
	)	
Defendants.	)	

TO: DEFENDANT D.R. HORTON, INC.

You are required to respond to the following Requests for Production within thirty (30) days. Your responses must be served upon:

Dabny Lynn and Sohayla Townes
Lucey Law Firm
415 Mill Street
Mt. Pleasant, SC 29464

INSTRUCTIONS

- A. Respond to these Requests as required by the South Carolina Rules of Civil Procedure.
- B. Where native electronically stored information ("ESI") is available, it must be produced in addition to a printed or PDF copy and with a standard load file.
- C. For any Evidence withheld under privilege, identify the Evidence by author, addressee, all recipients, date, number of pages, and subject matter; specify the nature and basis of the privilege; and identify each Person to whom the Evidence or any of its contents has been disclosed.
- D. For any Evidence which is destroyed, lost, or otherwise unavailable, identify the Evidence by author, recipient, date, number of pages, and subject matter; explain why the Evidence is unavailable; and provide the date and location of the Evidence when last in Your possession, custody, or control.

DEFINITIONS

- A. “Rose Hill” means all homes (except the 24 or so built by Poinsett Homes), lots, and common areas within the Rose Hill subdivision located in Easley, South Carolina, 29462.
- B. “You”, “Your”, “Defendant”, or “D.R. Horton” means D.R. Horton, Inc. and/or its agents, employees, consultants, attorneys, other representatives, or affiliated entities.
- C. The term “Evidence” means all documents, electronically stored information (ESI) and tangible items. Evidence includes, but is not limited to, the following exemplars:
 - Photographs, recordings (audio/video), Excel spreadsheets, PowerPoint presentations, PDFs, Word documents, physical materials, books, news articles, computer printouts, etc.
 - Communications (e-mails, letters, faxes, text messages, telephone logs, internet postings, etc.)
 - Marketing/Homeowner Materials (advertisements, promotions, purchasing incentives, warranties, brochures, homeowner selection sheets, manuals, purchase contracts, punchwork/walkthrough lists, real estate disclosures, listing agreements, preferred lender/attorney information, etc.)
 - Construction/Design Materials (drawings, plans, as-builts, specifications, submittals, change orders, purchase orders, budgets, RFIs, punch lists, contracts, subcontracts, field notes, work sheets, time cards, third-party consultant reports, inspection reports, draws, mock-ups, building products, permit applications (and attachments), permits, certificates of occupancy, variance requests, design/construction commentary from municipalities, licenses, quality control procedures/checklists, inspection notes, etc.)
 - Product Information (installation/application instructions, cut sheets, manufacturer recommendations, test reports, certifications, technical bulletins/literature, etc.)
 - Financial Records (job accounting ledgers, company profit and loss statements, budgets, balance sheets, purchase orders, invoices, receipts, labor records, and the like)
- D. The term “relate to” or “relating to” means concerning, discussing, describing, involving, regarding, pertaining to, or connected with the subject matter of the request in any way.
- E. Use of the singular (each) includes the plural (every) and vice versa.

REQUESTS FOR PRODUCTION

1. Produce all Evidence relating to the design, development, construction, marketing, and/or sale of Rose Hill.
2. Produce all Evidence relating to the repair of Rose Hill.
3. Produce all Evidence relating to the investigation of Rose Hill.

4. Produce all Evidence of permit applications submitted (including attachments) and building permits issued relating to Rose Hill.
5. Produce all Evidence relating to inspections performed internally at Rose Hill.
6. Produce all Evidence relating to inspections performed by third parties at Rose Hill.
7. Produce all Evidence relating to inspections performed by code officials or building inspectors at Rose Hill.
8. Produce all Evidence of due diligence performed by You relating to Your purchase of Rose Hill. This should include due diligence materials You received or generated in any purchase-related investigations.
9. Produce all Evidence relating to Rose Hill's site conditions before Your purchase of the property.
10. Produce all Evidence of Rose Hill's site condition near the time of Your purchase of the property (i.e., 2011-2012).
11. Produce all Evidence of Rose Hill's site condition after Your purchase of the property.
12. Produce all Evidence relating to Rose Hill's master plan.
13. Produce all Evidence relating to any changes made to Rose Hill's master plan.
14. Produce all Evidence of any plans submitted as part of the permitting process before Your purchase of Rose Hill.
15. Produce all Evidence of any plans submitted as part of the permitting process since Your purchase of Rose Hill.
16. Produce all Evidence relating to any work performed by Poinsett Homes at Rose Hill.

17. Produce all Evidence relating to Rose Hill's home models.
18. Produce all Evidence of all advertising for the sale of Rose Hill.
19. Produce all Evidence of Your profits related to the sale of Rose Hill.
20. Produce all Evidence of licenses You have held between 2010 to the present.
21. Produce Evidence of Your organizational and corporate structure as it exists between 2010 to the present. This request includes articles of organization/incorporation and organizational charts.
22. Produce all Evidence of Your company's protocols and guidelines between 2010 to present. This request includes training manuals, company manuals, and company policies and procedures effective between 2010 to present.
23. Produce all insurance policy documents, including complete copies of all policies and declaration pages, owned by You between 2010 to present.
24. Produce insurance certificates for all subcontractors who worked at Rose Hill.
25. Produce all insurance-related communications such as claim submissions and reservation of rights letters relating to Your carrier's notice and handling of this claim.
26. Produce the following for any expert witness You identify:
 - a) The most up-to-date *curriculum vitae* on his/her background, training, and education;
 - b) Evidence which he/she has received or generated concerning this case;
 - c) Evidence and any other materials upon which he/she may rely for his/ her testimony or to which he/she referred in reviewing this case;
 - d) All reports prepared by him/her in connection with this case;
 - e) All notes, outlines, PowerPoints, photographs, transcripts from any lectures, classes, or presentations given or attended by him/her or his/her company related to the issues in this case;
 - f) Any communications which he/she has sent or received from any party in this case;

- g) All his/her invoices and billing records for this case; and
- h) A complete list of all cases where he/she has provided expert consultant services and whether a deposition or trial testimony was given. Include the names of the parties, the jurisdiction where the case was filed, the case number, and the names of the attorneys representing the parties.

27. Produce all Evidence which You obtained in response to subpoenas, FOIA requests, or otherwise that relate to this case.

28. Produce all Evidence of South Carolina homeowners or business complaints related to construction work/building improvements/warranty work You performed in the last 13 years.

29. Produce all deposition transcripts or Evidence of sworn statements given by Your officers, employees, agents, or experts within the last 13 years related to construction defects.

30. Produce copies of Your most recently available tax returns for the last five years.

31. Produce all Evidence of Your record retention policies from 2010 to present.

32. Produce a list of the terms and other control functions You used to search for ESI responsive to these Requests.

33. To the extent not covered by the above Requests, produce all Evidence:

- a) of any problem, defect, or life-safety hazards (alleged or otherwise) at Rose Hill, whether prepared, sent, or received by You;
- b) of statements given by witnesses that relate to Rose Hill and/or matters at issue in this case;
- c) of agreements between You and other persons involved in building improvements or construction at the Rose Hill including, but not limited to servicing agreements, partnership agreements, contracting/installation agreements, warranty agreements, design agreements, or exclusivity agreements;
- d) of warranties issued by You and/or any third-party for Rose Hill, including evidence of warranties provided, warranty-related communications, warranty claims, and warranty work performed;
- e) of communications about Rose Hill among You/Your employees and/or between

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **Plaintiff's First Set of Interrogatories and First Requests for Production to Defendant** upon all parties to this matter by depositing a true copy of the same in the U.S. Mail, proper postage prepaid, and/or electronic mail and addressed to counsel of record as follows:

John T. Crawford, Esquire
Tom Dudley, Esquire
Kyle D. McGann, Esquire
James Warmoth, Esquire
Kenison Dudley & Crawford, LLC
1122 Barnwell Street
Columbia, SC 29201
crawford@conlaw.com
dudley@conlaw.com
mcgann@conlaw.com


Annette M. Mixson, Paralegal

October 20, 2020
Mount Pleasant, South Carolina

EXHIBIT B



Sohayla Townes <stownes@lucey-law.com>

Zitek v. DR Horton, Inc.

Maddox, J. Cordell Law Clerk (Peri Imler) <cmaddoxlc@sccourts.org>

Wed, Jan 6, 2021 at 3:05 PM

To: Justin Lucey <jlucey@lucey-law.com>

Cc: Dabny Lynn <dlynn@lucey-law.com>, John Crawford <crawford@conlaw.com>, "dudley@conlaw.com" <dudley@conlaw.com>, James Warmoth <warmoth@conlaw.com>, "mcgann@conlaw.com" <mcgann@conlaw.com>, "stownes@lucey-law.com" <stownes@lucey-law.com>, Kelly Nix <nix@conlaw.com>, Cara Smith <smith@conlaw.com>

Hello all,

Judge Maddox denies the motion to compel arbitration and grants the class certification. **Justin**, please draft the order, share it with opposing counsel, and E-file it for Judge Maddox's signature by **Wednesday, January 13, 2021**.

Best,

Peri Imler

Judicial Law Clerk to the Honorable J. Cordell Maddox, Jr.

Office: (864) 260-4636

Fax: (864) 260-6348

From: Justin Lucey <jlucey@lucey-law.com>

Sent: Thursday, December 24, 2020 8:24 AM

To: Maddox, J. Cordell Law Clerk (Peri Imler) <cmaddoxlc@sccourts.org>

Cc: Dabny Lynn <dlynn@lucey-law.com>; John Crawford <crawford@conlaw.com>; dudley@conlaw.com; James Warmoth <warmoth@conlaw.com>; mcgann@conlaw.com; stownes@lucey-law.com; Kelly Nix <nix@conlaw.com>; Cara Smith <smith@conlaw.com>

Subject: Re: Zitek v. DR Horton, Inc.

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

[Quoted text hidden]

FILED 01/06/21 10:43:39 AM JAN 06 2021 CLERK OF SUPERIOR COURT

EXHIBIT C

JUSTIN O'TOOLE LUCEY, PA

Attorneys at Law

Justin Lucey
Joshua F. Evans
Stephanie D. Drawdy
Dabny Lynn

415 Mill Street, Mount Pleasant, SC 29464
Reply to: P.O. Box 806, Mount Pleasant, SC 29465
Phone: 843.849.8400 · Fax: 843.849.8406 · www.lucey-law.com

Anna S. McCann
Lauren M. Milton
Sohayla R. Townes
Collin H. Fuller

January 19, 2021

VIA E-MAIL AND U.S. MAIL

John T. Crawford, Esquire
Tom Dudley, Esquire
Kyle D. McGann, Esquire
James Warmoth, Esquire
Kenison Dudley & Crawford, LLC
1122 Barnwell Street
Columbia, SC 29201
crawford@conlaw.com
mcgann@conlaw.com
tdudley@conlaw.com
jwarmoth@conlaw.com

RE: **Natalie Zitek v. D.R. Horton, Inc.**
Case No. 2019-CP-04-01942
Rule 11 Letter as to D.R. Horton's Discovery Responses

Dear John, Tom, James, and Kyle:

I am writing to follow up on Horton's Answers and Responses to Plaintiff's discovery requests served on October 20, 2020. On November 13, 2020, Horton filed a Rule 26 Motion seeking protection from responding to these requests; however, this Motion was not argued at the December 9th Motion hearing and it is now moot given the Court's ruling on arbitration. As such, Horton's Answers and Responses to Plaintiff's discovery requests are due.

Plaintiff asks Horton to confirm within the next two (2) days (or by close of business on January 21, 2021) that it will answer these requests within the next ten (10) days (or by close of business on Monday, February 1, 2021). This letter serves as Plaintiff's attempt to obtain said Answers and Responses pursuant to Rule 11, SCRPC. If Horton does not confirm by January 22nd that it will send its Answers and Responses by February 1st, Plaintiff will proceed to file a Motion to Compel.

Best,



Dabny Lynn

DL/dl

FILED 2021 JAN 19 10 41 AM 0413 9139 MAMANDERSON COMMODO RILEY AS SC ASS F2021022700003942

EXHIBIT D

Kyle D. McGann
Attorney
Licensed in SC
1122-B Barnwell Street
Columbia, SC 29201
864.242.4899
mcgann@conlaw.com

January 22, 2021

Via E-mail and First Class Mail

Justin Lucey, Esquire
Dabny Lynn, Esquire
Sohayla Townes, Esquire
Lucey Law Firm
415 Mill Street
Mount Pleasant, South Carolina

Re: Natalie Zitek, et. al. v. D.R. Horton, Inc., et. al.
D.R. Horton's Letter Regarding Second Round of Inspections
Case No. 2019-CP-04-1942

Dear Dabny:

We received your letter (the "Letter"), dated January 19, 2021, concerning discovery requests sent on October 20, 2021, concerning the above-referenced matter. The Letter makes mention that DRH's Motion to Stay Discovery (the "Motion"), filed on November 13, 2020, is now moot. We disagree. The Court has not heard the Motion yet, no notice has been provided concerning the Motion, and we maintain the grounds asserted in the Motion.

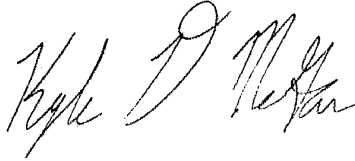
As you are aware, the December 9, 2020, hearing (the "Hearing") did not concern the Motion. The Hearing's Notice was limited to our Motion to Compel Arbitration and your Motion to Grant Class Certification. While Plaintiff has submitted a proposed order (the "Order") concerning the Hearing, the Order has not been issued.

We are still conferring with our client regarding potentially appealing or filing a motion concerning the Order. If we do file an aforementioned appeal/motion, DRH would maintain its grounds pursuant to Rule 26(c), SCRPC, and will amend its motion to reflect the current posture of case. Further, all time periods, including DRH's time to file an Answer, are still tolled as we await issuance of the Order.

Should you have any questions, please do not hesitate to call.

Very truly yours,

KENISON, DUDLEY & CRAWFORD, LLC

A handwritten signature in black ink, appearing to read "Kyle D. McGann". The signature is fluid and cursive, with the first name "Kyle" being the most prominent.

Kyle D. McGann

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-04-01942

Natalie Zitek, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., et al.,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC, et al.

Third-Party Defendants.

ProBuild Company, LLC; et al.,

Fourth-Party Plaintiffs,

v.

Harrelson Painting, LLC, et al.,

Fourth-Party Defendants.

Nicholas Soto a/k/a Nicolas Soto, Individually
and d/b/a Soto HVAC,

Fifth-Party Plaintiff,

v.

Toribio Islas and Alejandro Soto,

Fifth-Party Defendants.

**PLAINTIFF'S SECOND MOTION TO
COMPEL COMPLIANCE AND
DISCOVERY**

COMES NOW Plaintiff Natalie Zitek, individually and on behalf of all others similarly situated, and MOVES this Court for an Order enforcing its April 13, 2021 and October 6, 2021 Orders (Ex. A & B) compelling discovery, for an Order compelling D.R. Horton's deposition, and for all appropriate relief available under Rule 37, SCRCP and the common law of this state.

D.R. Horton was ordered on April 13, 2021 to provide to Plaintiff its requested discovery within sixty (60) days, or by June 14, 2021. Five and one half (5 ½) months have expired since the date performance was due, and only partial compliance has occurred.

On October 6, 2021, this Court sanctioned D.R. Horton for its delay and non-compliance and provided additional direction for compliance – substantial portions of which D.R. Horton has ignored. D.R. Horton has failed to timely produce large categories of information and documents, has reasserted privilege claims in its amended and supplemental discovery requests, despite the October 6th Order striking privilege claims, had provided patently bogus answers, has attempted to camouflage its non-compliance in letters instead of formal discovery responses, and has continued to assert baseless objections. Additionally, D.R. Horton has since used its continued non-compliance with discovery and discovery orders to block Plaintiff's Rule 30(b)6 deposition of D.R. Horton and had failed to cooperate in resetting the deposition.

Plaintiff seeks an order of this Court correcting the foregoing and granting all other appropriate relief. This motion shall be based upon a memorandum and other materials to be filed at or before the hearing on this motion.

November 30, 2021
Mount Pleasant, South Carolina

JUSTIN O'TOOLE LUCEY, P.A.

s/Justin Lucey

Justin O'Toole Lucey
Dabny Lynn
Sohayla R. Townes
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com
Attorneys for Plaintiff

FILED 2021 AUG 15 9:43 AM MANASSAS COUNTY CLERK'S OFFICE

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NO.: 2019-CP-04-01942
)
Natalie Zitek, individually and on behalf of all)
others similarly situated,)
)
Plaintiff,)
)
v.)
)
D.R. Horton, Inc.; Jane Doe #1-10; and John)
Doe #1-50,)
)
Defendants.)
)

D.R. Horton, Inc.,)
)
Third-Party Plaintiff,)
)
v.)
)
AJ Landscaping & Grading, LLC a/k/a A J)
Landscaping & Grading, LLC; AllPro)
Textures, LLC; Alpha Omega Construction)
Group, Inc.; American Concrete and Precast,)
Inc. a/k/a ACP Concrete, Inc.; A & J Framing,)
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor)
Designs Center; A Grade Above Others, LLC;)
Brand-Vaughan Lumber Co, Inc.; BKF)
Builders, Inc.; Blue Ridge Building Products,)
LLC; Builders Desinhouse, LLC; BMC East)
LLC; Builders FirstSource Southeast Group,)
LLC a/k/a Builders FirstSource, Inc.; Bravo)
Carpenters, Inc.; Caryl Mechanics II, Inc. a/k/a)
Caryl Mechanicals, Inc.; Cannaday Siding &)
Gutter, Inc.; Coleman Floor, LLC; Cortes)
Painting, LLC; CBU Enterprises, Inc.; CPI)
Security Systems, Inc.; DOM Group, LLC;)
Ferguson Enterprises, Inc.; Five Star)
Construction Inc.; Five Star Foundations, LLC;)
Galloway-Bell, Inc. a/k/a Galloway-Bell, Inc.)
II; Get Floored, LLC; GBS Building Supply –)
US LBM, LLC f/k/a GBS Building Supply,)
Inc.; General Shale Brick Inc.; Greener)

CONSENT ORDER

Pastures, Inc. a/k/a Greener Pastures of Aiken,)
 LLC; Installed Building Products, LLC a/k/a)
 Installed Building Products II, LLC; JLS)
 Masonry, Inc.; Kings Landscaping, LLC;)
 Landshapers, LLC; Lade-Danlar, Inc.; Lansing)
 Building Products, Inc.; Long Heating & Air)
 Conditioning, Inc.; L & M Electric, Inc.;)
 Manale Landscaping, LLC; MJ Cowboys,)
 LLC; M & L General Construction, LLC a/k/a)
 M & I General Construction, Inc. M&L Reyna)
 Constructions, LLC; M&M Foundations, LLC;)
 Nazareth Builders, LLC; NB Contractors,)
 LLC; Poinsett Development, LLC; Poinsett)
 Homes, LLC; P&T Construction, Inc. a/k/a P)
 & T Construction, Inc.; P & L Enterprises,)
 LLC; ProBuild Company, LLC a/k/a ProBuild)
 Holdings, Inc.; Rite Rug Company, Inc. a/k/a)
 Rite Rug Co.; Rodney Howard Grading Inc.)
 a/k/a Rodney Howard Grading Co.; Sandlapper)
 Concrete, LLC; Sodfather Inc.; Landscape)
 Contractors; Stock Building Supply, LLC;)
 TopBuild Home Services, Inc. a/k/a Gale)
 Contractors Service; Tucker Materials, Inc.)
 a/k/a Gypsum; UTM Enterprises, Inc.; and)
 Willow Tree Landscaping, Inc.,)
)
)
)
 Third-Party Defendants.)
)

This matter came before the Court on April 14, 2021, on Plaintiff Zitek’s Motion to Compel Discovery (“Motion”). At the time this Motion was filed, Defendant, D.R. Horton, Inc. (“Horton”), had not responded to Plaintiff Zitek’s discovery requests. Horton has since responded and provided an initial production. Plaintiff Zitek sent Horton a list of perceived deficiencies in its responses and production on April 9, 2021 (“April 9th List”); and, Horton has agreed to cure many of these. Therefore, Horton is Ordered to supplement its discovery responses in accordance with Plaintiff Zitek’s April 9th List (subject to Horton’s objections and to the extent that these documents exist), within a reasonable amount of time not to exceed sixty (60) days from the date of this Order.

AND IT IS SO ORDERED!

Presiding Judge for the 10th Circuit

Anderson, South Carolina
April ____, 2021

WE CONSENT:

JUSTIN O'TOOLE LUCEY, P.A.

s/ Dabny Lynn
Justin O'Toole Lucey, Esq.
Dabny Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com
Attorneys for Plaintiff

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason Imhoff
Jason Imhoff (SC Bar #69355)
John T. Crawford Jr. (SC Bar # 69682)
Kyle McGann (SC Bar # 103113)
F. James Warmoth (SC Bar # 101072)
Thomas E. Dudley (SC Bar # 66154)
704 E. McBee Ave.
Greenville, SC 29601
(864) 242-4899 phone
(864) 242-4844 fax
jimhoff@conlaw.com
Crawford@conlaw.com
Mcgann@conlaw.com
Warmoth@conlaw.com
Dudley@conlaw.com
Attorneys for D.R. Horton



EXHIBIT B

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-0401942

Natalie Zitek et. al.

D.R. Horton, Inc., et. al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
Natalie Zitek, individually and on behalf of)
all other similarly situated,)
)
Plaintiff,)
)
vs.)
)
D.R. Horton, Inc.,)
)
Defendants.)
)
D.R. Horton, Inc.,)
)
Third-Party Plaintiff,)
)
v.)
)
AJ Landscaping & Grading, LLC a/k/a A J)
Landscaping & Grading, LLC, *et. al.*,)
)
Third-Party Defendants.)
)
ProBuild Company, LLC, *et. al.*,)
)
Fourth-Party Plaintiffs,)
)
v.)
)
Harrelson Painting, LLC, *et. al.*,)
)
Fourth-Party Defendants.)
)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
Case Number: 2019-CP-04-01942

ORDER

This matter was before the Court pursuant to the Plaintiff's Motion for Compliance. The Court heard arguments from counsel and allowed the Defendant D.R. Horton to submit a memorandum. The Court also allowed the Plaintiff to reply to the Defendant's memorandum.

The controversy surrounds discovery. The parties entered into a consent order dated April 13, 2021 wherein the Defendant Horton was ordered to provide a number of pieces of information and/or documents within sixty (60) days. What was sought was clearly outlined in an attachment to the consent order. The Defendant D.R. Horton consented to this order.

The Plaintiff filed this motion because the Defendant D.R. Horton had not produced all of the information and/or documents requested. Neither had the Defendant D.R. Horton submitted answers to the Plaintiff outlining which of these materials were not in existence or unable to be located. There were several telephone conferences and email exchanges between the attorneys. It appears as though over 30,000 documents have been provided, although the parties dispute the relevancy of many of those. The Defendant D.R. Horton also asserted privilege in some of its formal answers, although no privilege log was submitted to the Court. At the hearing, counsel for the Defendant D.R. Horton did not assert privilege to any particular document or piece of information requested by the Plaintiff. Counsel for the Plaintiff characterizes the failure to produce the information as willful with the intent of obfuscating the facts of the case and making it difficult for the Plaintiff to proceed. Defense counsel characterizes the situation as just a complicated and time-consuming process of wading through thousands of documents where counsel for both sides have been in constant communication.

Rule 37(b)(2) of the S.C. Rules of Civil Procedure gives this Court authority to sanction parties for failure to comply with a discovery order. The parties in this case were subject to a consent discovery order pursuant to Rule 26 (f) of the S.C. Rules of Civil Procedure.

After careful review of the file, the submissions and arguments of counsel, along with the applicable law, the Court makes the following findings:

1. That the Defendant D.R. Horton is in willful violation of this Court's order regarding discovery.
2. That the Defendant D.R. Horton shall, within thirty (30) days, submit amended written answers to the Plaintiff clearly outlining what has been produced from the consent order list and what does not exist or cannot be located.
3. If there is an indication that the item or information cannot be located, the Defendant D.R. Horton shall be under a continuing duty to diligently search for, and then promptly provide such information to the Plaintiff should it be located.
4. That the materials labelled "privileged" in previous discovery responses are specifically deemed non-privileged by this order due to no privilege log, or even any specific identification of such alleged "privileged" information being submitted to the Court.
5. That, due to the Defendant D.R. Horton's non-compliance with this Court's order making sanctions appropriate under Rule 37 S.C.R.C.P., the Court awards \$5,000.00 in attorney fees to the Plaintiff. This amount shall be paid within thirty (30) days. The Court notes that a substantially higher amount was submitted by Plaintiff's counsel. The Court agrees with defense counsel's argument that much of the time expended by Plaintiff's counsel involved review of the voluminous amount of documents, which would have been necessary regardless of whether they had been produced on time or not. In awarding a much smaller amount of attorney fees, the Court finds that the Defendant D.R. Horton's violations appear to be more the product of negligence in gathering the ordered information rather than a set plan to frustrate discovery. The organized and clearly

readable brief submitted by defense counsel after the hearing sets forth the discovery items missing and the attempts to locate them in a manner that should have been done during the time frame allowed by the order. Simply sending thousands of documents as a response, with silence regarding what could not be located and no guide to what had been produced was not the manner in which the Defendant D.R. Horton should have answered the discovery requests. This negligent and cavalier response made it more difficult for the Plaintiff to proceed and increased the cost and time necessary for the litigation.

6. Should the Defendant D.R. Horton continue in non-compliance, the Plaintiff may have this matter brought back before the Court. The Court reminds the parties that there are harsher sanctions for non-compliance under Rule 37 S.C.R.C.P. than what the Court has chosen to impose here.

AND IT IS SO ORDERED.

Judge, Tenth Judicial Circuit

_____, 2021
Walhalla, South Carolina



Anderson Common Pleas

Case Caption: Natalie Zitek VS Jane Doe 1 , defendant, et al
Case Number: 2019CP0401942
Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2021-10-06 11:01:05 page 7 of 7

ELECTRONICALLY FILED - 2021 Nov 30 5:14 PM - ANDERSON - COMMON PLEAS - CASE#2019CP0401942

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Natalie Zitek, individually, and on behalf of	)	Civil Action No. 2019-CP-04-1942
all others similarly situated,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
D.R. Horton, Inc., Jane Doe#1-10; and John	)	
Doe #1-50,	)	
	)	
Defendants.	)	THIRD-PARTY DEFENDANT M&L
	)	GENERAL CONSTRUCTION, INC.'S
	)	AMENDED MOTION TO COMPEL
	)	THIRD-PARTY PLAINTIFF D.R.
	)	HORTON, INC.
D.R. Horton, Inc.,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
AJ Landscaping & Grading, LLC, a/k/a AJ	)	
Landscaping & Grading, LLC, et al.,	)	
	)	
Third-Party Defendants.	)	
	)	
ProBuild Company, LLC, et al.,	)	
	)	
Fourth-Party Plaintiffs,	)	
	)	
vs.	)	
	)	
Harrelson Paintiff, LLC, et al.	)	
	)	
Fourth-Party Defendants.	)	
	)	
	)	

**TO: D.R. HORTON AND THEIR COUNSEL, JOHN T. CRAWFORD Jr., ESQ.,
JASON M. IMHOFF, ESQ., F. JAMES WARMOTH**

YOU WILL PLEASE TAKE NOTICE that on the tenth day following service hereof, or
as soon thereafter as counsel may be heard, Third-Party Defendant M&L General Construction,

Inc. (hereinafter “ML”) will move by and through its undersigned counsel for an Order pursuant to Rule 37, SCRCP, compelling the Defendant and Third-Party Plaintiff D.R. Horton, Inc. (hereinafter “DR Horton”) to provide full and complete responses to ML’s First Set of Interrogatories and First Set of Requests for Production. ML will further move the Court for an award pursuant to Rule 37(a)(4), SCRCP, of costs and expenses incurred in obtaining the Order.

DR Horton, in response to the Interrogatories and Request for Production of Documents served on July 23, 2021, has failed to provided ML with answers and responses to the specific questions asked therein. Attached as **Exhibit A**, DR Horton has responded to each Interrogatory and Request with either an objection, blanket response, or reference to over 13,000 documents that they have produced, which provides our client with a lack of information as to why they have been included in the above-captioned lawsuit.

ML would specifically like the following Interrogatories answered fully and thoroughly as to provide an inking of insight as to why they have been named a party in this case.

Interrogatory No. 4

Specify what records you relied upon in naming ML as a Third-Party Defendant.

Interrogatory No. 5

Set forth an itemized statement of all damages you claim to have sustained due to work performed by ML.

Interrogatory No. 7

Set forth all work you allege was performed by ML at the homes that are the subject of the Complaint, including:

1. type of work,
2. specific home or homes, and
3. dates work was performed.

Interrogatory No. 8

Identify all communications you have had with ML, and if any, the form of any such communication, and the substance of those communications.

Interrogatory No. 10

Identify any and all documents and corresponding bates stamp(s) or other identifying marks of which you are aware reflecting that ML supplied labor or materials for the homes that are the subject of the Complaint.

Interrogatory No. 11

Set forth with specificity the problems with any work you allege was performed by ML.

Interrogatory No. 12

Identify any and all contracts, whether written, oral, or otherwise reflecting that ML worked at the Rose Hill subdivision. If you identify any contracts, identify the scope of the agreement and the parties involved in making the contract.

Further, as requested in the ML's First Set of Request for Production of Documents, ML would ask the Court to order DR Horton to provide relevant documents with corresponding bates stamp(s) in response to the following request:

This Motion is based upon the South Carolina Rules of Civil Procedure, all other applicable law, including statutory and case law, and such other and further matters as may be presented to the Court on or before the date of the hearing.

RESPECTFULLY SUBMITTED,

BRUNER POWELL WALL & MULLINS, LLC

s/Wesley D. Peel

Wesley D. Peel, Bar No. 9283

J. Cole Hancock, Bar No. 104658

P.O. Box 61110 (29260)

1735 St. Julian Place, Suite 200 (29204)

Columbia, South Carolina

(803) 252-7693

wpeel@brunerpowell.com

jcolehancock@brunerpowell.com

*Attorneys for Third-Party Defendant M&L General
Construction, Inc.*

November 15, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
Natalie Zitek, individually, and on behalf of)
all others similarly situated,)
Plaintiff,)
vs.)
D.R. Horton, Inc., Jane Doe#1-10; and John)
Doe #1-50,)
Defendants.)

D.R. Horton, Inc.,)
Third-Party Plaintiff,)
vs.)
AJ Landscaping & Grading, LLC, a/k/a AJ)
Landscaping & Grading, LLC; AllPro)
Textures, LLC; Alpha Omega Construction)
Group, Inc.; American Concrete and Precast,)
Inc.; A/K/A ACP Concrete, Inc.; A&J)
Framing, Inc; ALPHA E.M.C.; A-Z, Inc.;)
Atlanta Floor Designs Center; A Grade)
Above Others, LLC; Brand-Vaughan)
Lumber Co, Inc.; BKF Builders, Inc.; Blue)
Ridge Building Products, LLC; Builders)
Designhouse, LLC; BMC East LLC;)
Builders FirstSource Southeast Group, LLC,)
A/K/A Builders FirstSource, Inc.; Bravo)
Carpenters, Inc.; Caryl Mechanics II, Inc.,)
Cannaday Siding & Gutter, Inc.; Coleman)
Floor, LLC; Cortes Painting, LLC; CBU)
Enterprises, Inc.; CPI Security Systems,)
Inc.; Dom Group, LLC; Ferguson)
Enterprises, Inc.; Five Star Construction,)
Inc.; Five Star Foundations, LLC;)
Galloway-Bell, Inc., A/K/A Galloway-Bell,)
Inc. II; Get Floored, LLC; GBS Building)
Supply – US LBM, LLC, F/K/A GBS)
Building Supply, Inc.; General Shale Brick,)
Inc.; Greener Pastures, Inc., A/K/A Greener)
Pastures of Aiken, LLC; Installed Building)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Civil Action No. 2019-CP-04-1942

**DEFENDANT D.R. HORTON, INC.'S
RESPONSES TO DEFENDANT M&L
GENERAL CONSTRUCTION, INC.'S
FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION
OF DOCUMENTS**

ELECTRONICALLY FILED 12/02/20 2:04 PM ILJ 9339 AMM ANDRESON COMMONORLEASASCSA#2020092109210006942

Products, LLC, A/K/A Installed Building)
 Products II, LLC; JLS Masonry, Inc.; Kings)
 Landscaping, LLC; Landshapers, LLC;)
 Lade-Danlar, Inc.; Lansing Building)
 Products, Inc.; Long Heating & Air)
 Conditioning, Inc.; L&M Electric, Inc.;)
 Manale Landscaping, LLC; MJ Cowboys,)
 LLC; M&L General Construction, LLC,)
 A/K/A M&L General Construction, Inc.;)
 M&L Reyna Construction, LLC; M&M)
 Foundations, LLC; Nazareth Builders, LLC;)
 NB Contractors, LLC; Poinsett)
 Development, LLC; Poinsett Homes, LLC;)
 P&T Construction, Inc.; P&L Enterprises,)
 LLC; Probuild Company, LLC A/K/A P&)
 Construction, Inc.; P&L Enterprises, LLC;)
 Probuild Company, LLC A/K/A Probuilding)
 Holdings, Inc.; Rite Rug Company, Inc.,)
 A/K/A Rite Rug Co.; Rodney Howard)
 Grading, Inc., A/K/A Rodney Howard)
 Grading Co.; Sandlapper Concrete, LLC;)
 Sodfather Inc., Landscape Contractors;)
 Stock Building Supply, LLC; TopBuild)
 Home Services, Inc., A/K/A Gale)
 Contractors Service; Tucker Materials, Inc.;)
 A/K/A Gypsum; UTM Enterprises, Inc; and)
 Willow Tree Landscaping, Inc.,)
)
 Third-Party Defendants.)
)

TO: DEFENDANT M&L GENERAL CONSTRUCTION, INC, AND COUNSEL OF RECORD, WESLEY D. PEEL, ESQUIRE AND J. COLE HANCOCK, ESQUIRE:

Pursuant to Rules 33 and 34 of the South Carolina Rules of Civil Procedure, the undersigned attorney for the Defendant D.R. Horton, Inc. (“D.R. Horton”), hereby provides its answers to Defendant M&L General Construction, Inc.’s (“M&L”) First Set of Interrogatories and Requests for Production as follows:

GENERAL OBJECTIONS

1. D.R. Horton objects to the Interrogatories to the extent that they purport to impose obligations beyond those imposed by the South Carolina Rules of Civil Procedure.

2. D.R. Horton objects to the Interrogatories to the extent that they request information which is protected by the attorney-client privilege and/or the work product doctrine and/or any other applicable law, rule or privilege.

3. D.R. Horton objects to the Interrogatories to the extent that the requested information is equally available to the M&L, on the grounds that producing such information is unnecessary, unduly burdensome and harassing.

4. D.R. Horton objects to the Interrogatories to the extent M&L seeks information which is in the possession of the M&L or persons or entities other than D.R. Horton.

5. D.R. Horton objects to the Interrogatories to the extent that they seek information which is not relevant to issues in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence and to the extent that they are overbroad, oppressive, vague, and unduly burdensome and would impose upon D.R. Horton an unreasonable burden of inquiry.

6. D.R. Horton objects to the Interrogatories to the extent that they seek information without regard to any time period limitation and are therefore not reasonably calculated to lead to the discovery of admissible evidence.

7. D.R. Horton objects to the Interrogatories to the extent that they seek information which calls for a legal conclusion by D.R. Horton.

OBJECTIONS AND PRIVILEGES NOT WAIVED

The responses given below are made without waiving, or intending to waive, but to the contrary, intending to preserve and preserving:

(a) The right to object, on the grounds of competency, privilege, relevancy or materiality, or any other proper grounds, to the use of this information for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action;

(b) The right to object, on any and all grounds, at any time, to other discovery procedures involving or relating to the subject matter of the Interrogatories to which D.R. Horton has responded herein; and

(c) The right at any time to revise, correct, add to or clarify any of the responses propounded herein.

RESPONSES TO INTERROGATORIES

1. Give the names, addresses, and telephone numbers of all persons known to the parties or counsel to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses and who has possession of any such statements taken.

ANSWER:

**One or more representatives of D.R. Horton, Inc.
c/o Kenison, Dudley & Crawford, LLC,
704 E. McBee Avenue
Greenville, SC 29601**

One or more representatives of D.R. Horton may be called to testify concerning matters including, but not limited to, the construction of the subject property, the Plaintiff's purchase of the subject property, and efforts to address the concerns raised by Plaintiff after their purchase of the subject property. No recorded statement related to the present action.

**AJ Landscaping & Grading, LLC
117 Eastview Circle
Simpsonville, South Carolina 29685**

One or more representatives of AJ Landscaping & Grading, LLC, may testify as to the construction work performed on Rose Hills, particularly the grading and landscape work.

**Builders FirstSource Southeast Group, LLC
2 Office Park Court Suite 103
Columbia, South Carolina 29223**

One or more representatives of Builders FirstSource Southeast Group, LLC, may testify as to the construction work performed on Rose Hills, particularly the framing work.

**Long Heating & Air Conditioning, Inc.
1200 Woodruff Road, Suite C-25
Greenville, South Carolina 29607**

One or more representatives of Long Heating & Air Conditioning, Inc., may testify as to the construction work performed on Rose Hills, particularly the HVAC work.

**General Shale Brick Inc.
114 Landmark Drive
Greensboro, North Carolina 27409**

One or more representatives of General Shale Brick, Inc., may testify as to the construction work performed on Rose Hills, particularly any brick and masonry work.

**MJ Cowboys, LLC
157 Valley Brook Road
Piedmont, South Carolina 29673**

One or more representatives of MJ Cowboys, LLC, may testify as to the construction work performed on Rose Hills, particularly any flatwork and concrete work.

**ProBuild Holdings, Inc.
7595 Technology Way, Suite 500
Denver, Colorado 80237**

One or more representatives of ProBuild Holdings, Inc., may testify as to the construction work performed on Rose Hills, particularly any window and door work.

**P&T Construction, Inc.
5835 Heartwood Court
Harrisburg, North Carolina**

One or more representatives of P&T Construction, Inc., may testify as to the construction work performed on Rose Hills, particularly any siding work.

The following Third-Party Defendants named in D.R. Horton's Amended Answer and Third-Party Complaint. We will supplement these as more information is received regarding contact information and scope of work:

AJ Landscaping & Grading, LLC, a/k/a AJ Landscaping & Grading, LLC

Allpro Textures, LLC

Alpha Omega Construction Group, Inc.

American Concrete and Precast, Inc.; a/k/a ACP Concrete, Inc.

A & J Framing, Inc

ELECTRONICALLY FILED 2020-06-16 11:53 AM AUSTIN HORTON COMPANY v. PLEASANT SCASSER 2009-02-06 06:42

Alpha E.M.C.

A-Z, Inc.

Atlanta Floor Designs Center

A Grade Above Others, LLC

Brand-Vaughan Lumber Co, Inc.

BKF Builders, Inc.

Blue Ridge Building Products, LLC

Builders Designhouse, LLC

BMC East LLC

Builders FirstSource Southeast Group, LLC, a/k/a Builders FirstSource, Inc.

Bravo Carpenters, Inc.

Caryl Mechanics II, Inc., a/k/a Caryl Mechanicals, Inc.

Cannaday Siding & Gutter, Inc.

Coleman Floor, LLC

Cortes Painting, LLC

CBU Enterprises, Inc.

CPI Security Systems, Inc.

Dom Group, LLC

Ferguson Enterprises, Inc.

Five Star Construction Inc.

Five Star Foundations, LLC

Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc II

Get Floored, LLC

GBS Building Supply – US LBM, LLC, f/k/a GBS Building Supply, Inc.

General Shale Brick Inc.

Greener Pastures, Inc., a/k/a Greener Pastures Of Aiken, LLC

Installed Building Products, LLC, a/k/a Installed Building Products II, LLC

JLS Masonry, Inc.

Kings Landscaping, LLC

Landshapers, LLC

Lade-Danlar, Inc.

Lansing Building Products, Inc.

Long Heating & Air Conditioning, Inc.

L & M Electric, Inc.

Manale Landscaping, LLC

MJ Cowboys, LLC

M & L General Construction, LLC, a/k/a M & L General Construction, Inc.

M&L Reyna Construction, LLC

M&M Foundations, LLC

Nazareth Builders, LLC

NB Contractors, LLC

Poinsett Development, LLC

Poinsett Homes, LLC

P&T Construction, Inc., a/k/a P & T Construction, Inc.

P & L Enterprises, LLC

Probuild Company, LLC a/k/a Probuild Holdings, Inc.

Rite Rug Company, Inc., a/k/a Rite Rug Co.

Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.

Sandlapper Concrete, LLC

Sodfather Inc.

Landscape Contractors

Stock Building Supply, LLC

Topbuild Home Services, Inc., a/k/a Gale Contractors Service

Tucker Materials, Inc., a/k/a Gypsum

UTM Enterprises, Inc

Willow Tree Landscaping, Inc

301

case and/or their representatives, any and all persons identified in discovery in this action by any other party, and any and all persons identified or referenced in any document produced by any party in this action.

D.R. Horton is unaware of any statements at this time but reserves the right to supplement its answer upon discovery of any statements, if existing.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of written statements taken from such witnesses.

ANSWER: See Response to Interrogatory No. 1.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession of the party or counsel that relate to the claims or to the defenses of this case.

ANSWER: D.R. Horton objects to Interrogatory No. 3 on the grounds that it seeks information that is beyond the scope of discovery permitted under SCRPC 26 and seeks to require the disclosure of the mental impressions of counsel.

Further responding, and without waiving these or the above General Objections, D.R. Horton states that Plaintiff has made allegations of defects connected with the entire subdivision. These alleged defects have not been fully identified by Plaintiff and D.R. Horton cannot ascertain what defects Plaintiff alleges to exist related to the Home. Therefore, D.R. Horton does not know what information relates to the claim as Plaintiff's claim is overly broad.

Notwithstanding these objections and requests for clarity, Pursuant to Rule 33(c), SCRCP, D.R. Horton craves reference to those responsive documents which will be produced in response to Plaintiff's SCRCP 34 Requests for Production. Due to the volume of the documents requested, DRH is still in the process of gathering responsive documents and will produce the same upon completion of its document search. D.R. Horton objects to the production of any documents and information subject to the General Objections above and any other applicable objection(s) asserted herein.

4. Specify what records you relied upon in naming ML as a Third-Party Defendant.

ANSWER: The answer to this Interrogatory may be derived or ascertained from D.R. Horton's business records and the burden of deriving or ascertaining the answer would be substantially the same for the requesting party as it would for D.R. Horton. Therefore, pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure, all non-privileged/protected documents in D.R. Horton's possession, which are responsive to this

Request and are reasonably calculated to lead to the discovery of admissible evidence are being produced with D.R. Horton's Responses to Request for Production provided simultaneously herewith.

5. Set forth an itemized statement of all damages you claim to have sustained due to work performed by ML.

ANSWER: D.R. Horton objects to the extent that the information is subject to attorney client, attorney work product, and other privilege applicable in this matter. D.R. Horton asserts that it has not incurred any attorneys' fees or costs related to its own acts or omissions, as D.R. Horton has only been named in this lawsuit based on the conduct, acts, or omissions of other Co-Defendants. D.R. Horton has incurred at least One Hundred Fifty-Two Thousand and 00/100 Dollars (\$152,000.00) in attorneys' Fees and continues to incur additional costs and fees of which portions of that are attributable to other Defendants' failure to adequately defend D.R. Horton as required by their Contracts. D.R. Horton subcontractors, D.R. Horton is in the process of identifying damages, costs, and fees directly attributable to each D.R. Horton subcontractor as far as possible and intends to divide general damages, costs, and fees pro rata among those direct subcontractors. That effort is in process. D.R. Horton is also entitled to damages that cannot be quantified except by a trier of fact, including, but not limited to, loss of reputation, increased in-housework load, warranty claims and other damages set forth in D.R. Horton's Third-Party Complaint. Therefore, D.R. Horton cannot list this amount. Given the ongoing nature of this matter, D.R. Horton may continuously supplement this response.

6. List the names and addresses of any expert witnesses whom DR proposes to use as a witness at the trial of the case.

ANSWER:

One or more representatives of Applied Building Sciences, Inc., including L. Steven Moore, PE, RRC, REWC

Applied Building Sciences, Inc. ("ABS")
5601 Seventy-Seven Center Drive, Suite 225
Charlotte, North Carolina 28217

Mr. Moore is expected to testify consistent with his observations and opinions concerning the construction of the Homes in Rose Hill.

A copy of Mr. Moore's CV has already been made readily available but is being re-produced. All evidence provided to Mr. Moore has also been produced. See DRH 000001 - DRH 013707.

7. Set forth all work you allege was performed by ML at the homes that are the subject of the Complaint, including:

1. type of work,
2. specific home or homes, and
3. dates work was performed.

ANSWER: D.R. Horton objects to Interrogatory No. 7 on the grounds that it seeks information that is beyond the scope of discovery permitted under SCRCP 26 and seeks to require the disclosure of the mental impressions of counsel.

Further responding, and without waiving these or the above General Objections, D.R. Horton states that Plaintiff has made allegations of defects connected with the entire subdivision. These alleged defects have not been fully identified by Plaintiff and D.R. Horton cannot ascertain what defects Plaintiff alleges to exist related to the Home. Therefore, D.R. Horton does not know what information relates to the claim as Plaintiff's claim is overly broad.

Notwithstanding these objections and requests for clarity, Pursuant to Rule 33(c), SCRCP, D.R. Horton craves reference to those responsive documents which will be produced in response to Plaintiff's SCRCP 34 Requests for Production. Due to the volume of the documents requested, DRH is still in the process of gathering responsive documents and will produce the same upon completion of its document search. D.R. Horton objects to the production of any documents and information subject to the General Objections above and any other applicable objection(s) asserted herein.

8. Identify all communications you have had with ML, and if any, the form of any such communication, and the substance of those communications.

ANSWER: All relevant non-privileged documents responsive to this request are being produced herewith as bates range D.R. Horton 000001-013302. D.R. Horton is still working through this issue for itself and will supplement as possible.

9. Identify each warranty and/or guarantee, whether written or oral, or whether express or implied, made by ML relating in any manner to any materials, work, or services provided in connection with the residence, and for each such warranty or guarantee state who made it, to whom it was made, and the specific representations made.

ANSWER: All relevant non-privileged documents responsive to this request are being produced herewith as bates range D.R. Horton 000001-013302. D.R. Horton is still working through this issue for itself and will supplement as possible.

10. Identify any and all documents and corresponding bates stamp(s) or other

identifying marks of which you are aware reflecting that ML supplied labor or materials for the homes that are the subject of the Complaint.

ANSWER: The answer to this Interrogatory may be derived or ascertained from D.R. Horton's business records and the burden of deriving or ascertaining the answer would be substantially the same for the requesting party as it would for D.R. Horton. Therefore, pursuant to Rule 33(c) of the South Carolina Rules of Civil Procedure, all non-privileged/protected documents in D.R. Horton's possession, which are responsive to this Request and are reasonably calculated to lead to the discovery of admissible evidence are being produced with D.R. Horton's Responses to Request for Production provided simultaneously herewith

11. Set forth with specificity the problems with any work you allege was performed by ML.

ANSWER: At this time, it is not D.R. Horton's position this Defendant's work was defective or caused damage. Plaintiff has alleged the work done was defective and caused damage.

12. Identify any and all contracts, whether written, oral, or otherwise, reflecting that ML worked at the Rose Hill subdivision. If you identify any contracts, identify the scope of the agreement and the parties involved in making the contract.

ANSWER: D.R. Horton objects to this request as premature as discovery is ongoing. Subject to further discovery, D.R. Horton has not identified any such errors and/or omissions. To the extent there are errors and/or omissions and subject to further discovery:

- D.R. Horton contends that Plaintiff is responsible for the damages to the extent alleged in D.R. Horton's pleadings, including but not limited to, its Third, Fifth, and Fourteenth Affirmative Defenses.

- D.R. Horton contends that Defendants are responsible for the damages to the extent alleged in D.R. Horton's Cross-Claims.

- D.R. Horton contends the remaining Defendants (those not named in D.R. Horton's Cross-Claims) are responsible for the damages to the extent alleged in D.R. Horton's pleadings, including but not limited to, its Fourth Affirmative Defense.

ELECTRONICALLY FILED DE 20 2020 AUG 16 11:53 AM AMERICAN COUNCIL ON ELECTRONIC FILING

RESPONSES TO REQUESTS FOR PRODUCTION

GENERAL OBJECTIONS

1. D.R. Horton objects to the Requests to the extent that they purport to impose obligations beyond those imposed by the South Carolina Rules of Civil Procedure.

2. D.R. Horton objects to the Requests to the extent that they request information which is protected by the attorney-client privilege and/or the work product doctrine and/or any other applicable law, rule or privilege.

3. D.R. Horton objects to the Requests to the extent that the requested information is equally available to Windward on the grounds that producing such information is unnecessary, unduly burdensome and harassing.

4. D.R. Horton objects to the Requests to the extent Windward seeks information which is in the possession of Windward or persons or entities other than D.R. Horton.

5. D.R. Horton objects to the Requests to the extent that they seek information which is not relevant to issues in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence and to the extent that they are overbroad, oppressive, vague, and unduly burdensome and would impose upon D.R. Horton an unreasonable burden of inquiry.

6. D.R. Horton objects to the Requests to the extent that they seek information without regard to any time period limitation and are therefore not reasonably calculated to lead to the discovery of admissible evidence.

7. D.R. Horton objects to the Interrogatories to the extent that they seek information which calls for a legal conclusion by D.R. Horton.

8. D.R. Horton objects to the Requests to the extent that they purport to impose obligations beyond those imposed by the South Carolina Rules of Civil Procedure.

OBJECTIONS AND PRIVILEGES NOT WAIVED

The responses given below are made without waiving, or intending to waive, but to the contrary, intending to preserve and preserving:

(a) The right to object, on the grounds of competency, privilege, relevancy or materiality, or any other proper grounds, to the use of this information for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action;

(b) The right to object, on any and all grounds, at any time, to other discovery procedures involving or relating to the subject matter of the Interrogatories to which D.R. Horton has responded herein; and

(c) The right at any time to revise, correct, add to, amend and/or clarify any of the responses propounded herein.

1. Produce all documents referred to, or relied on, by you in answering the interrogatories.

ANSWER: Defendant D.R. Horton objects to Request for Production No. 1 on three principal grounds. First, insofar as the request is designed to require the production of information relating to the entirety of this matter, the request is unreasonably overbroad and unduly burdensome and it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence as some homes have opted out of this lawsuit. Second, even to the extent that the request might be limited to the Homes having not opted out, insofar as it seeks information concerning numerous persons and entities whose scope of work and/or responsibility do not bear any reasonable connection to the matters at issue in this case, the request is overbroad and unduly burdensome, and it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence. Third, insofar as the request seeks information related to matters such as business plans, financial records, corporate governance documents and tax documents, the request is overbroad and unduly burdensome, it seeks information that is not relevant nor reasonably calculated to lead to the discovery of admissible evidence, and it seeks to require the production of confidential and proprietary business information.

Subject to and without waiving the foregoing objections, Defendant D.R. Horton will produce documents concerning this matter upon receipt of said documents. Defendant D.R. Horton, pursuant to Rule 34 and to the extent that the information is not protected from being disclosed pursuant to Rule 26 or by privilege, will produce additional documents in its possession upon its receipt which constitute its files concerning the construction, sale and warranty claims record concerning the Homes. Notwithstanding, See DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

2. Produce any and all documents which you believe show ML performed work at the Rose Hill subdivision.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

3. Produce any and all contracts between DR and any person or entity which you believe is applicable to work performed at the Rose Hill subdivision.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

4. Produce complete policies of insurance for any carriers participating in the defense of this case.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

5. Produce any and all scopes of work provided to or by ML.

ANSWER: A See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

6. Produce any and all documents which relate to ML's association with work performed at the Rose Hill subdivision.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

7. Produce copies of all notices given to ML about your complaints with work performed at the Rose Hill subdivision.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

8. Produce any and all correspondence that relates to ML's work at the Rose Hill subdivision.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

9. Produce each and every document which reflects any settlement agreement you have reached with any party to this matter.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

10. Produce all invoices and submittals to you by ML that you say reflects work at the Rose Hill subdivision.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

11. Produce all records of payments, credits, back-charges, or other accounting entries related to work you say ML performed at the Rose Hill subdivision and produce any subsequent back charges or credits paid to or misapplied to ML relating to any other property, job or project within 2 years of all work performed by D.R. Horton at the Rose Hill subdivision.

ANSWER: See Response to Request for Production No. 1. Notwithstanding, see DRH 000001 - DRH 013707 and supplemental production at KDC 00013708 – KDC 00033798.

ELECTRONICALLY FILED: 2020-06-16 11:53:39 AM AMSTERDAM COMMONWEALTH EAS/SCAS/EP/2009270006942

INC., A/K/A GALLOWAY-BELL, INC. II;)
 GET FLOORED, LLC; GBS BUILDING)
 SUPPLY – US LBM, LLC, F/K/A GBS)
 BUILDING SUPPLY, INC.; GENERAL)
 SHALE BRICK INC.; GREENER)
 PASTURES, INC., A/K/A GREENER)
 PASTURES OF AIKEN, LLC; INSTALLED)
 BUILDING PRODUCTS, LLC, A/K/A)
 INSTALLED BUILDING PRODUCTS II,)
 LLC; JLS MASONRY, INC.; KINGS)
 LANDSCAPING, LLC; LANDSHAPERS,)
 LLC; LADE-DANLAR, INC.; LANSING)
 BUILDING PRODUCTS, INC.; LONG)
 HEATING & AIR CONDITIONING, INC.; L)
 & M ELECTRIC, INC; MANALE)
 LANDSCAPING, LLC; MJ COWBOYS,)
 LLC; M & L GENERAL CONSTRUCTION,)
 LLC, A/K/A M & L GENERAL)
 CONSTRUCTION, INC.; M&L REYNA)
 CONSTRUCTION, LLC; M&M)
 FOUNDATIONS, LLC; NAZARETH)
 BUILDERS, LLC; NB CONTRACTORS,)
 LLC; POINSETT DEVELOPMENT, LLC;)
 POINSETT HOMES, LLC; P&T)
 CONSTRUCTION, INC., A/K/A P & T)
 CONSTRUCTION, INC.; P & L)
 ENTERPRISES, LLC; PROBUILD)
 COMPANY, LLC A/K/A PROBUILD)
 HOLDINGS, INC.; RITE RUG COMPANY,)
 INC., A/K/A RITE RUG CO.; RODNEY)
 HOWARD GRADING INC., A/K/A)
 RODNEY HOWARD GRADING CO.;)
 SANDLAPPER CONCRETE, LLC;)
 SODFATHER INC., LANDSCAPE)
 CONTRACTORS; STOCK BUILDING)
 SUPPLY, LLC; TOPBUILD HOME)
 SERVICES, INC., A/K/A GALE)
 CONTRACTORS SERVICE; TUCKER)
 MATERIALS, INC., A/K/A GYPSUM; UTM)
 ENTERPRISES, INC; AND WILLOW TREE)
 LANDSCAPING, INC;)
)

Third-Party Defendants.

I, the undersigned, of the law offices of Kenison, Dudley & Crawford, LLC for the Defendant D.R. Horton, Inc. do hereby certify that I have served the below listed **DEFENDANT D.R. HORTON, INC.’S RESPONSES TO DEFENDANT M&L GENERAL CONSTRUCTION, INC’S FIRST SET OF INTERROGATORIES AND REQUESTS FOR**

PRODUCTION OF DOCUMENTS, upon counsel of record *via email* in this action this 7th day of October , 2021.

Justin O'Toole Lucey, Esq. Dabny Lynn, Esq. Sohayla R. Townes, Esq. Justin O'Toole Lucey, P.A. P.O. Box 806 Mount Pleasant, SC 29465-0806 jlucey@lucey-law.com dlynn@lucey-law.com stownes@lucey-law.com <i>Attorneys for Plaintiff</i>	Anne R. Culbreath, Esq. 325 Rocky Slope Road, Suite 201 Greenville, SC 29607 arculbreath@wjcblaw.com <i>Attorney for Defendant Sandlapper Concrete, LLC</i>
Heath M. Stewart, III, Esq. Michael Trask, Esq. McAngus Goudelock & Courie, LLC 1320 Main Street, 10th Floor P.O. Box 12519 (29201) Columbia, SC 29211 heath.stewart@mgclaw.com michael.trask@mgclaw.com <i>Attorneys for Long Heating & Air Conditioning, Inc.</i>	C. Reed Teague, Esquire THE WARD LAW FIRM, P.A. 233 South Pine Street Post Office Box 5663 Spartanburg, SC 29304 rteague@wardfirm.com <i>Attorneys for Alpha Omega Construction Group, Inc.</i>
William H. Cox, III Howell, Gibson and Hughes, P.A. P.O. Box 40 Beaufort, SC 29901 wcox@hgghpa.com <i>Attorneys for Builders FirstSource Southeast Group, LLC a/ka/ Builders FirstSource, Inc.</i>	David W. Holmes Holmes Law Firm 712 North Main Street Greenville, SC 29609 davidholmes@holmes-law.com <i>Attorneys for General Shale Brick, Inc.</i>
W. Duffie Powers Carter Massingill Gallivan, White & Boyd, P.A. 55 Beattie Place, Suite 1200 Greenville, SC 29601 dpowers@gwblawfirm.com cmassingill@gwblawfirm.com <i>Attorneys for Manale Landscaping, Inc.</i>	

KENISON, DUDLEY & CRAWFORD, LLC

s/ Stephanie Simpson
Stephanie Simpson, Paralegal

October 7, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J
Framing, Inc.; Alpha E.M.C.; A-Z, Inc.;
Atlanta Floor Designs Center; A Grade
Above Others, LLC; Brand-Vaughan
Lumber Co, Inc.; BKF Builders, Inc.;
Builders Designhouse, LLC; BMC East LLC
d/b/a Coleman Floor, LLC; Builders
Firstsource Southeast Group, LLC, a/k/a
Builders Firstsource, Inc.; Bravo Carpenters,
Inc.; Caryl Mechanics II, Inc., a/k/a Caryl
Mechanics, Inc.; Cannaday Siding &
Gutter, Inc.; Cortes Painting, LLC; CBU
Enterprises, Inc.; CPI Security Systems, Inc.;
DOM Group, LLC; Ferguson Enterprises,
Inc.; Five Star Construction Inc.; Five Star
Foundations, LLC; Galloway-Bell, Inc.,
a/k/a Galloway-Bell, Inc. II; Get Floored,
LLC; GBS Building Supply – US LBM,
LLC, f/k/a GBS Building Supply, Inc.;

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**WILLOW TREE
LANDSCAPING, INC.’S MOTION TO
COMPEL D.R. HORTON, INC.**

General Shale Brick Inc.; Greener Pastures, Inc., a/k/a Green Pastures of Aiken, LLC; IBS Asset, LLC d/b/a Blue Ridge Building Products; Installed Building Products, LLC, a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc, a/k/a Gypsum; Silver Line Building Products Corp.; Dupree Plumbing Co., Inc.; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc., and Silver Line Building Products Corporation

Third-Party Defendants.

COMES NOW Defendant Willow Tree Landscaping, Inc. (hereinafter “Willow Tree” or “Defendant”), by and through its undersigned attorney, who respectfully moves for an Order compelling D.R. Horton, Inc., (hereinafter “D.R. Horton”), to provide complete answers to Willow Tree’s First Set of Interrogatories, and Requests for Production, and this Motion would show the Court as follows:

1. On August 26, 2021, Willow Tree served D.R. Horton with Willow Tree's First Set of Interrogatories and Requests for Production. See attached as Exhibit "A".

2. On April 19, 2022, counsel for Willow Tree sent a letter to counsel for D.R. Horton and made a bona fide attempt to resolve this issue without the intervention of the Court. See attached as Exhibit "B".

3. To date, D.R. Horton has not responded to the Interrogatories, Requests for Production, or letter.

WHEREFORE, Willow Tree respectfully requests an Order of this Court granting its Motion to Compel D.R. Horton to provide complete answers to Willow Tree's Interrogatories and Requests for Production, as well as reimbursement for the costs and fees incurred as a result of having to file this Motion.

ROSS & CRISTALDI, LLC

s/ Phil Cristaldi
Philip P. Cristaldi, III, Bar No.: 102219
863 Coleman Blvd., Ste B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: pcristaldi@rclawsc.com
Willow Tree Landscaping, Inc.

Mt. Pleasant, South Carolina

May 4, 2022

ROSS & CRISTALDI^{LLC}
ATTORNEYS AT LAW

EXHIBIT A

Jeffrey A. Ross
Philip P. Cristaldi, III
Scott H. Winograd
Kirkley G. White
Emily C. Sheets

Kirkley White
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
kwhite@rcclawsc.com
(843) 329-4040

August 26, 2021

VIA ELECTRONIC MAIL

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
F. James Wamoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
wamoth@conlaw.com

Re: Natalie Zitek v. Willow Tree Landscaping, Inc.
Case No.: 2019-CP-04-01942

Dear Counselors:

Please find Willow Tree Landscaping, Inc.'s First Set of Interrogatories and Requests for Production to D.R. Horton, Inc. in connection in the above mentioned matter.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you very much for your attention to the above.

Very truly yours,



Kirkley G. White

KGW/cew
Enclosures

863 Coleman Blvd., Suite B, Mount Pleasant, SC 29464

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II; Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**WILLOW TREE LANDSCAPING, INC.'S
FIRST SET OF INTERROGATORIES TO
D.R. HORTON, INC.**

Third-Party Defendants.

PURSUANT to Rule 33 of the South Carolina Rules of Civil Procedure, Third-Party

These Interrogatories are continuing in character and require the filing of supplementary answers in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure, if before trial the party to whom these Interrogatories are directed obtains further or different information after the initial answer. Supplementary answers should include the date upon and manner in which

such further or different information came to the attention of the answering party.

DEFINITIONS

As used herein, the following terms are defined as indicated:

- A. The term **“document”** means anything which may be considered to be a document or tangible thing within the meaning of Rule 34 of the South Carolina Rules of Civil Procedure and includes the original and any copy of any written, printed, recorded, graphic, or photographic matter, sound reproduction, chart, tape, disc, card, wire, and any other electronic or mechanical recording or transcript of any other instrument or device which contains any information or from which any information can be derived or retrieved. The term **“document”** also includes copies containing any information in addition to or in any way different from that contained in or on the original, and all attachments, enclosures, or documents affixed or referred to in any documents identified in response to any of the following Interrogatories.
- B. The term **“person”** means any natural person, public, or private corporation, partnership, joint venture, association, or governmental entity (including any governmental agency or political sub-division of any government), any group, any form of business or legal organization or agreement.
- C. The terms **“identify”** and **“identity”** when used in connection with any of the following terms mean and require you to state:
 - i. With respect to a natural person:
 - a. Such person's name, present or last known address, and present telephone number;
 - b. If employed by you, each position and title during his or her employment; and
 - c. If employed by you, the nature and description of his or her duties and responsibilities in each position indicated.
 - ii. With respect to a document:
 - a. The date and type of document (i.e. letter, memorandum, telegram, etc.).
 - b. The subject matter or substance of the document.
 - c. The identity of each author, addressee, and person copied on the document.
 - d. The identity of all persons who now have custody of the document or a copy of the document.
 - e. If any such document was at any time in the possession, custody, or control of your company but is no longer, whether missing, lost, destroyed, or has been transferred, voluntarily or involuntary, to any other person or otherwise disposed of and the circumstances surrounding it, the authorization given, if any, for such disposition, and the identity of person or persons to whom such documents were transferred, if any.

- iii. With respect to a meeting:
 - a. The date and location thereof.
 - b. The identity of all persons present thereat.
 - c. The identity of any documents which record, refer, or relate to such meeting.
 - d. The subject matter or substance of any discussion at such meeting.

- iv. With respect to a scope of work:
 - a. The category of construction into which the work would fall (for example, masonry, framing, HVAC, siding, stucco, roofing, plumbing, design, etc.).
 - b. The specific materials to be installed.
 - c. The location on the project and/or building(s) which the work was performed or materials installed broken down by interior or exterior of the building, the floor (for example ground floor, first floor, etc.), the side (i.e., south side, north side, etc.), or some other identifier such that the work can be photographed and distinguished from the work of another.
 - d. If any of the above are unable to be identified, please say so, why they are not able to be identified, and what additional information is needed to make that identification.

- D. The pronoun **“you”** refers to the party to whom these Interrogatories are addressed and directed and to its subsidiaries, officers, employees, representatives, agents, and unless privileged, its attorneys.
- E. The terms **“relating to,” “relate to,” and “related to”** mean directly or indirectly, expressly or implied, mentioning, describing, pertaining to, being connected with, or reflecting upon the subject matter of the specific request.
- F. The terms **“framing” “siding” and “roofing”** work are defined as they are used and intended in your pleadings.
- G. The term **“meeting”** means any contemporaneous presence of two or more natural persons, whether or not such presence was by chance or pre-arrangement, and whether or not the meeting was formal or informal or occurred in connection with some other activity.
- H. The term **“relevant period”** unless otherwise specified means the period from January 1, 2012 to the date of your response.
- I. The term **“or”** means both **“or”** and **“and.”**
- J. The phrase **“first-hand knowledge”** means something you actually saw or heard, as distinguished from something you learned from some other person or source. It is also a knowledge that is gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.

identifying marks of which you are aware reflecting that Willow Tree was paid for work performed on the project.

5. Set forth the facts on which you base your allegations that Willow Tree, and not some other entity, caused any damage you are claiming in this suit.

6. Identify all building codes, manufacturer's installation instructions, plans and specifications, and/or industry standards which you claim Willow Tree violated performing its alleged work at the project.

7. Identify with specificity each and every wrongful act, omission, negligence, breaches, and/or representation made by Willow Tree which you allege has caused you damage.

8. State with particularity and specificity, the date on which you first learned of each such alleged defect or damage, the name, address, title or position of the person in your company or companies who received the above-referenced notice, and the nature and extent of any action taken by you, if any, and the date of each such action, with respect to the receipt of any such notice.

9. Identify any and all contracts, whether written, oral, or otherwise, reflecting that Willow Tree worked on the project. If you identify any contracts, identify the scope of the agreement and the parties involved in making contract.

10. Identify if you believe that other parties, companies, and/or persons also performed the same or similar scopes of work as Willow Tree on the project. If so, please identify those parties, companies, and persons, and what scope of work they performed that is the same or similar to Willow Tree's scope of work. Please separately identify and differentiate the specific scopes performed by each of these entities in such a way that each's scope of work could be investigated independently of the others. In other words, who did what work, where and/or when and how does one tell which trade's work they are looking at when viewing the project?

11. Identify the facts on which you rely to distinguish the work performed by Willow Tree from the parties listed in the Interrogatory immediately above.

12. Please identify all documents in your possession in which you rely to assert allegations that Willow Tree provided faulty or otherwise improper work.

13. Identify all photographs in any expert's report(s) related to this project which you believe show work performed or labor provided by Willow Tree in breach of a legal duty.

14. If any remedial work has been undertaken to correct or otherwise address any of the problems referred to in the pleadings, or at any time since the construction of the project, please provide the name, address, and telephone number of the person, company, companies, or other entities involved in the performance of such work, the date upon which the work was performed, the nature of the work performed, the costs and expenses of the work performed, and whether such expenses or costs have been paid.

15. Give the names, addresses, and telephone numbers of all persons known to the parties or counsel to be witnesses concerning the facts of this case, and indicate whether or not written or recorded statements have been taken from the witnesses and who has possession of any such statements taken.

16. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession of the party or counsel that relate to the claim or to the defense of this case.

17. For each person known to the parties or to counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

18. Identify all experts and/or consultants retained by you or on your behalf and identify

any reports they have prepared.

19. State whether any investigation of the conditions on site was made by you, and if so, state the date and nature of the investigation; identify the agent making the investigation on your behalf; describe the findings, conclusions, and recommendations of the investigation; and identify all relevant documents.

20. State the precise amount of damages you claim in this action, broken down as to its various elements or items.

21. Identify the facts on which you base your allegations that any conduct of Willow Tree has caused damage to your professional reputation.

22. Set forth the names and addresses of all insurance companies which may have liability insurance coverage relating to the claim, the years of the policies, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

23. If you have reached or at any time in the future reach a settlement regarding all or any portions of any claim, counter-claim, third-party claim and any other claims between you and any other party to this lawsuit, or if you reach or at any time in the future reach a settlement with any other persons or entities not a party to the case regarding the alleged damages to the subject property, then promptly disclose the full terms of each such settlement, and attach a complete copy of each such settlement. This Interrogatory shall include any settlement release, covenant not to execute or enforce judgment, covenant not to sue, and all other settlement or compromise regarding the subject property and this litigation.

24. Identify all prior lawsuits, legal matters, or proceedings in which you have been a party, either plaintiff or defendant. In answering this Interrogatory, please identify all parties

involved in the proceeding(s), the case number(s), and all details regarding the disposition of the matters.

Willow Tree's INT to DRH
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC



Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Kirkley G. White, Bar No.: 103702

863 Coleman Blvd. Ste. B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

kwhite@rclawsc.com

Attorneys for Willow Tree Landscaping, Inc.

Mt. Pleasant, South Carolina

August 26, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II; Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**WILLOW TREE LANDSCAPING, INC.'S
REQUESTS FOR PRODUCTION TO D.R.
HORTON, INC.**

Third-Party Defendants.

Third-Party Willow Tree Landscaping, Inc., (hereinafter referred to as “Willow Tree”), by its undersigned counsel, hereby requests, in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, that Defendant/Third-Party Plaintiff, D.R. Horton, Inc. (hereinafter referred to as “DRH”), produce and permit Willow Tree to inspect and copy the following documents pertaining to the subject matter of the above named lawsuit within thirty (30) days from the date of service of this request at the office of ROSS & CRISTALDI, LLC, 863 Coleman Blvd., Ste. B, Mount Pleasant, South Carolina 29464, or, in lieu thereof, serve exact copies of the documents to Philip P. Cristaldi, attorney for Willow Tree, at the aforementioned address.

Page 2 of 7

obtain further documents or materials at any time between the date of production and the conclusion of this litigation.

DEFINITIONS (AS USED HEREIN)

A. The word "**person**" means any natural person, firm, or corporation, partnership, joint venture, or any other form of business entity.

B. A request for the location of documents constitutes a request to state the present address at which such documents are kept, if known, and, if not known, the last address known and information as to their disposition.

C. A request for the identity of a person constitutes a request for his name, his present business address, if known, and, if not known, his last known business and residence address, and current phone number.

D. "**Custodian**" means the person who has possession or control of documents and a request for the identity of a custodian constitutes a request for his name, address, and phone number.

E. The pronoun "**you**" refers to the party to whom this Request is addressed and to its subsidiaries, officers, employees, representatives, agents and, unless privileged, its attorneys.

F. The term "**documents**" means all writings of any kind including the originals and all non-identical copies whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, books, checks, statements, receipts, returns, summaries, pamphlets, prospectuses, inter-office and intra-office communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or aural records, or representations of any kind including, without limitation, tapes, cassettes, discs, or other recordings including any electronic or digital format.

G. The term "**all documents**" means every document as above defined known to you and each document which can be located or discovered by reasonably diligent efforts.

H. The "**the project**" or "**Residence**" means the premises and real property which is the subject of this suit.

REQUESTS FOR PRODUCTION

1. Produce each and every document in your possession which forms any part of the basis for your answers to Interrogatories served simultaneously herewith.

2. Produce any and all documents which you believe show Willow Tree performed work on this project.

3. All documents relating to any purchases and/or renovations/up-fits/additions to the Property performed by you, including but not limited to, all settlement statements, contracts (or modifications thereof), offers to purchase, correspondence by or between Plaintiffs, the seller of the Property, and any realtors, and any marketing materials and all disclosures given to or obtained by the Plaintiffs.

4. Produce any and all contracts between Willow Tree and any person or entity which you believe are applicable to this project.

5. Produce complete policies of insurance for any carriers participating in the defense of this case.

6. Produce any and all scopes of work provided to or by Willow Tree.

7. Produce any and all documents which relate to Willow Tree's association with this project.

8. Produce copies of all notices given to Willow Tree about your complaints with the project.

9. Produce copies of any and all documents or materials relating in any way to any inspections, maintenance activities and/or repairs of any aspects of the project, to include, but not be limited to, contracts, estimates, checks for payment, descriptions of any defect or repair, inspector notes, log sheets, inspection reports, or any other documents or writings associated with such inspections, maintenance activities or repairs.

10. Produce any and all correspondence that relates to Willow Tree's work on this project.

11. Produce copies of all documents and materials received from a non-party in response to a subpoena or Freedom of Information Act Request served by you or your counsel in connection with this suit.

12. Produce each and every document which reflects any settlement agreement you have reached with any party to this matter.

13. Produce each and every document in your possession whose subject matter is in any way related to the project, including the following:

- a. field reports for this property;
- b. bid estimates, including work sheets, take off sheets and analysis;
- c. job record files, job diaries or daily reports or field notes;
- d. deeds of conveyance;
- e. certificates of occupancy and of substantial completion;
- f. agreements with any design professionals to render design services;
- g. agreements between any builder and any owner for the construction of the project;
- h. plans, drawings or blueprints whether preliminary, working, as built, or other which were used or referenced or in any way relate to the project or structure thereon;
- i. field reports, job logs, construction reports, and progress reports;
- j. estimates, including work sheets, take off sheets and analysis;
- k. labor reports and records;
- l. equipment reports and records;
- m. scheduling time in sequence, projections, CPM schedules, bar charts, time tables and updates, revisions or amendments, whether or not submitted or approved;
- n. all comparison summaries, tabulations and analyses comparing cost and/or man hours actually incurred on the project with cost and/or man hours originally anticipated;
- o. requests for information, interpretations, and clarifications of specifications and all responses;

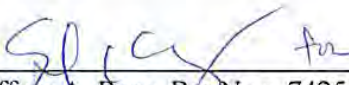
- p. minutes of the meetings of the board of directors of the horizontal property regime;
 - q. minutes of the meetings of the members and owners of the horizontal property regime;
 - r. every document which is or forms a part of any report or inspection of conditions on site prepared by a consultant or expert retained for purposes of testifying at the trial of the case;
 - s. contractors submittals;
 - t. the contract which is the subject of this action;
 - u. internal memoranda;
 - v. progress photographs;
 - w. inspections;
 - x. job meeting minutes;
 - y. change orders, field orders, work orders, or proposals which were approved, disputed, and pending;
 - z. pay estimates, requisitions, certifications, and payments;
 - aa. records of actual costs incurred in connection with the project, including cancelled checks for materials and payroll, job cost accounting, reports, audits, and financial statements;
 - bb. correspondence in any writing or any kind or description between and among the contractor, architect, engineer, subcontractors, material and equipment suppliers, owners, building code officials or any other person, firm, or entity concerning or affecting the project that is the subject of this action;
 - cc. all documents upon which you intend to rely to establish proof of claims, damages, or repudiation of claims;
 - dd. Curriculum Vitae of any expert you propose to use in this litigation; and/or
 - ee. copies of any and all reports generated by experts listed above.
14. Produce all exhibits which you intend to use at the trial of this case.

These Requests for Production shall be deemed to continue until the time of the trial of the case.

(Signature Page to Follow)

Willow Tree's RFP to DRH
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC



Jeffrey A. Ross, Bar No.: 74254
Philip P. Cristaldi, III, Bar No.: 102219
Kirkley G. White, Bar No.: 103702
863 Coleman Blvd. Ste. B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: jross@rclawsc.com
peristaldi@rclawsc.com
kwhite@rclawsc.com
Attorneys for Willow Tree Landscaping, Inc.

Mt. Pleasant, South Carolina

August 26, 2021

CERTIFICATE OF SERVICE

Case No. 2019-CP-04-01942

The undersigned hereby certifies that a true and correct copy of the foregoing Willow Tree Landscaping, Inc.'s First Set of Interrogatories and Requests for Production to D.R. Horton, Inc. has been served via electronic mail to the following counsel of record on the 26 day of August, 2021:

Attorney for Plaintiff

Justin O'Toole Lucey, Esq.
Dabney Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
PO Box 806
Mount Pleasant, SC 29465-0806
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com

Attorney for DR Horton

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East Mcbee Avenue
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
warmoth@conlaw.com

Attorneys for Builder Services Group LLC d/b/a Gale Contractor Services

N. Keith Emge, Jr., Esq.
Jessica W. Stratta, Esq.
Resnick & Louis, P.C.
146 Fairchild Street, Suite 130
Charleston, SC 29492
cemge@rlattorneys.com
jstratta@rlattorneys.com

Attorneys for P&T Construction, Inc.

Alan R. Belcher, Jr., Esq.
Connor E. Johnson, Esq.
Hall Booth Smith, P.C.
111 Coleman Blvd., Suite 301
Mt. Pleasant, SC 29464
abelcher@hallboothsmith.com
cjohnson@hallboothsmith.com

Attorneys for Long Heating & Air Conditioning, Inc.

Heath M. Stewart, Esq.
Michael Trask, Esq.
PO Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, SC 29211
Heath.stewart@mgclaw.com
Michael.trask@mgclaw.com

Attorneys for Brand-Vaughan Lumber Co, Inc.

Eric R. Tonnsen, Esq.
J. Patrick Bradley, Esq.
Eller Tonnsen Bach
1306 S. Church Street
Greenville, SC 29605
etonnsen@etblawfirm.com
pbradley@etblawfirm.com

Attorney for General Shale Brick, Inc.

David W. Holmes, Esq.
Holmes Law Firm
712 North Main Street
Greenville, SC 29609
davidholmes@holmes-law.com

Attorneys for Builders FirstSource Southeast Group, LLC a/k/a Builders FirstSource, Inc.

Stephen P. Hughes, Esq.
William H. Cox, III, Esq.
Howell, Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901-0004
sphughes@hghpa.com
wcox@hghpa.com

ROSS & CRISTALDI_{LLC}
ATTORNEYS AT LAW

EXHIBIT B

Jeffrey A. Ross
Philip P. Cristaldi, III
Scott H. Winograd
Emily C. Sheets
Benjamin D. Gilchrest

Phil Cristaldi
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
pcristaldi@rclawsc.com
(843) 329-4040

April 19, 2022

VIA ELECTRONIC MAIL

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
F. James Wamoth, Esq.
Kenison, Dudley & Crawford, LLC
crawford@conlaw.com
jimhoff@conlaw.com
wamoth@conlaw.com

Re: Natalie Zitek, individually and on behalf of all others similarly situated v. Willow Tree
Landscaping, Inc.
Case No.: 2019-CP-04-01942

Dear Counselors:

Please allow this letter to serve as a friendly reminder that D.R. Horton, Inc. has not responded to Willow Tree Landscaping, Inc.'s First Set of Interrogatories and Requests for Production which were served upon you on or about August 26, 2021. If you need additional time, please contact me, otherwise, if we have not received your responses within ten days of the date of this letter, I will be forced to file a Motion to Compel in order to protect my client's interests. I am sure you understand our position.

Thank you very much for your anticipated cooperation in this matter. I look forward to hearing from you.

Very truly yours,



Philip P. Cristaldi

PPC/cew

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J
Framing, Inc.; Alpha E.M.C.; A-Z, Inc.;
Atlanta Floor Designs Center; A Grade
Above Others, LLC; Brand-Vaughan
Lumber Co, Inc.; BKF Builders, Inc.; Blue
Ridge Building Products, LLC; Builders
Designhouse, LLC; BMC East LLC;
Builders Firstsource Southeast Group, LLC,
a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises,
Inc.; CPI Security Systems, Inc.; DOM
Group, LLC; Ferguson Enterprises, Inc.;
Five Star Construction Inc.; Five Star
Foundations, LLC; Galloway-Bell, Inc.,
a/k/a Galloway-Bell, Inc. II; Get Floored,
LLC; GBS Building Supply – US LBM,
LLC, f/k/a GBS Building Supply, Inc.;

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**SODFATHER INC.,
LANDSCAPE CONTRACTORS'S
MOTION TO COMPEL D.R. HORTON,
INC.**

General Shale Brick Inc.; Greener Pastures, Inc., a/k/a Green Pastures of Aiken, LLC; Installed Building Products, LLC, a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc.,

Third-Party Defendants.

COMES NOW Defendant Sodfather Inc., Landscape Contractors (hereinafter “Sodfather” or “Defendant”), by and through its undersigned attorney, who respectfully moves for an Order compelling D.R. Horton, Inc., (hereinafter “D.R. Horton”), to provide complete answers to Sodfather’s First Set of Interrogatories, and Requests for Production, and this Motion would show the Court as follows:

1. On June 29, 2021, Sodfather served D.R. Horton with Sodfather’s First Set of Interrogatories and Requests for Production. See attached as Exhibit “A”.

2. On April 19, 2022, counsel for Sodfather sent a letter to counsel for D.R. Horton and made a bona fide attempt to resolve this issue without the intervention of the Court. See attached as Exhibit “B”.

3. To date, D.R. Horton has not responded to the Interrogatories, and Requests for Production, or letter.

WHEREFORE, Sodfather respectfully requests an Order of this Court granting its Motion to Compel D.R. Horton to provide complete answers to Sodfather’s Interrogatories and Requests for Production, as well as reimbursement for the costs and fees incurred as a result of having to file this Motion.

ROSS & CRISTALDI, LLC

s/ Phil Cristaldi
Philip P. Cristaldi, III, Bar No.: 102219
863 Coleman Blvd., Ste B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: pcristaldi@rclawsc.com
Sodfather Inc., Landscape Contractors

Mt. Pleasant, South Carolina

May 4, 2022

ROSS & CRISTALDI LLC
ATTORNEYS AT LAW

EXHIBIT A

Jeffrey A. Ross
Philip P. Cristaldi, III
Scott H. Winograd
Kirkley G. White
Emily C. Sheets

Kirkley White
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
kwhite@rclawsc.com
(843) 329-4040

June 29, 2021

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
Kyle McGann, Esq.
F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East Mcbee Avenue
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
mcgann@conlaw.com
warmoth@conlaw.com

Re: Natalie Zitek, individually, and on behalf of all others similarly situated v. Sodfather Inc.,
Landscape Contractors
Case No.: 2019-CP-04-01942

Dear Counselors:

Please find Sodfather Inc., Landscape Contractors First Set of Interrogatories and Requests for Production to DR Horton in connection with the above mentioned matter.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you very much for your attention to the above.

Very truly yours,



Kirkley G. White

KGW/cew

Enclosures

cc: *All Counsel of Record (via email only, with enclosures)*

863 Coleman Blvd., Suite B, Mount Pleasant, SC 29464

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II; Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**SODFATHER INC., LANDSCAPE
CONTRACTORS' FIRST SET OF
INTERROGATORIES TO D.R. HORTON,
INC.**

Third-Party Defendants.

PURSUANT to Rule 33 of the South Carolina Rules of Civil Procedure, Third-Party Defendant Sodfather Inc., Landscape Contractors (hereinafter referred to as “Sodfather”), requests Defendant/Third-Party Plaintiff, D.R. Horton, Inc. (hereinafter referred to as “DRH”), to answer under oath all of the following Interrogatories pertaining to the subject matter of the above-named lawsuit not objected to within the time allowed.

These Interrogatories are continuing in character and require the filing of supplementary answers in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure, if before trial the party to whom these Interrogatories are directed obtains further or different information after the initial answer. Supplementary answers should include the date upon and manner in which

- Page 4 of 10

identifying marks of which you are aware reflecting that Sodfather was paid for work performed on the project.

5. Set forth the facts on which you base your allegations that Sodfather, and not some other entity, caused any damage you are claiming in this suit.

6. Identify all building codes, manufacturer's installation instructions, plans and specifications, and/or industry standards which you claim Sodfather violated performing its alleged work at the project.

7. Identify with specificity each and every wrongful act, omission, negligence, breaches, and/or representation made by Sodfather which you allege has caused you damage.

8. State with particularity and specificity, the date on which you first learned of each such alleged defect or damage, the name, address, title or position of the person in your company or companies who received the above-referenced notice, and the nature and extent of any action taken by you, if any, and the date of each such action, with respect to the receipt of any such notice.

9. Identify any and all contracts, whether written, oral, or otherwise, reflecting that Sodfather worked on the project. If you identify any contracts, identify the scope of the agreement and the parties involved in making contract.

10. Identify if you believe that other parties, companies, and/or persons also performed the same or similar scopes of work as Sodfather on the project. If so, please identify those parties, companies, and persons, and what scope of work they performed that is the same or similar to Sodfather's scope of work. Please separately identify and differentiate the specific scopes performed by each of these entities in such a way that each's scope of work could be investigated independently of the others. In other words, who did what work, where and/or when and how does one tell which trade's work they are looking at when viewing the project?

any reports they have prepared.

19. State whether any investigation of the conditions on site was made by you, and if so, state the date and nature of the investigation; identify the agent making the investigation on your behalf; describe the findings, conclusions, and recommendations of the investigation; and identify all relevant documents.

20. State the precise amount of damages you claim in this action, broken down as to its various elements or items.

21. Identify the facts on which you base your allegations that any conduct of Sodfather has caused damage to your professional reputation.

22. Set forth the names and addresses of all insurance companies which may have liability insurance coverage relating to the claim, the years of the policies, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

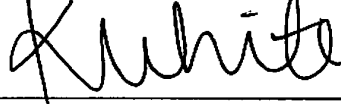
23. If you have reached or at any time in the future reach a settlement regarding all or any portions of any claim, counter-claim, third-party claim and any other claims between you and any other party to this lawsuit, or if you reach or at any time in the future reach a settlement with any other persons or entities not a party to the case regarding the alleged damages to the subject property, then promptly disclose the full terms of each such settlement, and attach a complete copy of each such settlement. This Interrogatory shall include any settlement release, covenant not to execute or enforce judgment, covenant not to sue, and all other settlement or compromise regarding the subject property and this litigation.

24. Identify all prior lawsuits, legal matters, or proceedings in which you have been a party, either plaintiff or defendant. In answering this Interrogatory, please identify all parties

involved in the proceeding(s), the case number(s), and all details regarding the disposition of the matters.

Sodfather's INT to DRH
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC



Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Kirkley G. White, Bar No.: 103702

863 Coleman Blvd. Ste. B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

kwhite@rclawsc.com

***Attorneys for Sodfather Inc., Landscape
Contractors***

Mt. Pleasant, South Carolina

June 29, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II; Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**SODFATHER INC., LANDSCAPE
CONTRACTORS' REQUESTS FOR
PRODUCTION TO D.R. HORTON, INC.**

LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc.,

Third-Party Defendants.

TO: JASON M. IMHOFF, ESQ. AND JOHN T. CRAWFORD, JR. ESQ., COUNSEL FOR D.R. HORTON, INC.:

Third-Party Defendant Sodfather Inc., Landscape Contractors (hereinafter referred to as "Sodfather"), by its undersigned counsel, hereby requests, in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, that Defendant/Third-Party Plaintiff, D.R. Horton, Inc. (hereinafter referred to as "DRH"), produce and permit Sodfather to inspect and copy the following documents pertaining to the subject matter of the above named lawsuit within thirty (30) days from the date of service of this request at the office of ROSS & CRISTALDI, LLC, 863 Coleman Blvd., Ste. B, Mount Pleasant, South Carolina 29464, or, in lieu thereof, serve exact copies of the documents to Philip P. Cristaldi, attorney for Sodfather, at the aforementioned address.

These Requests shall be deemed continuing and require supplemental responses if you

obtain further documents or materials at any time between the date of production and the conclusion of this litigation.

DEFINITIONS (AS USED HEREIN)

A. The word "**person**" means any natural person, firm, or corporation, partnership, joint venture, or any other form of business entity.

B. A request for the location of documents constitutes a request to state the present address at which such documents are kept, if known, and, if not known, the last address known and information as to their disposition.

C. A request for the identity of a person constitutes a request for his name, his present business address, if known, and, if not known, his last known business and residence address, and current phone number.

D. "**Custodian**" means the person who has possession or control of documents and a request for the identity of a custodian constitutes a request for his name, address, and phone number.

E. The pronoun "**you**" refers to the party to whom this Request is addressed and to its subsidiaries, officers, employees, representatives, agents and, unless privileged, its attorneys.

F. The term "**documents**" means all writings of any kind including the originals and all non-identical copies whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, books, checks, statements, receipts, returns, summaries, pamphlets, prospectuses, inter-office and intra-office communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or aural records, or representations of any kind including, without limitation, tapes, cassettes, discs, or other recordings including any electronic or digital format.

G. The term "**all documents**" means every document as above defined known to you and each document which can be located or discovered by reasonably diligent efforts.

H. The "**the project**" or "**Residence**" means the premises and real property which is the subject of this suit.

REQUESTS FOR PRODUCTION

1. Produce each and every document in your possession which forms any part of the basis for your answers to Interrogatories served simultaneously herewith.

2. Produce any and all documents which you believe show Sodfather performed work on this project.
3. All documents relating to any purchases and/or renovations/up-fits/additions to the Property performed by you, including but not limited to, all settlement statements, contracts (or modifications thereof), offers to purchase, correspondence by or between Plaintiffs, the seller of the Property, and any realtors, and any marketing materials and all disclosures given to or obtained by the Plaintiffs.
4. Produce any and all contracts between Sodfather and any person or entity which you believe are applicable to this project.
5. Produce complete policies of insurance for any carriers participating in the defense of this case.
6. Produce any and all scopes of work provided to or by Sodfather.
7. Produce any and all documents which relate to Sodfather's association with this project.
8. Produce copies of all notices given to Sodfather about your complaints with the project.
9. Produce copies of any and all documents or materials relating in any way to any inspections, maintenance activities and/or repairs of any aspects of the project, to include, but not be limited to, contracts, estimates, checks for payment, descriptions of any defect or repair, inspector notes, log sheets, inspection reports, or any other documents or writings associated with such inspections, maintenance activities or repairs.
10. Produce any and all correspondence that relates to Sodfather's work on this project.

11. Produce copies of all documents and materials received from a non-party in response to a subpoena or Freedom of Information Act Request served by you or your counsel in connection with this suit.

12. Produce each and every document which reflects any settlement agreement you have reached with any party to this matter.

13. Produce each and every document in your possession whose subject matter is in any way related to the project, including the following:

- a. field reports for this property;
- b. bid estimates, including work sheets, take off sheets and analysis;
- c. job record files, job diaries or daily reports or field notes;
- d. deeds of conveyance;
- e. certificates of occupancy and of substantial completion;
- f. agreements with any design professionals to render design services;
- g. agreements between any builder and any owner for the construction of the project;
- h. plans, drawings or blueprints whether preliminary, working, as built, or other which were used or referenced or in any way relate to the project or structure thereon;
- i. field reports, job logs, construction reports, and progress reports;
- j. estimates, including work sheets, take off sheets and analysis;
- k. labor reports and records;
- l. equipment reports and records;
- m. scheduling time in sequence, projections, CPM schedules, bar charts, time tables and updates, revisions or amendments, whether or not submitted or approved;
- n. all comparison summaries, tabulations and analyses comparing cost and/or man hours actually incurred on the project with cost and/or man hours originally anticipated;
- o. requests for information, interpretations, and clarifications of specifications and all responses;

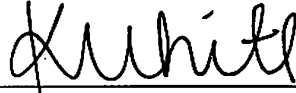
- p. minutes of the meetings of the board of directors of the horizontal property regime;
 - q. minutes of the meetings of the members and owners of the horizontal property regime;
 - r. every document which is or forms a part of any report or inspection of conditions on site prepared by a consultant or expert retained for purposes of testifying at the trial of the case;
 - s. contractors submittals;
 - t. the contract which is the subject of this action;
 - u. internal memoranda;
 - v. progress photographs;
 - w. inspections;
 - x. job meeting minutes;
 - y. change orders, field orders, work orders, or proposals which were approved, disputed, and pending;
 - z. pay estimates, requisitions, certifications, and payments;
 - aa. records of actual costs incurred in connection with the project, including cancelled checks for materials and payroll, job cost accounting, reports, audits, and financial statements;
 - bb. correspondence in any writing or any kind or description between and among the contractor, architect, engineer, subcontractors, material and equipment suppliers, owners, building code officials or any other person, firm, or entity concerning or affecting the project that is the subject of this action;
 - cc. all documents upon which you intend to rely to establish proof of claims, damages, or repudiation of claims;
 - dd. Curriculum Vitae of any expert you propose to use in this litigation; and/or
 - ee. copies of any and all reports generated by experts listed above.
14. Produce all exhibits which you intend to use at the trial of this case.

These Requests for Production shall be deemed to continue until the time of the trial of the case.

(Signature Page to Follow)

Sodfather's RFP to DRH
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC



Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Kirkley G. White, Bar No.: 103702

863 Coleman Blvd. Ste. B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

kwhite@rclawsc.com

***Attorneys for Sodfather Inc., Landscape
Contractors***

Mt. Pleasant, South Carolina

June 21, 2021

CERTIFICATE OF SERVICE

Case No. 2019-CP-04-01942

The undersigned hereby certifies that a true and correct copy of the foregoing Sodfather Inc., Landscape Contractors First Set of Interrogatories and Requests for Production to DR Horton has been served via electronic mail to the following counsel of record on the 29th day of June, 2021:

Attorney for Plaintiff

Justin O'Toole Lucey, Esq.
Dabney Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
PO Box 806
Mount Pleasant, SC 29465-0806
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com

Attorneys for Builder Services Group LLC d/b/a Gale Contractor Services

N. Keith Emge, Jr., Esq.
Jessica W. Stratta, Esq.
Resnick & Louis, P.C.
146 Fairchild Street, Suite 130
Charleston, SC 29492
cemge@rlattorneys.com
jstratta@rlattorneys.com

Attorneys for Long Heating & Air Conditioning, Inc.

Heath M. Stewart, Esq.
Michael Trask, Esq.
PO Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, SC 29211
Heath.stewart@mgclaw.com
Michael.trask@mgclaw.com

Attorney for General Shale Brick, Inc.

David W. Holmes, Esq.
Holmes Law Firm
712 North Main Street
Greenville, SC 29609
davidholmes@holmes-law.com

Attorney for DR Horton

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
Kyle McGann, Esq.
F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East Mcbee Avenue
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
mcgann@conlaw.com
warmoth@conlaw.com

Attorneys for P&T Construction, Inc.

Alan R. Belcher, Jr., Esq.
Connor E. Johnson, Esq.
Hall Booth Smith, P.C.
111 Coleman Blvd., Suite 301
Mt. Pleasant, SC 29464
abelcher@hallboothsmith.com
cjohnson@hallboothsmith.com

Attorneys for Brand-Vaughan Lumber Co, Inc.

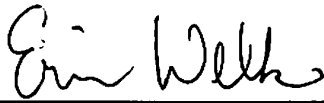
Eric R. Tonnsen, Esq.
Eller Tonnsen Bach
1306 S. Church Street
Greenville, SC 29605
etonnsen@etblawfirm.com

Attorneys for Builders FirstSource Southeast Group, LLC a/k/a Builders FirstSource, Inc.

Stephen P. Hughes, Esq.
William H. Cox, III, Esq.
Howell, Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901-0004
sphughes@hghpa.com
wcox@hghpa.com

Attorney for Sandlapper Concrete, LLC

Anne R. Culbreath, Esq.
Andrew N. Price, Esq.
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
aculbreath@wjcblaw.com
anprice@wjcblaw.com



Ross & Cristaldi LLC

***Attorneys for US LBM, LLC d/b/a GBS
Building Supply and Tucker Materials, Inc.***

W. Duffie Powers, Esq.
Carter R. Massingill, Esq.
Gallivan, White & Boyd, P.A.
55 Beattie Place, Suite 1200
Post Office Box 10589 (29603)
Greenville, SC 29601
dpowers@gwblawfirm.com
cmassingill@gwblawfirm.com

ROSS & CRISTALDI_{LLC}
ATTORNEYS AT LAW

EXHIBIT B

Jeffrey A. Ross
Philip P. Cristaldi, III
Scott H. Winograd
Emily C. Sheets
Benjamin D. Gilchrest

Phil Cristaldi
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
pcristaldi@rclawsc.com
(843) 329-4040

April 19, 2022

VIA ELECTRONIC MAIL

John T. Crawford Jr., Esq
Jason Imhoff, Esq.
F. James Wamoth, Esq.
Kenison, Dudley & Crawford, LLC
crawford@conlaw.com
jimhoff@conlaw.com
wamoth@conlaw.com

Re: Natalie Zitek, individually and on behalf of all others similarly situated v. Sodfather Inc.,
Landscape Contractors
Case No.: 2019-CP-04-01942

Dear Counselors:

Please allow this letter to serve as a friendly reminder that D.R. Horton, Inc. has not responded to Sodfather Inc., Landscape Contractors' First Set of Interrogatories and Requests for Production which were served upon you on or about June 29, 2021. If you need additional time, please contact me, otherwise, if we have not received your responses within ten days of the date of this letter, I will be forced to file a Motion to Compel in order to protect my client's interests. I am sure you understand our position.

Thank you very much for your anticipated cooperation in this matter. I look forward to hearing from you.

Very truly yours,



Philip P. Cristaldi

PPC/cew

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J
Framing, Inc.; Alpha E.M.C.; A-Z, Inc.;
Atlanta Floor Designs Center; A Grade
Above Others, LLC; Brand-Vaughan
Lumber Co, Inc.; BKF Builders, Inc.; Blue
Ridge Building Products, LLC; Builders
Designhouse, LLC; BMC East LLC;
Builders Firstsource Southeast Group, LLC,
a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises,
Inc.; CPI Security Systems, Inc.; DOM
Group, LLC; Ferguson Enterprises, Inc.;
Five Star Construction Inc.; Five Star
Foundations, LLC; Galloway-Bell, Inc.,
a/k/a Galloway-Bell, Inc. II; Get Floored,
LLC; GBS Building Supply – US LBM,
LLC, f/k/a GBS Building Supply, Inc.;

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**P & L ENTERPRISES, LLC.'S MOTION
TO COMPEL D.R. HORTON, INC.**

General Shale Brick Inc.; Greener Pastures, Inc., a/k/a Green Pastures of Aiken, LLC; Installed Building Products, LLC, a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc.,

Third-Party Defendants.

COMES NOW Defendant P&L Enterprises, LLC (hereinafter “P&L” or “Defendant”), by and through its undersigned attorney, who respectfully moves for an Order compelling D.R. Horton, Inc., (hereinafter “D.R. Horton”), to provide complete answers to P&L’s First Set of Interrogatories, and Requests for Production, and this Motion would show the Court as follows:

1. On September 9, 2021, P&L served D.R. Horton with P&L’s First Set of Interrogatories and Requests for Production. See attached as Exhibit “A”.

2. On April 19, 2022, counsel for P&L sent a letter to counsel for D.R. Horton and made a bona fide attempt to resolve this issue without the intervention of the Court. See attached as Exhibit "B".

3. To date, D.R. Horton has not responded to the Interrogatories, Requests for Production, or letter.

WHEREFORE, P&L respectfully requests an Order of this Court granting its Motion to Compel D.R. Horton to provide complete answers to P&L's Interrogatories and Requests for Production, as well as reimbursement for the costs and fees incurred as a result of having to file this Motion.

ROSS & CRISTALDI, LLC

s/ Phil Cristaldi
Philip P. Cristaldi, III, Bar No.: 102219
863 Coleman Blvd., Ste B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: pcristaldi@rclawsc.com
P&L Enterprises, LLC

Mt. Pleasant, South Carolina

May 4, 2022

ROSS & CRISTALDI^{LLC}
ATTORNEYS AT LAW

EXHIBIT A

Jeffrey A. Ross
Phillip R. Cristaldi, III
Scott H. Winograd
Kirkley G. White
Emily C. Sheets

Kirkley White
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
kwhite@rcclawsc.com
(843) 329-4040

September 9, 2021

VIA ELECTRONIC MAIL

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East Mcbee Avenue
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
warmoth@conlaw.com

Re: Natalie Zitek, individually, and on behalf of all others similarly situated v. P&L
Enterprises, LLC
Case No.: 2019-CP-04-01942

Dear Counselors:

Please find P&L Enterprises, LLC's First Set of Interrogatories and Requests for Production to D.R. Horton, Inc. in connection in the above mentioned matter.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you very much for your attention to the above.

Very truly yours,



Kirkley G. White

KGW/ew
Enclosures

863 Coleman Blvd., Suite B, Mount Pleasant, SC 29464

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; All Pro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II; Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**P&L ENTERPRISES, LLC'S FIRST SET
OF INTERROGATORIES TO D.R.
HORTON, INC.**

LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather, Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc.,

Third-Party Defendants.

TO: JASON M. IMHOFF, ESQ. AND JOHN T. CRAWFORD, JR. ESQ., COUNSEL FOR D.R. HORTON, INC.:

PURSUANT to Rule 33 of the South Carolina Rules of Civil Procedure, Third-Party Defendant P&L Enterprises, LLC (hereinafter referred to as “P&L”), requests Defendant/Third-Party Plaintiff, D.R. Horton, Inc. (hereinafter referred to as “DRH”), to answer under oath all of the following Interrogatories pertaining to the subject matter of the above-named lawsuit not objected to within the time allowed.

These Interrogatories are continuing in character and require the filing of supplementary answers in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure, if before trial the party to whom these Interrogatories are directed obtains further or different information after the initial answer. Supplementary answers should include the date upon and manner in which

such further or different information came to the attention of the answering party.

DEFINITIONS

As used herein, the following terms are defined as indicated:

- A. The term **“document”** means anything which may be considered to be a document or tangible thing within the meaning of Rule 34 of the South Carolina Rules of Civil Procedure and includes the original and any copy of any written, printed, recorded, graphic, or photographic matter, sound reproduction, chart, tape, disc, card, wire, and any other electronic or mechanical recording or transcript of any other instrument or device which contains any information or from which any information can be derived or retrieved. The term **“document”** also includes copies containing any information in addition to or in any way different from that contained in or on the original, and all attachments, enclosures, or documents affixed or referred to in any documents identified in response to any of the following Interrogatories.
- B. The term **“person”** means any natural person, public, or private corporation, partnership, joint venture, association, or governmental entity (including any governmental agency or political sub-division of any government), any group, any form of business or legal organization or agreement.
- C. The terms **“identify”** and **“identity”** when used in connection with any of the following terms mean and require you to state:
 - i. With respect to a natural person:
 - a. Such person's name, present or last known address, and present telephone number;
 - b. If employed by you, each position and title during his or her employment; and
 - c. If employed by you, the nature and description of his or her duties and responsibilities in each position indicated.
 - ii. With respect to a document:
 - a. The date and type of document (i.e. letter, memorandum, telegram, etc.).
 - b. The subject matter or substance of the document.
 - c. The identity of each author, addressee, and person copied on the document.
 - d. The identity of all persons who now have custody of the document or a copy of the document.
 - e. If any such document was at any time in the possession, custody, or control of your company but is no longer, whether missing, lost, destroyed, or has been transferred, voluntarily or involuntary, to any other person or otherwise disposed of and the circumstances surrounding it, the authorization given, if any, for such disposition, and the identity of person or persons to whom such documents were transferred, if any.

- K. The use of the singular herein shall be determined to include the plural and the masculine and the feminine, as appropriate in the context.
- L. The terms “**the project**” or “**residences**” means the premises and 270 single-family homes located at **Rose Hill Subdivision located at highway 74, Anderson County, South Carolina**, which is the subject of this lawsuit.

INSTRUCTIONS

- M. If any interrogatory does not apply, you must state “**not applicable**” with respect to such interrogatory and state the factual basis for such contention.
- N. Each interrogatory must be separately answered.
- O. If any of these Interrogatories cannot be answered in full, you are asked to answer to the fullest extent possible, specify the reason for your inability to answer the remainder of the Interrogatory, and state whatever information or knowledge you have concerning the unanswered portion.
- P. If, with respect to any interrogatory, you exercise your option under Rule 33(c) of the South Carolina Rules of Civil Procedure to produce business records in lieu of otherwise answering such interrogatory, the following information must be provided and the following procedures employed:
 - i. Specify all documents from which the answer to such interrogatory can be derived or ascertained.
 - ii. Produce such documents separately and designate the interrogatory to which each relates.

INTERROGATORIES

1. Provide a detailed description, per your knowledge and understanding, of P&L’s scope of work at the project and the origin of that understanding.
2. Identify what labor and/or materials P&L performed or provided at each individual residence involved in this lawsuit. In doing so, please identify the precise location(s) and addresses to include lot #'s for each property you believe P&L performed work at so that Counsel for P&L may investigate and photograph the same.
3. Identify each residence involved in this suit that P&L did not perform any work at.
4. Identify any and all documents and corresponding bates stamp(s) or other identifying marks of which you are aware reflecting that P&L was paid for work performed on the

project.

5. Set forth the facts on which you base your allegations that P&L, and not some other entity, caused any damage you are claiming in this suit.

6. Identify all building codes, manufacturer's installation instructions, plans and specifications, and/or industry standards which you claim P&L violated performing its alleged work at the project.

7. Identify with specificity each and every wrongful act, omission, negligence, breaches, and/or representation made by P&L which you allege has caused you damage.

8. State with particularity and specificity, the date on which you first learned of each such alleged defect or damage, the name, address, title or position of the person in your company or companies who received the above-referenced notice, and the nature and extent of any action taken by you, if any, and the date of each such action, with respect to the receipt of any such notice.

9. Identify any and all contracts, whether written, oral, or otherwise, reflecting that P&L worked on the project. If you identify any contracts, identify the scope of the agreement and the parties involved in making contract.

10. Identify if you believe that other parties, companies, and/or persons also performed the same or similar scopes of work as P&L on the project. If so, please identify those parties, companies, and persons, and what scope of work they performed that is the same or similar to P&L's scope of work. Please separately identify and differentiate the specific scopes performed by each of these entities in such a way that each's scope of work could be investigated independently of the others. In other words, who did what work, where and/or when and how does one tell which trade's work they are looking at when viewing the project?

11. Identify the facts on which you rely to distinguish the work performed by P&L

from the parties listed in the Interrogatory immediately above.

12. Please identify all documents in your possession in which you rely on to assert allegations that P&L provided faulty or otherwise improper work.

13. Identify all photographs in any expert's report(s) related to this project which you believe show work performed or labor provided by P&L in breach of a legal duty.

14. If any remedial work has been undertaken to correct or otherwise address any of the problems referred to in the pleadings, or at any time since the construction of the project, please provide the name, address, and telephone number of the person, company, companies, or other entities involved in the performance of such work, the date upon which the work was performed, the nature of the work performed, the costs and expenses of the work performed, and whether such expenses or costs have been paid.

15. Give the names, addresses, and telephone numbers of all persons known to the parties or counsel to be witnesses concerning the facts of this case, and indicate whether or not written or recorded statements have been taken from the witnesses and who has possession of any such statements taken.

16. Set forth a list of photographs, plats, sketches, or other prepared documents in the possession of the party or counsel that relate to the claim or to the defense of this case.

17. For each person known to the parties or to counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

18. Identify all experts and/or consultants retained by you or on your behalf and identify any reports they have prepared.

19. State whether any investigation of the conditions on site was made by you, and if so, state the date and nature of the investigation; identify the agent making the investigation on your behalf; describe the findings, conclusions, and recommendations of the investigation; and identify all relevant documents.

20. State the precise amount of damages you claim in this action, broken down as to its various elements or items.

21. Identify the facts on which you base your allegations that any conduct of P&L has caused damage to your professional reputation.

22. Set forth the names and addresses of all insurance companies which may have liability insurance coverage relating to the claim, the years of the policies, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

23. If you have reached or at any time in the future reach a settlement regarding all or any portions of any claim, counter-claim, third-party claim and any other claims between you and any other party to this lawsuit, or if you reach or at any time in the future reach a settlement with any other persons or entities not a party to the case regarding the alleged damages to the subject property, then promptly disclose the full terms of each such settlement, and attach a complete copy of each such settlement. This Interrogatory shall include any settlement release, covenant not to execute or enforce judgment, covenant not to sue, and all other settlement or compromise regarding the subject property and this litigation.

24. Identify all prior lawsuits, legal matters, or proceedings in which you have been a party, either plaintiff or defendant. In answering this Interrogatory, please identify all parties involved in the proceeding(s), the case number(s), and all details regarding the disposition of the

matters.

25. Identify all parties and respective insurance companies who have accepted DRH's additional insured tender(s) in this lawsuit.

26. Identify all parties and respective insurance companies who have accepted DRH's contractual indemnity tender(s) in this lawsuit.

27. Identify the total amount of attorney fees and costs that DRH has incurred to date in this lawsuit not paid for by any other defendant or defendants' insurance carrier(s).

28. Identify the total amount of attorney fees and costs which DRH claims it has incurred defending Plaintiffs' claims in this lawsuit for the work performed by P&L.

29. Identify the total amount of attorney fees and costs that DRH has incurred to date in this lawsuit.

30. Are you aware of any umbrella insurance policy, and owners-controlled insurance program (OCIP), and/or a contractor's controlled insurance program (CCIP), pertaining to the project? If yes, please set forth the name, addresses and policy numbers of all insurance companies that provided the policy.

These Interrogatories shall be deemed to continue until the time of the trial for this case.

(Signature Page to Follow)

Sp 1506 for

Attorneys for P&L Enterprises, LLC

September 9, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II; Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**P&L ENTERPRISES, LLC'S REQUESTS
FOR PRODUCTION TO D.R. HORTON,
INC.**

LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc.,

Third-Party Defendants.

TO: JASON M. IMHOFF, ESQ. AND JOHN T. CRAWFORD, JR. ESQ., COUNSEL FOR D.R. HORTON, INC.:

Third-Party Defendant P&L Enterprises, LLC (hereinafter referred to as "P&L"), by its undersigned counsel, hereby requests, in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, that Defendant/Third-Party Plaintiff, D.R. Horton, Inc. (hereinafter referred to as "DRH"), produce and permit P&L to inspect and copy the following documents pertaining to the subject matter of the above named lawsuit within thirty (30) days from the date of service of this request at the office of ROSS & CRISTALDI, LLC, 863 Coleman Blvd., Ste. B, Mount Pleasant, South Carolina 29464, or, in lieu thereof, serve exact copies of the documents to Philip P. Cristaldi, attorney for P&L, at the aforementioned address.

These Requests shall be deemed continuing and require supplemental responses if you

obtain further documents or materials at any time between the date of production and the conclusion of this litigation.

DEFINITIONS (AS USED HEREIN)

A. The word "**person**" means any natural person, firm, or corporation, partnership, joint venture, or any other form of business entity.

B. A request for the location of documents constitutes a request to state the present address at which such documents are kept, if known, and, if not known, the last address known and information as to their disposition.

C. A request for the identity of a person constitutes a request for his name, his present business address, if known, and, if not known, his last known business and residence address, and current phone number.

D. "**Custodian**" means the person who has possession or control of documents and a request for the identity of a custodian constitutes a request for his name, address, and phone number.

E. The pronoun "**you**" refers to the party to whom this Request is addressed and to its subsidiaries, officers, employees, representatives, agents and, unless privileged, its attorneys.

F. The term "**documents**" means all writings of any kind including the originals and all non-identical copies whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, books, checks, statements, receipts, returns, summaries, pamphlets, prospectuses, inter-office and intra-office communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or aural records, or representations of any kind including, without limitation, tapes, cassettes, discs, or other recordings including any electronic or digital format.

G. The term "**all documents**" means every document as above defined known to you and each document which can be located or discovered by reasonably diligent efforts.

H. The "**the project**" or "**Residence**" means the premises and real property which is the subject of this suit.

REQUESTS FOR PRODUCTION

1. Produce each and every document in your possession which forms any part of the basis for your answers to Interrogatories served simultaneously herewith.

2. Produce any and all documents which you believe show P&L performed work on this project.

3. All documents relating to any purchases and/or renovations/up-fits/additions to the Property performed by you, including but not limited to, all settlement statements, contracts (or modifications thereof), offers to purchase, correspondence by or between Plaintiffs, the seller of the Property, and any realtors, and any marketing materials and all disclosures given to or obtained by the Plaintiffs.

4. Produce any and all contracts between P&L and any person or entity which you believe are applicable to this project.

5. Produce any and all scopes of work provided to or by P&L.

6. Produce any and all documents which relate to P&L's association with this project.

7. Produce copies of all notices given to P&L about your complaints with the project.

8. Produce copies of any and all documents or materials relating in any way to any inspections, maintenance activities and/or repairs of any aspects of the project, to include, but not be limited to, contracts, estimates, checks for payment, descriptions of any defect or repair, inspector notes, log sheets, inspection reports, or any other documents or writings associated with such inspections, maintenance activities or repairs.

9. Produce any and all correspondence that relates to P&L's work on this project.

10. Produce copies of all documents and materials received from a non-party in response to a subpoena or Freedom of Information Act Request served by you or your counsel in connection with this suit.

11. Produce each and every general liability insurance policy from the time of the project to present.

12. Produce each and every document which reflects any settlement agreement you have reached with any party to this matter.

13. Produce each and every document in your possession whose subject matter is in any way related to the project, including the following:

- a. field reports for this property;
- b. bid estimates, including work sheets, take off sheets and analysis;
- c. job record files, job diaries or daily reports or field notes;
- d. deeds of conveyance;
- e. certificates of occupancy and of substantial completion;
- f. agreements with any design professionals to render design services;
- g. agreements between any builder and any owner for the construction of the project;
- h. plans, drawings or blueprints whether preliminary, working, as built, or other which were used or referenced or in any way relate to the project or structure thereon;
- i. field reports, job logs, construction reports, and progress reports;
- j. estimates, including work sheets, take off sheets and analysis;
- k. labor reports and records;
- l. equipment reports and records;
- m. scheduling time in sequence, projections, CPM schedules, bar charts, time tables and updates, revisions or amendments, whether or not submitted or approved;
- n. all comparison summaries, tabulations and analyses comparing cost and/or man hours actually incurred on the project with cost and/or man hours originally anticipated;
- o. requests for information, interpretations, and clarifications of specifications and all responses;
- p. minutes of the meetings of the board of directors of the horizontal property regime;

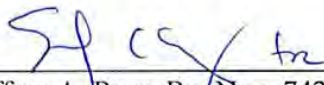
- q. minutes of the meetings of the members and owners of the horizontal property regime;
 - r. every document which is or forms a part of any report or inspection of conditions on site prepared by a consultant or expert retained for purposes of testifying at the trial of the case;
 - s. contractors submittals;
 - t. the contract which is the subject of this action;
 - u. internal memoranda;
 - v. progress photographs;
 - w. inspections;
 - x. job meeting minutes;
 - y. change orders, field orders, work orders, or proposals which were approved, disputed, and pending;
 - z. pay estimates, requisitions, certifications, and payments;
 - aa. records of actual costs incurred in connection with the project, including cancelled checks for materials and payroll, job cost accounting, reports, audits, and financial statements;
 - bb. correspondence in any writing or any kind or description between and among the contractor, architect, engineer, subcontractors, material and equipment suppliers, owners, building code officials or any other person, firm, or entity concerning or affecting the project that is the subject of this action;
 - cc. all documents upon which you intend to rely to establish proof of claims, damages, or repudiation of claims;
 - dd. Curriculum Vitae of any expert you propose to use in this litigation; and/or
 - ee. copies of any and all reports generated by experts listed above.
14. Produce all exhibits which you intend to use at the trial of this case.

These Requests for Production shall be deemed to continue until the time of the trial of the case.

(Signature Page to Follow)

P&L's RFP to DRH
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC



Jeffrey A. Ross, Bar No.: 74254
Philip P. Cristaldi, III, Bar No.: 102219
Kirkley G. White, Bar No.: 103702
863 Coleman Blvd. Ste. B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: jross@rclawsc.com
pcristaldi@rclawsc.com
kwhite@rclawsc.com
Attorneys for P&L Enterprises, LLC

Mt. Pleasant, South Carolina

September 9, 2021

CERTIFICATE OF SERVICE

Case No. 2019-CP-04-01942

The undersigned hereby certifies that a true and correct copy of the foregoing **P&L Enterprises, LLC's First Set of Interrogatories and Requests for Production to D.R. Horton, Inc.** has been served via electronic mail to the following counsel of record on the 9th day of September, 2021:

Attorney for Plaintiff

Justin O'Toole Lucey, Esq.
Dabney Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
PO Box 806
Mount Pleasant, SC 29465-0806
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com

Attorney for DR Horton

John T. Crawford Jr., Esq
Jason Imhoff, Esq.
F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East Mcbee Avenue
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
warmoth@conlaw.com

Attorneys for Builder Services Group LLC d/b/a Gale Contractor Services

N. Keith Emge, Jr., Esq.
Jessica W. Stratta, Esq.
Resnick & Louis, P.C.
146 Fairchild Street, Suite 130
Charleston, SC 29492
cemge@rlattorneys.com
jstratta@rlattorneys.com

Attorneys for P&T Construction, Inc.

Alan R. Belcher, Jr., Esq
Connor E. Johnson, Esq
Hall Booth Smith, P.C.
111 Coleman Blvd., Suite 301
Mt. Pleasant, SC 29464
abelcher@hallboothsmith.com
cjohnson@hallboothsmith.com

Attorneys for Long Heating & Air Conditioning, Inc.

Heath M. Stewart, Esq.
Michael Trask, Esq.
PO Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, SC 29211
Heath.stewart@mgclaw.com
Michael.trask@mgclaw.com

Attorneys for Brand-Vaughan Lumber Co, Inc.

Eric R. Tonnsen, Esq.
J. Patrick Bradley, Esq.
Eller Tonnsen Bach
1306 S. Church Street
Greenville, SC 29605
etonnsen@etblawfirm.com
pbradley@etblawfirm.com

Attorney for General Shale Brick, Inc.

David W. Holmes, Esq.
Holmes Law Firm
712 North Main Street
Greenville, SC 29609
davidholmes@holmes-law.com

Attorneys for Builders FirstSource Southeast Group, LLC a/k/a Builders FirstSource, Inc.

Stephen P. Hughes, Esq.
William H. Cox, III, Esq.
Howell, Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901-0004
sphughes@hgpha.com
wcox@hgpha.com

Attorney for Sandlapper Concrete, LLC

Anne R. Culbreath, Esq.
Andrew N. Price, Esq.
Willson Jones Carter & Baxley, P.A.
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
aculbreath@wjcblaw.com
anprice@wjcblaw.com

Attorneys for Installed Building Products, LLC

Everett Augustus Kendall, II, Esq.
Murphy & Grantland, PA
PO Box 6648
Columbia, SC 29260
rkendall@murphygrantland.com

Attorneys for CPI Security Systems, Inc.

Caroline Marie Gieser, Esq.
Shook, Hardy & Bacon L.L.P.
1230 Peachtree Street, Suite 1200
Atlanta, GA 30309
cgieser@shb.com

Attorney for Caryl Mechanics II, Inc. a/k/a Caryl Mechanicals, Inc.

C. Reed Teague, Esq.
The Ward Law Firm, P.A.
PO Box 5663
Spartanburg, SC 29304
rteague@wardfirm.com

Attorney for CBU Enterprises, Inc.

Shelley Sunderman Montague, Esq.
Gallivan, White & Boyd, PA
PO Box 7368
1201 Main Street, Suite 1200
Columbia, SC 29202
smontague@gwblawfirm.com

Attorneys for Lade-Danlar, Inc.

Steven L. Smith, Esq.
Smith Closser Wheeler, PA
7455 Cross County Road, Ste 1 (29418)
P.O. Box 40578, Charleston, SC 29423
ssmith@scnlaw.com

Attorneys for Ferguson Enterprises, Inc.

Jacqueline Dixon Phillips, Esq.
Parker Nelson & Associates
211 King Street, Suite 107
Charleston, SC 29401
jdixon@pnalaw.net

Attorney for Alpha Omega Construction Group, Inc.

C. Reed Teague, Esq.
The Ward Law Firm, P.A.
PO Box 5663
Spartanburg, SC 29304
rteague@wardfirm.com

Attorneys for A Grade Above Others, LLC

Katherine Walker, Esq.
James K Bryson, Esq.
Ethridge Law Group, LLC
1100 Queensborough Blvd., Suite 200
Mount Pleasant, SC 29464
kwalker@ethridgelawgroup.com
jbryson@ethridgelawgroup.com

Attorney for Cannady's Siding & Gutter, Inc.

Michael L. Leech, Esq.
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8114
mleech@clawsonandstaubes.com

Attorneys for Bruner Powell Wall & Mullins, LLC

Wesley D. Peel, Esq.
J. Cole Hancock, Esq.
P.O. Box 61110 (29260)
1735 St. Julian Place
Columbia, SC 29204
wpeel@brunerpowell.com
jcolehancock@brunerpowell.com

ROSS & CRISTALDI^{LLC}
ATTORNEYS AT LAW

EXHIBIT B

Jeffrey A. Ross
Philip P. Cristaldi, III
Scott H. Winograd
Emily C. Sheets
Benjamin D. Gilchrest

Phil Cristaldi
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
pcristaldi@rclawsc.com
(843) 329-4040

April 19, 2022

VIA ELECTRONIC MAIL

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
F. James Wamoth, Esq.
Kenison, Dudley & Crawford, LLC
crawford@conlaw.com
jimhoff@conlaw.com
wamoth@conlaw.com

Re: Natalie Zitek, individually and on behalf of all others similarly situated v. P&L
Enterprises, LLC
Case No.: 2019-CP-04-01942

Dear Counselors:

Please allow this letter to serve as a friendly reminder that D.R. Horton, Inc. has not responded to P&L Enterprises LLC's First Set of Interrogatories and Requests for Production which were served upon you on or about September 9, 2021. If you need additional time, please contact me, otherwise, if we have not received your responses within ten days of the date of this letter, I will be forced to file a Motion to Compel in order to protect my client's interests. I am sure you understand our position.

Thank you very much for your anticipated cooperation in this matter. I look forward to hearing from you.

Very truly yours,



Philip P. Cristaldi

PPC/ew

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II; Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**GALLOWAY-BELL, INC., A/K/A
GALLOWAY-BELL, INC. II'S MOTION
TO COMPEL D.R. HORTON, INC.**

of Aiken, LLC; Installed Building Products, LLC, a/k/a Installed Building Products II LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc.,

Third-Party Defendants.

COMES NOW Defendant Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II (hereinafter “Galloway-Bell” or “Defendant”), by and through its undersigned attorney, who respectfully moves for an Order compelling D.R. Horton, Inc., (hereinafter “D.R. Horton”), to provide complete answers to Galloway-Bell’s First Set of Interrogatories, and Requests for Production, and this Motion would show the Court as follows:

1. On July 22, 2021, Galloway-Bell served D.R. Horton with Galloway-Bell’s First Set of Interrogatories and Requests for Production. See attached as Exhibit “A”.
2. On April 19, 2022, counsel for Galloway-Bell sent a letter to counsel for D.R. Horton and made a bona fide attempt to resolve this issue without the intervention of the Court. See attached as Exhibit “B”.

3. To date, D.R. Horton has not responded to the Interrogatories, Requests for Production, or letter.

WHEREFORE, Galloway-Bell respectfully requests an Order of this Court granting its Motion to Compel D.R. Horton to provide complete answers to Galloway-Bell's Interrogatories and Requests for Production, as well as reimbursement for the costs and fees incurred as a result of having to file this Motion.

ROSS & CRISTALDI, LLC

s/ Philip Cristaldi

Philip P. Cristaldi, III, Bar No.: 102219

863 Coleman Blvd., Ste B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: pcristaldi@rclawsc.com

Galloway-Bell, Inc., A/K/A Galloway-Bell, Inc. II.

Mt. Pleasant, South Carolina

May 4, 2022

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; All Pro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II: Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**GALLOWAY-BELL, INC., A/K/A
GALLOWAY-BELL, INC. II'S FIRST SET
OF INTERROGATORIES TO D.R.
HORTON, INC.**

LLC; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danlar, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC, a/k/a M&L General Construction, Inc.; M&L Reyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC; NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, Inc., a/k/a P & T Construction, Inc.; P & L Enterprises, LLC; Probuild Company, LLC a/k/a Probuild Holdings, Inc.; Rite Rug Company, Inc., a/k/a, Rite Rug Co.; Rodney Howard Grading Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather, Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractors Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc; and Willow Tree Landscaping, Inc.,

Third-Party Defendants.

TO: JASON M. IMHOFF, ESQ. AND JOHN T. CRAWFORD, JR. ESQ., COUNSEL FOR D.R. HORTON, INC.:

PURSUANT to Rule 33 of the South Carolina Rules of Civil Procedure, Third-Party Defendant Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II (hereinafter referred to as “Galloway”), requests Defendant/Third-Party Plaintiff, D.R. Horton, Inc. (hereinafter referred to as “DRH”), to answer under oath all of the following Interrogatories pertaining to the subject matter of the above-named lawsuit not objected to within the time allowed.

These Interrogatories are continuing in character and require the filing of supplementary answers in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure, if before trial the party to whom these Interrogatories are directed obtains further or different information after the initial answer. Supplementary answers should include the date upon and manner in which

such further or different information came to the attention of the answering party.

DEFINITIONS

As used herein, the following terms are defined as indicated:

- A. The term **“document”** means anything which may be considered to be a document or tangible thing within the meaning of Rule 34 of the South Carolina Rules of Civil Procedure and includes the original and any copy of any written, printed, recorded, graphic, or photographic matter, sound reproduction, chart, tape, disc, card, wire, and any other electronic or mechanical recording or transcript of any other instrument or device which contains any information or from which any information can be derived or retrieved. The term **“document”** also includes copies containing any information in addition to or in any way different from that contained in or on the original, and all attachments, enclosures, or documents affixed or referred to in any documents identified in response to any of the following Interrogatories.
- B. The term **“person”** means any natural person, public, or private corporation, partnership, joint venture, association, or governmental entity (including any governmental agency or political sub-division of any government), any group, any form of business or legal organization or agreement.
- C. The terms **“identify”** and **“identity”** when used in connection with any of the following terms mean and require you to state:
 - i. With respect to a natural person:
 - a. Such person's name, present or last known address, and present telephone number;
 - b. If employed by you, each position and title during his or her employment; and
 - c. If employed by you, the nature and description of his or her duties and responsibilities in each position indicated.
 - ii. With respect to a document:
 - a. The date and type of document (i.e. letter, memorandum, telegram, etc.).
 - b. The subject matter or substance of the document.
 - c. The identity of each author, addressee, and person copied on the document.
 - d. The identity of all persons who now have custody of the document or a copy of the document.
 - e. If any such document was at any time in the possession, custody, or control of your company but is no longer, whether missing, lost, destroyed, or has been transferred, voluntarily or involuntary, to any other person or otherwise disposed of and the circumstances surrounding it, the authorization given, if any, for such disposition, and the identity of person or persons to whom such documents were transferred, if any.

- iii. With respect to a meeting:
 - a. The date and location thereof.
 - b. The identity of all persons present thereat.
 - c. The identity of any documents which record, refer, or relate to such meeting.
 - d. The subject matter or substance of any discussion at such meeting.
- iv. With respect to a scope of work:
 - a. The category of construction into which the work would fall (for example, masonry, framing, HVAC, siding, stucco, roofing, plumbing, design, etc.).
 - b. The specific materials to be installed.
 - c. The location on the project and/or building(s) which the work was performed or materials installed broken down by interior or exterior of the building, the floor (for example ground floor, first floor, etc.), the side (i.e., south side, north side, etc.), or some other identifier such that the work can be photographed and distinguished from the work of another.
 - d. If any of the above are unable to be identified, please say so, why they are not able to be identified, and what additional information is needed to make that identification.
- D. The pronoun **“you”** refers to the party to whom these Interrogatories are addressed and directed and to its subsidiaries, officers, employees, representatives, agents, and unless privileged, its attorneys.
- E. The terms **“relating to,” “relate to,” and “related to”** mean directly or indirectly, expressly or implied, mentioning, describing, pertaining to, being connected with, or reflecting upon the subject matter of the specific request.
- F. The terms **“framing” “siding” and “roofing”** work are defined as they are used and intended in your pleadings.
- G. The term **“meeting”** means any contemporaneous presence of two or more natural persons, whether or not such presence was by chance or pre-arrangement, and whether or not the meeting was formal or informal or occurred in connection with some other activity.
- H. The term **“relevant period”** unless otherwise specified means the period from January 1, 2007 to the date of your response.
- I. The term **“or”** means both **“or”** and **“and.”**
- J. The phrase **“first-hand knowledge”** means something you actually saw or heard, as distinguished from something you learned from some other person or source. It is also a knowledge that is gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.

- K. The use of the singular herein shall be determined to include the plural and the masculine and the feminine, as appropriate in the context.
- L. The terms “**the project**” or “**residences**” means the premises and 270 single-family homes located at **Rose Hill Subdivision located at highway 74, Anderson County, South Carolina**, which is the subject of this lawsuit.

INSTRUCTIONS

- M. If any interrogatory does not apply, you must state “**not applicable**” with respect to such interrogatory and state the factual basis for such contention.
- N. Each interrogatory must be separately answered.
- O. If any of these Interrogatories cannot be answered in full, you are asked to answer to the fullest extent possible, specify the reason for your inability to answer the remainder of the Interrogatory, and state whatever information or knowledge you have concerning the unanswered portion.
- P. If, with respect to any interrogatory, you exercise your option under Rule 33(c) of the South Carolina Rules of Civil Procedure to produce business records in lieu of otherwise answering such interrogatory, the following information must be provided and the following procedures employed:
 - i. Specify all documents from which the answer to such interrogatory can be derived or ascertained.
 - ii. Produce such documents separately and designate the interrogatory to which each relates.

INTERROGATORIES

1. Provide a detailed description, per your knowledge and understanding, of Galloway’s scope of work at the project and the origin of that understanding.
2. Identify what labor and/or materials Galloway performed or provided at each individual residence involved in this lawsuit. In doing so, please identify the precise location(s) and addresses to include lot #'s for each property you believe Galloway performed work at so that Counsel for Galloway may investigate and photograph the same.
3. Identify each residence involved in this suit that Galloway did not perform any work at.
4. Identify any and all documents and corresponding bates stamp(s) or other

identifying marks of which you are aware reflecting that Galloway was paid for work performed on the project.

any reports they have prepared.

19. State whether any investigation of the conditions on site was made by you, and if so, state the date and nature of the investigation; identify the agent making the investigation on your behalf; describe the findings, conclusions, and recommendations of the investigation; and identify all relevant documents.

20. State the precise amount of damages you claim in this action, broken down as to its various elements or items.

21. Identify the facts on which you base your allegations that any conduct of Galloway has caused damage to your professional reputation.

22. Set forth the names and addresses of all insurance companies which may have liability insurance coverage relating to the claim, the years of the policies, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

23. If you have reached or at any time in the future reach a settlement regarding all or any portions of any claim, counter-claim, third-party claim and any other claims between you and any other party to this lawsuit, or if you reach or at any time in the future reach a settlement with any other persons or entities not a party to the case regarding the alleged damages to the subject property, then promptly disclose the full terms of each such settlement, and attach a complete copy of each such settlement. This Interrogatory shall include any settlement release, covenant not to execute or enforce judgment, covenant not to sue, and all other settlement or compromise regarding the subject property and this litigation.

24. Identify all prior lawsuits, legal matters, or proceedings in which you have been a party, either plaintiff or defendant. In answering this Interrogatory, please identify all parties

involved in the proceeding(s), the case number(s), and all details regarding the disposition of the matters.

Galloway's INT to DRH
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC

Kuhil

Jeffrey A. Ross, Bar No.: 74254
Philip P. Cristaldi, III, Bar No.: 102219
Kirkley G. White, Bar No.: 103702
863 Coleman Blvd. Ste. B
Mt. Pleasant, South Carolina 29464
Phone: (843) 329-4040
Email: jross@rclawsc.com
pcristaldi@rclawsc.com
kwhite@rclawsc.com

Attorneys for Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II

Mt. Pleasant, South Carolina

July 22, 2021

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Natalie Zitek, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

D.R. Horton, Inc., Jane Doe #1-10; and, John
Doe #1-50,

Defendants.

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

AJ Landscaping & Grading, LLC a/k/a A J
Landscaping & Grading, LLC; AllPro
Textures, LLC; Alpha Omega Construction
Group, Inc.; American Concrete and Precast,
Inc.; a/k/a ACP Concrete, Inc.; A&J Framing,
Inc.; Alpha E.M.C.; A-Z, Inc.; Atlanta Floor
Designs Center; A Grade Above Others,
LLC; Brand-Vaughan Lumber Co, Inc.; BKF
Builders, Inc.; Blue Ridge Building Products,
LLC; Builders Designhouse, LLC; BMC East
LLC; Builders Firstsource Southeast Group,
LLC, a/k/a Builders Firstsource, Inc.; Bravo
Carpenters, Inc.; Caryl Mechanics II, Inc.,
a/k/a Caryl Mechanicals, Inc.; Cannaday
Siding & Gutter, Inc.; Coleman Floor, LLC;
Cortes Painting, LLC; CBU Enterprises, Inc.;
CPI Security Systems, Inc.; DOM Group,
LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations,
LLC; Galloway-Bell, Inc., a/k/a Galloway-
Bell, Inc. II: Get Floored, LLC; GBS Building
Supply – US LBM, LLC, f/k/a GBS Building
Supply, Inc.; General Shale Brick Inc.;
Greener Pastures, Inc., a/k/a Green Pastures
of Aiken, LLC; Installed Building Products,
LLC, a/k/a Installed Building Products II

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-04-01942

**GALLOWAY-BELL, INC., A/K/A
GALLOWAY-BELL, INC. II'S
REQUESTS FOR PRODUCTION TO D.R.
HORTON, INC.**

Third-Party Defendants.

Third-Party Defendant Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II (hereinafter referred to as “Galloway”), by its undersigned counsel, hereby requests, in accordance with Rule 34 of the South Carolina Rules of Civil Procedure, that Defendant/Third-Party Plaintiff, D.R. Horton, Inc. (hereinafter referred to as “DRH”), produce and permit Galloway to inspect and copy the following documents pertaining to the subject matter of the above named lawsuit within thirty (30) days from the date of service of this request at the office of ROSS & CRISTALDI, LLC, 863 Coleman Blvd., Ste. B, Mount Pleasant, South Carolina 29464, or, in lieu thereof, serve exact copies of the documents to Philip P. Cristaldi, attorney for Galloway, at the aforementioned address.

These Requests shall be deemed continuing and require supplemental responses if you obtain further documents or materials at any time between the date of production and the conclusion of this litigation.

DEFINITIONS (AS USED HEREIN)

A. The word "**person**" means any natural person, firm, or corporation, partnership, joint venture, or any other form of business entity.

B. A request for the location of documents constitutes a request to state the present address at which such documents are kept, if known, and, if not known, the last address known and information as to their disposition.

C. A request for the identity of a person constitutes a request for his name, his present business address, if known, and, if not known, his last known business and residence address, and current phone number.

D. "**Custodian**" means the person who has possession or control of documents and a request for the identity of a custodian constitutes a request for his name, address, and phone number.

E. The pronoun "**you**" refers to the party to whom this Request is addressed and to its subsidiaries, officers, employees, representatives, agents and, unless privileged, its attorneys.

F. The term "**documents**" means all writings of any kind including the originals and all non-identical copies whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, books, checks, statements, receipts, returns, summaries, pamphlets, prospectuses, inter-office and intra-office communications, offers, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or aural records, or representations of any kind including, without limitation, tapes, cassettes, discs, or other recordings including any electronic or digital format.

G. The term "**all documents**" means every document as above defined known to you and each document which can be located or discovered by reasonably diligent efforts.

H. The "**the project**" or "**Residence**" means the premises and real property which is the subject of this suit.

REQUESTS FOR PRODUCTION

1. Produce each and every document in your possession which forms any part of the basis for your answers to Interrogatories served simultaneously herewith.
2. Produce any and all documents which you believe show Galloway performed work on this project.
3. All documents relating to any purchases and/or renovations/up-fits/additions to the Property performed by you, including but not limited to, all settlement statements, contracts (or modifications thereof), offers to purchase, correspondence by or between Plaintiffs, the seller of the Property, and any realtors, and any marketing materials and all disclosures given to or obtained by the Plaintiffs.
4. Produce any and all contracts between Galloway and any person or entity which you believe are applicable to this project.
5. Produce complete policies of insurance for any carriers participating in the defense of this case.
6. Produce any and all scopes of work provided to or by Galloway.
7. Produce any and all documents which relate to Galloway's association with this project.
8. Produce copies of all notices given to Galloway about your complaints with the project.
9. Produce copies of any and all documents or materials relating in any way to any inspections, maintenance activities and/or repairs of any aspects of the project, to include, but not be limited to, contracts, estimates, checks for payment, descriptions of any defect or repair,

inspector notes, log sheets, inspection reports, or any other documents or writings associated with such inspections, maintenance activities or repairs.

10. Produce any and all correspondence that relates to Galloway's work on this project.

11. Produce copies of all documents and materials received from a non-party in response to a subpoena or Freedom of Information Act Request served by you or your counsel in connection with this suit.

12. Produce each and every general liability insurance policy from the time of the project to present.

13. Produce each and every document which reflects any settlement agreement you have reached with any party to this matter.

14. Produce each and every document in your possession whose subject matter is in any way related to the project, including the following:

- a. field reports for this property;
- b. bid estimates, including work sheets, take off sheets and analysis;
- c. job record files, job diaries or daily reports or field notes;
- d. deeds of conveyance;
- e. certificates of occupancy and of substantial completion;
- f. agreements with any design professionals to render design services;
- g. agreements between any builder and any owner for the construction of the project;
- h. plans, drawings or blueprints whether preliminary, working, as built, or other which were used or referenced or in any way relate to the project or structure thereon;
- i. field reports, job logs, construction reports, and progress reports;
- j. estimates, including work sheets, take off sheets and analysis;
- k. labor reports and records;
- l. equipment reports and records;

- m. scheduling time in sequence, projections, CPM schedules, bar charts, time tables and updates, revisions or amendments, whether or not submitted or approved;
- n. all comparison summaries, tabulations and analyses comparing cost and/or man hours actually incurred on the project with cost and/or man hours originally anticipated;
- o. requests for information, interpretations, and clarifications of specifications and all responses;
- p. minutes of the meetings of the board of directors of the horizontal property regime;
- q. minutes of the meetings of the members and owners of the horizontal property regime;
- r. every document which is or forms a part of any report or inspection of conditions on site prepared by a consultant or expert retained for purposes of testifying at the trial of the case;
- s. contractors submittals;
- t. the contract which is the subject of this action;
- u. internal memoranda;
- v. progress photographs;
- w. inspections;
- x. job meeting minutes;
- y. change orders, field orders, work orders, or proposals which were approved, disputed, and pending;
- z. pay estimates, requisitions, certifications, and payments;
- aa. records of actual costs incurred in connection with the project, including cancelled checks for materials and payroll, job cost accounting, reports, audits, and financial statements;
- bb. correspondence in any writing or any kind or description between and among the contractor, architect, engineer, subcontractors, material and equipment suppliers, owners, building code officials or any other person, firm, or entity concerning or affecting the project that is the subject of this action;
- cc. all documents upon which you intend to rely to establish proof of claims, damages, or repudiation of claims;
- dd. Curriculum Vitae of any expert you propose to use in this litigation; and/or
- ee. copies of any and all reports generated by experts listed above.

15. Produce all exhibits which you intend to use at the trial of this case.

These Requests for Production shall be deemed to continue until the time of the trial of the case.

Galloway's RFP to DRH
Case No: 2019-CP-04-1942

ROSS & CRISTALDI, LLC



Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Kirkley G. White, Bar No.: 103702

863 Coleman Blvd. Ste. B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

kwhite@rclawsc.com

Attorneys for Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II

Mt. Pleasant, South Carolina

July 22, 2021

CERTIFICATE OF SERVICE

Case No. 2019-CP-04-01942

The undersigned hereby certifies that a true and correct copy of the foregoing Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II's First Set of Interrogatories and Requests for Production to Plaintiff has been served via electronic mail to the following counsel of record on the 22nd day of July, 2021:

Attorney for Plaintiff

Justin O'Toole Lucey, Esq.
Dabney Lynn, Esq.
Sohayla R. Townes, Esq.
415 Mill Street (29464)
PO Box 806
Mount Pleasant, SC 29465-0806
jlucey@lucey-law.com
dlynn@lucey-law.com
stownes@lucey-law.com

Attorneys for Builder Services Group LLC d/b/a Gale Contractor Services

N. Keith Emge, Jr., Esq.
Jessica W. Stratta, Esq.
Resnick & Louis, P.C.
146 Fairchild Street, Suite 130
Charleston, SC 29492
cemge@rlattorneys.com
jstratta@rlattorneys.com

Attorneys for Long Heating & Air Conditioning, Inc.

Heath M. Stewart, Esq.
Michael Trask, Esq.
PO Box 12519
1320 Main Street, 10th Floor (29201)
Columbia, SC 29211
Heath.stewart@mgclaw.com
Michael.trask@mgclaw.com

Attorney for General Shale Brick, Inc.

David W. Holmes, Esq.
Holmes Law Firm
712 North Main Street
Greenville, SC 29609
davidholmes@holmes-law.com

Attorney for DR Horton

John T. Crawford Jr., Esq.
Jason Imhoff, Esq.
Kyle McGann, Esq.
F. James Warmoth, Esq.
Kenison, Dudley & Crawford, LLC
704 East Mcbee Avenue
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
mcgann@conlaw.com
warmoth@conlaw.com

Attorneys for P&T Construction, Inc.

Alan R. Belcher, Jr., Esq.
Connor E. Johnson, Esq.
Hall Booth Smith, P.C.
111 Coleman Blvd., Suite 301
Mt. Pleasant, SC 29464
abelcher@hallboothsmith.com
cjohnson@hallboothsmith.com

Attorneys for Brand-Vaughan Lumber Co, Inc.

Eric R. Tonnsen, Esq.
J. Patrick Bradley, Esq.
Eller Tonnsen Bach
1306 S. Church Street
Greenville, SC 29605
etonnsen@etblawfirm.com
pbradley@etblawfirm.com

Attorneys for Builders FirstSource Southeast Group, LLC a/k/a Builders FirstSource, Inc.

Stephen P. Hughes, Esq.
William H. Cox, III, Esq.
Howell, Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901-0004
sphughes@hghpa.com
wcox@hghpa.com

Attorney for Sandlapper Concrete, LLC

Anne R. Culbreath, Esq.
 Andrew N. Price, Esq.
 Willson Jones Carter & Baxley, P.A.
 325 Rocky Slope Road, Suite 201
 Greenville, SC 29607
aculbreath@wjcbllaw.com
anprice@wjcbllaw.com

Attorneys for Installed Building Products, LLC

Everett Augustus Kendall, II, Esq.
 Murphy & Grantland, PA
 PO Box 6648
 Columbia, SC 29260
rkendall@murphygrantland.com

Attorneys for CPI Security Systems, Inc.

Caroline Marie Gieser, Esq.
 Shook, Hardy & Bacon L.L.P.
 1230 Peachtree Street, Suite 1200
 Atlanta, GA 30309
cgieser@shb.com

Attorney for Caryl Mechanics II, Inc. a/k/a Caryl Mechanicals, Inc.

C. Reed Teague, Esq.
 The Ward Law Firm, P.A.
 PO Box 5663
 Spartanburg, SC 29304
rteague@wardfirm.com

Attorney for CBU Enterprises, Inc.

Shelley Sunderman Montague, Esq.
 Gallivan, White & Boyd, PA
 PO Box 7368
 1201 Main Street, Suite 1200
 Columbia, SC 29202
smontague@gwblawfirm.com


 Ross & Cristaldi LLC

Attorneys for Ferguson Enterprises, Inc.

Jacqueline Dixon Phillips, Esq.
 Parker Nelson & Associates
 211 King Street, Suite 107
 Charleston, SC 29401
jdixon@pnalaw.net

Attorney for Alpha Omega Construction Group, Inc.

C. Reed Teague, Esq.
 The Ward Law Firm, P.A.
 PO Box 5663
 Spartanburg, SC 29304
rteague@wardfirm.com

Attorneys for A Grade Above Others, LLC

Katherine Walker, Esq.
 James K Bryson, Esq.
 Ethridge Law Group, LLC
 1100 Queensborough Blvd., Suite 200
 Mount Pleasant, SC 29464
kwalker@ethridgelawgroup.com
jbryson@ethridgelawgroup.com

Attorney for Cannady's Siding & Gutter, Inc.

Michael L. Leech, Esq.
 Clawson & Staubes, LLC
 126 Seven Farms Drive, Suite 200
 Charleston, SC 29492-8114
mleech@clawsonandstaubes.com

ROSS & CRISTALDI_{LLC}
ATTORNEYS AT LAW

EXHIBIT B

Jeffrey A. Ross
Philip P. Cristaldi, III
Scott H. Winograd
Emily C. Sheets
Benjamin D. Gilchrest

Phil Cristaldi
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
pcristaldi@rclawsc.com
(843) 329-4040

April 19, 2022

VIA ELECTRONIC MAIL

John T. Crawford Jr., Esq
Jason Imhoff, Esq.
F. James Wamoth, Esq.
Kenison, Dudley & Crawford, LLC
crawford@conlaw.com
jimhoff@conlaw.com
wamoth@conlaw.com

Re: Natalie Zitek, individually and on behalf of all others similarly situated v. Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II
Case No.: 2019-CP-04-01942

Dear Counselors:

Please allow this letter to serve as a friendly reminder that D.R. Horton, Inc. has not responded to Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II's First Set of Interrogatories and Requests for Production which were served upon you on or about July 22, 2021. If you need additional time, please contact me, otherwise, if we have not received your responses within ten days of the date of this letter, I will be forced to file a Motion to Compel in order to protect my client's interests. I am sure you understand our position.

Thank you very much for your anticipated cooperation in this matter. I look forward to hearing from you.

Very truly yours,



Philip P. Cristaldi

PPC/ew

FORM 4 EXHIBIT 2

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

CASE NO. 2021CP2605960

Lorraine Luongo
PLAINTIFF(S)

Dr Horton Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion/Compel is Resolved.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/27/2022 .

Molly McKenna McDermid for American Residential Services LLC
Carlton Daniel Bowers for BMC East LLC
Theodore Parker, III for BMC East LLC
Emily Christine Sheets for Rogers Carpentry LLC, Roger D Bessant
Jeffrey A Ross for Rogers Carpentry LLC, Roger D Bessant
Philip Paul Cristaldi, III for Rogers Carpentry LLC, Roger D Bessant
John T. Crawford, Jr. for Dr Horton Inc
Steve Bosch
Arias Masonry LLC
Rachel Igdlal for Lorraine Luongo
Victor Arias
Leonor Arias
Frederick Elliott Quinn, IV for Lorraine Luongo
HF Construction Company Inc
F. Cordes Ford, IV for American Residential Services LLC

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Lorraine Luongo , plaintiff, et al VS DR Horton Inc , defendant, et al
Case Number: 2021CP2605960
Type: Order/Electronic Form 4

So Ordered

s/ Steven H. John, Resident Circuit Judge, #129

Electronically signed on 2022-05-27 12:39:39 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

LORRAINE LUONGO,

Plaintiff,

v.

D.R. HORTON, INC.; ROGER'S
CARPENTRY, LLC; ROGER D. BESSANT;
BMC EAST, LLC; ARIAS MASONRY,
LLC; VICTOR ARIAS; LEONOR ARIAS;
STEVE BOSCH; and AMERICAN
RESIDENTIAL SERVICES, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2021-CP-26-05960

**PLAINTIFF'S MOTION TO COMPEL
DISCOVERY RESPONSES FROM
DEFENDANT D.R. HORTON, INC.**

Pursuant to Rule 37(a) of the South Carolina Rules of Civil Procedure, Plaintiff Lorraine Luongo ("Plaintiff"), respectfully moves the Court for an Order compelling Defendant D.R. Horton, Inc. ("Defendant") to serve complete responses to Plaintiff's First Set of Interrogatories and First Set of Requests for Production (together, "Discovery Requests"). In support of their Motion, Plaintiff shows the following:

1. Plaintiff served their Discovery Requests on Defendant by U.S. Mail and email on December 10, 2021. Copies of the Discovery Requests are attached hereto as Exhibit A.
2. Rules 26, 33, and 34 of the South Carolina Rules of Civil Procedure require Defendant to produce written responses to Plaintiff's Discovery Requests as well as responsive, non-privileged documents. The deadline for Defendant to respond to the Discovery Requests was January 14, 2022.
3. Defendant failed to respond to Plaintiff's Discovery Requests.

4. On February 17, 2022, Plaintiff's counsel sent Defendant's counsel a letter concerning Defendant's overdue responses to Plaintiff's Discovery Requests. The letter informed Defendant that Plaintiff had not received Defendant's discovery responses and requested that Defendant provide responses to Plaintiff's Discovery Requests by March 9, 2022, to avoid a motion to compel. A copy of that correspondence is attached as Exhibit B.

5. Defendant failed to produce responses to Plaintiff's Discovery Requests and failed to respond to the letter.

6. To date, Plaintiff has not received responses to Plaintiff's Discovery Requests from Defendant.

WHEREFORE, Plaintiff respectfully requests an Order compelling Defendant to provide full and complete responses to Plaintiff's Discovery Requests.

THE STEINBERG LAW FIRM, L.L.P.
103 Grandview Dr., Ste. A
Summerville, SC 29484
(843) 871-6522 - office
(843) 871-8565 - facsimile

By: s/Elliotte Quinn
F. Elliotte Quinn IV
SC Bar No.: 102744
Rachel Igdal
SC Bar No.:
equinn@steinberglawfirm.com

Attorneys for Plaintiffs

March 14, 2022

Summerville, South Carolina

Exhibit A

ELECTRONICALLY FILED - 2022 Aug 14 9:35 AM - JASPER - COMMON PLEAS - CASE#2021CP2605069

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL J. JORDAN
BENJAMIN W. AKERY



CATHERINE D. MEEHAN
KELLY M. ALFRED
F. ELLIOTTE QUINN, I
TAYLOR GROOM
ANNIE E. ANDREW
RACHEL IGDA
CHARLES S. GOLDBERG (1933-2019)
HUGO M. SPITZ (1927-2018)
IRVING STEINBERG (1902-1980)

103 Grandview Drive | P.O. Box 2670 | Summerville | SC | 29484 | (843) 871-6522 | (843) 871-8565 fax | steinberglawfirm.com

December 10, 2021

VIA U.S. MAIL AND E-MAIL

John T. Crawford, Jr.
Kenison, Dudley & Crawford, LLC
740 East McBee Avenue
Greenville, SC 29601
crawford@conlaw.com
imhoff@conlaw.com

Re: *Luongo v. D.R. Horton, Inc., et al.*
Horry County Court of Common Pleas
2021-CP-26-05960

Dear John:

Please find enclosed:

1. Plaintiffs' First Set of Interrogatories to Defendant D.R. Horton, Inc.,
2. Plaintiffs' First Set of Requests for Production to Defendant D.R. Horton, Inc.

Sincerely,


Elliotte Quinn
equinn@steinberglawfirm.com
843-871-6522


FEQ/mbc

Enclosures (as stated)

December 10, 2021

Page 2

Cc: (via email only)

Jeffrey A. Ross
Philip P. Cristaldi
Emily C. Sheets
Ross & Cristaldi, LLC
jross@rclawsc.com
pcristaldi@rclawsc.com
esheets@rclawsc.com

*Attorneys for Defendants Roger's Carpentry, LLC
and Roger D. Bessant*

Theodore Parker III
Carlton D. Bowers
Parker Nelson & Associates, CHTD
tparker@pnalaw.net
cbowers@pnalaw.net

Attorneys for Defendant BMC East, LLC

F. Cordes Ford IV
Molly M. McDermid
Womble Bond Dickinson (US) LLP
cordes.ford@wbd-us.com
molly.mcdermid@wbd-us.com

Attorneys for Defendant American Residential Services, LLC

ELECTRONICALLY FILED - 2022 Aug 14 9:35 AM - JHSRER - COMMON PLEAS - CASE#2021CP2606069

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Case No.: 2021-CP-26-05960

LORRAINE LUONGO,

Plaintiffs,

v.

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

D.R. HORTON, INC.; ROGER'S
CARPENTRY, LLC; ROGER D. BESSANT;
BMC EAST, LLC; ARIAS MASONRY,
LLC; VICTOR ARIAS; LEONOR ARIAS;
STEVE BOSCH; and AMERICAN
RESIDENTIAL SERVICES, LLC,

TO DEFENDANT D.R. HORTON, INC.

Defendants.

**TO: DEFENDANT D.R. HORTON, INC. AND ITS COUNSEL JOHN T. CRAWFORD,
JR.**

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff hereby serves upon you the following First Set of Interrogatories. These Interrogatories are to be answered separately and fully, in writing, and signed by the person making them within thirty days after service hereof. You are to serve a copy of Your answers upon the undersigned counsel at the below listed address.

DEFINITIONS AND INSTRUCTIONS

In answering each Interrogatory, the following definitions and instructions apply:

1. "You," "Your," or "Defendant" shall mean the party to whom these Interrogatories are addressed.
2. The term "Property" shall mean 4521 Farm Lake Drive in Myrtle Beach in Horry County, South Carolina which is the property with Horry County tax map number 164-24-01-079.

3. The term “person” shall mean and include any natural person, firm, corporation, limited liability company, unincorporated association, partnership, joint venture, and any other entity.

4. The terms “document” or “evidence” refer to all evidence of any kind existing in any type of medium and are defined in the broadest sense permitted under the South Carolina Rules of Civil Procedure and South Carolina law.

5. The terms “refer to” or “relate to” shall mean mentioning, comprising, constituting, indicating, describing, reflecting, evidencing, regarding, pertaining to, showing, discussing, connected with, memorializing and/or involving in any way whatsoever the subject matter of the request, including having a legal, factual, or logical connection, relationship, correlation, or association with the subject matter of the request. A document or item of evidence may “refer to” or “relate to” a person or subject without specifically mentioning or discussing said person or subject.

6. If any documents or evidence relevant to the Interrogatories have been lost, discarded, or destroyed, identify the documents or evidence so lost, discarded, or destroyed as completely as possible, including without limitation providing the following information: the person or persons who lost, discarded, or destroyed the document or evidence and the date of, manner of, and reason for losing, discarding, or destroying the document or evidence.

7. These Interrogatories shall be continuing so as to require that You supplement Your answers in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure. If a complete answer to any Interrogatory is not presently available, supplemental answers are required at the time the information is available.

INTERROGATORIES

1. Give the names and addresses of persons known to You or Your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each person known to You or Your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the opposing party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy. The insurance information requested in this Interrogatory includes all commercial general liability policies for You or any subcontractor engaged by You and in place at any time from when Your work at the Property began through the present.

5. State whether You or any person or entity employed or engaged by You performed work at the Property subsequent to the completion of original construction, and if so, state when that work was performed, who performed that work, and the scope of that work.

6. Identify all designers, architects, engineers, consultants, or subcontractors engaged by You who performed any work related to the claims in this action or provided any services related to the claims in this action. For each such person, state the scope of the person's work or services.

7. Identify each foreman, supervisor, superintendent, manager, area manager, or field assistant responsible for overseeing the work at the Property for You.

8. Identify all persons who performed any inspection or investigation of the Property before or after the completion of Your work and describe the nature of the inspection or investigation and the date the inspection or investigation was performed.

9. State whether you had written or oral agreements with any of Your subcontractors for work at the Property. If You had any oral agreement with a subcontractor for work at the Property, state the principal terms of the oral agreement.

10. State whether You have tendered this claim to all insurance carriers who provided You with commercial general liability insurance at any time from when Your work at the Property began through the Present, and if not, identify any such insurance carrier You have not tendered the claim to.

11. State whether You have withheld any information responsive to any Interrogatory or not produced any document requested by Plaintiff's First Set of Requests for Production, and if so, identify the information or documents withheld and state the legal and/or factual basis for the withholding or non-production.

THE STEINBERG LAW FIRM, LLP

By:



F. Elliotte Quinn IV
Rachel Igdal
843-871-6522
equinn@steinberglawfirm.com
rigdal@steinberglawfirm.com
103 Grandview Dr., Ste. A
Summerville, SC 29484

Attorneys for Plaintiff

December 10, 2021

CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's First Set of Interrogatories to Defendant D.R. Horton, Inc. was served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, and by e-mail, addressed to the following as shown below this 10 day of December, 2021.

John T. Crawford, Jr.
Kenison, Dudley & Crawford, LLC
740 East McBee Avenue
Greenville, SC 29601
crawford@conlaw.com
imhoff@conlaw.com

Attorney for Defendant D.R. Horton, Inc.

This is to certify that a copy of Plaintiff's First Set of Interrogatories to Defendant D.R. Horton, Inc. was served upon the following counsel of record by e-mail, addressed to the following as shown below this 10 day of December, 2021.

Jeffrey A. Ross
Philip P. Cristaldi
Emily C. Sheets
Ross & Cristaldi, LLC
jross@rclawsc.com
pcristaldi@rclawsc.com
esheets@rclawsc.com

*Attorneys for Defendants Roger's Carpentry, LLC
and Roger D. Bessant*

Theodore Parker III
Carlton D. Bowers
Parker Nelson & Associates, CHTD
tparker@pnlaw.net
cbowers@pnlaw.net

Attorneys for Defendant BMC East, LLC

F. Cordes Ford IV
Molly M. McDermid
Womble Bond Dickinson (US) LLP
cordes.ford@wbd-us.com

molly.mcdermid@wbd-us.com

Attorneys for Defendant American Residential Services, LLC



The Steinberg Law Firm, LLP
103 Grandview Dr., Ste. A
Summerville, SC 29483

ELECTRONICALLY FILED - 2022 Aug 14 9:35 AM - JSPRR - COMMON PLEAS - CASE#2021CP2605069

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Case No.: 2021-CP-26-05960

LORRAINE LUONGO,

Plaintiffs,

v.

D.R. HORTON, INC.; ROGER'S
CARPENTRY, LLC; ROGER D. BESSANT;
BMC EAST, LLC; ARIAS MASONRY,
LLC; VICTOR ARIAS; LEONOR ARIAS;
STEVE BOSCH; and AMERICAN
RESIDENTIAL SERVICES, LLC,

Defendants.

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION**

TO DEFENDANT D.R. HORTON, INC.

TO: DEFENDANT D.R. HORTON, INC. AND ITS COUNSEL JOHN T. CRAWFORD, JR.

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiff hereby serves upon you the following First Set of Requests for Production. These Requests are to be answered separately and fully, in writing, and signed by the person making them within thirty days after service hereof. You are to serve a copy of Your responses upon the undersigned counsel at the below listed address.

DEFINITIONS AND INSTRUCTIONS

In responding to each Request, the following definitions and instructions apply:

1. "You," "Your," or "Defendant" shall mean the party to whom these Requests are addressed.
2. The term "Property" shall mean 4521 Farm Lake Drive in Myrtle Beach in Horry County, South Carolina which is the property with Horry County tax map number 164-24-01-079.

3. The term “person” shall mean and include any natural person, firm, corporation, limited liability company, unincorporated association, partnership, joint venture, and any other entity.

4. The terms “document” or “evidence” refer to all evidence of any kind existing in any type of medium and are defined in the broadest sense permitted under the South Carolina Rules of Civil Procedure and South Carolina law.

5. If any documents or evidence responsive to the Requests have been lost, discarded, or destroyed, identify the documents or evidence so lost, discarded, or destroyed as completely as possible, including without limitation providing the following information: the person or persons who lost, discarded, or destroyed the document or evidence and the date of, manner of, reason for losing, discarding, or destroying the document or evidence.

6. These Requests shall be continuing so as to require that You supplement Your responses and production in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure.

REQUESTS FOR PRODUCTION

1. Your entire file related to the construction of the Property.
2. All contracts, subcontracts, or other agreements related to the design, construction, work, services, materials, and installation of materials for or at the Property.
3. All documents reflecting the names of all contractors, subcontractors, materialmen, architects, or engineers who provided services, work, or materials to or for the Property.
4. Your organizational charts reflecting Your employees who performed work related to the Property, their superiors, and their responsibilities at the time of construction of the Property.
5. Your construction training manuals; company manuals related to construction or the supervision of construction; company policies and procedures related to construction or the

supervision of construction; guidelines related to construction or the supervision of construction; and like documents in effect at any time during Your work at the Property.

6. All documents related to any consultants' or experts' reports, analyses, or tests of or related to the Property made prior to the earlier of when You received notice of this claim or when this lawsuit was filed.

7. All certificates of insurance and declaration pages for all liability insurance policies You maintained from when Your services or work at the Property commenced through to the present.

8. All commercial general liability insurance policies You maintained from when Your services or work at the Property commenced through to the present.

9. All certificates of insurance, declaration pages, additional insured endorsements, and insurance policies for any commercial general liability insurance policy for any subcontractor, lower tier contractor, or other person who provided services or work for or at the Property on Your behalf or at Your direction.

10. All declination or denial letters from insurance carriers related to this action.

11. All acceptance of defense or reservation of rights letters from insurance carriers related to this action.

12. Documentation of the prior partial or total use or exhaustion of the policy limits of any commercial general liability insurance policy You maintained from when Your services or work at the Property commenced through to the present.

13. All correspondence or other written communications between You and Plaintiff related to the Property.

14. All correspondence or other written communications between You and any subcontractor, lower tier contractor, or material supplier related to the Property or Plaintiff.

15. All documents provided to or received from any expert witness You intend to call at the trial of this case.

16. All documents reflecting the method and amount of compensation for any expert witness You intend to call at the trial of this case.

17. All invoices from any expert You intend to call at the trial of this case.

18. All photographs of the Property taken at any time after issuance of the building permit and through the present.

19. All subcontractor scopes of work and documents related to subcontractor scopes of work for the Property.

20. All certificates of substantial completion, certificates of final completion, and related documents for the Property.

21. All field reports and documents related to field reports for work at the Property.

22. All job meeting minutes and documents related to job meeting minutes for work at the Property.

23. All logs or records of inspections of the Property in preparation for, during, or after the completion of construction by Your foreman, supervisor, superintendent, manager, area manager, or field assistant.

24. All change orders, proposed changes orders, and documents related to change orders or proposed change orders for work at the Property.

25. All payment applications, requests for payment, and supporting or related documents, including photographs, for work at the Property.

26. All payment applications, requests for payment, and supporting or related documents received by You from Your subcontractors and materialmen related to Your work at the Property.

27. All requests for information, requests for interpretations, requests for

clarifications, and related documents for work at the Property.

28. All documents related to a payment from Plaintiffs to You related to the Property.

29. All documents related to a request from a subcontractor or supplier to You for payment related to the Property.

30. All documents related to a payment from You to a subcontractor or supplier related to the Property.

31. Your email retention, deletion, or purging policy, if any, from the time of Your work at the Property to the present.

32. Your data retention, deletion, or purging policy, if any, from the time of Your work at the Property to the present.

33. All documents related to the Property that You obtained in response to subpoenas or FOIA requests.

34. All documents referred to in Your answers to Plaintiffs' Interrogatories.

35. All documents You contend refute Plaintiffs' allegations, claims, or damages.

THE STEINBERG LAW FIRM, LLP

By:



F. Elliott Quinn IV

Rachel Igdal

843-871-6522

equinn@steinberglawfirm.com

rigdal@steinberglawfirm.com

103 Grandview Dr., Ste. A

Summerville, SC 29484

Attorneys for Plaintiff

December 10, 2021

CERTIFICATE OF SERVICE

This is to certify that a copy of Plaintiff's First Set of Requests for Production to Defendant D.R. Horton, Inc. was served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, and by e-mail, addressed to the following as shown below this 10 day of December, 2021.

John T. Crawford, Jr.
Kenison, Dudley & Crawford, LLC
740 East McBee Avenue
Greenville, SC 29601
crawford@conlaw.com
imhoff@conlaw.com

Attorney for Defendant D.R. Horton, Inc.

This is to certify that a copy of Plaintiff's First Set of Requests for Production to Defendant D.R. Horton, Inc. was served upon the following counsel of record by e-mail, addressed to the following as shown below this 10 day of December, 2021.

Jeffrey A. Ross
Philip P. Cristaldi
Emily C. Sheets
Ross & Cristaldi, LLC
jross@rclawsc.com
pcristaldi@rclawsc.com
esheets@rclawsc.com

*Attorneys for Defendants Roger's Carpentry, LLC
and Roger D. Bessant*

Theodore Parker III
Carlton D. Bowers
Parker Nelson & Associates, CHTD
tparker@pnalaw.net
cbowers@pnalaw.net

Attorneys for Defendant BMC East, LLC

F. Cordes Ford IV
Molly M. McDermid
Womble Bond Dickinson (US) LLP
cordes.ford@wbd-us.com
molly.mcdermid@wbd-us.com

Attorneys for Defendant American Residential Services, LLC



The Steinberg Law Firm, LLP
103 Grandview Dr., Ste. A
Summerville, SC 29483

ELECTRONICALLY FILED - 2022 Aug 17 9:35 AM - JASPER - COMMON PLEAS - CASE#2021CP2605069

Exhibit B



103 Grandview Drive | P.O. Box 2670 | Summerville | SC | 29483 | (843) 871-6522 | (843) 871-8565 fax | www.steinberglawfirm.com

February 17, 2022

VIA E-MAIL ONLY

John T. Crawford, Jr.
Kenison, Dudley & Crawford, LLC
740 East McBee Avenue
Greenville, SC 29601
crawford@conlaw.com
imhoff@conlaw.com

Re: *Luongo v. D.R. Horton, Inc, et al.*
Horry County Court of Common Pleas
2021-CP-26-05960
SLF#: 2021-

Dear John,

Defendant D.R. Horton, Inc. was served with Plaintiff's First Set of Interrogatories and Plaintiff's First Set of Requests for Production on December 10, 2021. The deadline for your client's responses elapsed. We would like to resolve the issue without having to involve the Court, and ask that you provide your responses by March 9, 2022, so that we may avoid filing a motion to compel. If you believe a phone call to discuss the discovery requests would be helpful or if you need additional time due to unique circumstances, please contact me at your earliest convenience. This letter shall serve as our effort to resolve this matter through communication as required by Rule 11, SCRCPC. Thank you for your assistance in resolving this matter.

Regards,

Rachel Igdal
rigdal@steinberglawfirm.com
843-871-6522

ELECTRONICALLY FILED - 2022 Aug 14 8:39 AM - HERRER - COMMON PLEAS - CASE#2021CP2605960

EXHIBIT 3

GRANTED

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO.: 2:17-CV-00215-PMD

Responses to discovery shall be
filed within 10 days of this order.


PATRICK MICHAEL DUFF
United States District Judge

May 25, 2017

Darlene Creaturo,)
)
Plaintiff,)
)
-versus-)
)
D.R. Horton, Inc.,)
)
Defendant)
_____)

NOTICE OF MOTION AND MOTION TO COMPEL

TO: KLYE DILLARD, ESQUIRE, COUNSEL FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiff will move for an Order compelling the Defendant to provide complete responses to Plaintiff's First Set of Discovery Requests (attached as Exhibit "A"). Defendant has not responded to these Discovery Requests.

The Discovery Requests were served on the Defendant through its registered agent (along with the state court pleadings) on December 27, 2016. Defendant subsequently removed the action to this Court. On February 15, 2017, the Court indicated in its Scheduling Order that discovery may commence. On March 27, 2017, Plaintiff brought to the attention of Defendant that Defendant's responses were due. Plaintiff then granted Defendant an extension to respond to the discovery requests with a new due date of April 16, 2017. Defendant has not yet responded to the Discovery Requests.

WHEREFORE, your Plaintiff prays for an Order compelling Defendant to fully answer and respond without objections to Plaintiff's First Set of Discovery Requests.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NO.: 2:17-CV-00215-PMO

Darlene Creaturo,)
)
Plaintiff,)
)
-versus-)
)
D.R. Horton, Inc.,)
)
Defendant)
_____)

**NOTICE OF MOTION AND MOTION
TO COMPEL**

TO: KLYE DILLARD, ESQUIRE, COUNSEL FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiff will move for an Order compelling the Defendant to provide complete responses to Plaintiff's First Set of Discovery Requests (attached as Exhibit "A"). Defendant has not responded to these Discovery Requests.

The Discovery Requests were served on the Defendant through its registered agent (along with the state court pleadings) on December 27, 2016. Defendant subsequently removed the action to this Court. On February 15, 2017, the Court indicated in its Scheduling Order that discovery may commence. On March 27, 2017, Plaintiff brought to the attention of Defendant that Defendant's responses were due. Plaintiff then granted Defendant an extension to respond to the discovery requests with a new due date of April 16, 2017. Defendant has not yet responded to the Discovery Requests.

WHEREFORE, your Plaintiff prays for an Order compelling Defendant to fully answer and respond without objections to Plaintiff's First Set of Discovery Requests.

MARK C. TANENBAUM, P.A.

By: s/Stephen A. Butaitis
STEPHEN A. BUTAITIS (Fed I.D. # 5895)
steve@tanenbaumlaw.com
1017 Chuck Dawley Boulevard
Suite 101
Mt. Pleasant, S.C. 29464
Telephone (843) 577-5100
Facsimile (843) 722-4688

BLUESTEIN, JOHNSON & BURKE, LLC
BRIAN C. JOHNSON (Fed I.D. # 9200)
bjohnson@bjblawfirm.com
1024 eWall Street, Suite 101
Mt. Pleasant, SC 29464
Telephone (843) 571-7161
Facsimile (843) 571-4919

ATTORNEYS FOR PLAINTIFF

May 5, 2017

I affirm that I have communicated in good faith with defense counsel concerning this discovery matter prior to the filing of this motion.

s/Stephen A. Butaitis
STEPHEN A. BUTAITIS,

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.:16-CP-10-

DARLENE CREATURO,

Plaintiff,

-v-

D.R. HORTON, INC.,

Defendant.

**PLAINTIFF'S FIRST SET OF
DISCOVERY REQUESTS****TO: DEFENDANT D.R. HORTON, INC.:**

The Plaintiff above named, by and through undersigned counsel, hereby serves the following Interrogatories and Requests for Production on the Defendant D.R. Horton, pursuant to the South Carolina Rules of Civil Procedure. These Discovery Requests are served pursuant to and governed by inter alia, Rule 26(e), Rule 33 and Rule 34 of said South Carolina Rules of Civil Procedure. If hereinafter you are asked to produce documents or other materials which are not in your possession, but you are aware of who may have same, please either obtain a copy and produce same or set forth the name, current address and telephone number of the person or entity who may be in possession of same. Defendant's responses shall be fully stated, separately, in writing and under oath. Plaintiff requests that all documents produced bear "Bates stamps" or numbers on them, and that your written responses identify which numbered documents respond to which discovery request. If you do not number the documents, then designate specifically which documents are responsive to which particular request.

1. Give the name and address of each person known to the parties or counsel to be a witness concerning the facts of the case or that you intend to call as a witness at the

trial of this case.

2. For each person known to the parties or counsel to be a witness, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, indicate whether a statement has been taken from said party or witness, and provide a copy of any written or recorded statements taken.

3. Set forth a list of photographs, plats, sketches, correspondence, memoranda, notes, minutes, or other prepared documents or electronically stored in possession of the party that relate to the claim or defense of the case, and produce a copy of each.

4. List the name and address of each expert witness whom the party has consulted or proposes to use as a witness at the trial of the case, each opinion that witness has or will testify to and the facts upon which that opinion is based. If you have a report from an expert witness, produce a copy of same. Produce a complete copy of said expert witness' file; of all memoranda, reports, correspondence, records and other documents said expert has considered with respect to this claim; and an up-to-date curriculum vitae for each witness.

5. Set forth the names and addresses of all insurance companies which have liability insurance coverage, whether primary, excess, or umbrella, relating to this action, the number of each such policy and the amount of liability coverage provided by each policy and produce a copy of each such policy.

6. If there is medical payments coverage or some other form of benefit available to the Plaintiff not based on fault or liability arising from this occurrence, so state and set forth the amount of such benefit and what it is available for.

7. If this claim is being defended under a reservation of rights or if any insurer has

issued any communication reserving its rights as to this claim, please provide copies of all documents relating to same.

8. What is the name and current address of each person who investigated this matter for this Defendant or its insurer(s)?

9. Set forth the name and current address of each person who has supplied information to Defendant's counsel used to respond to these Discovery Requests.

10. Identify any and all written or recorded statements made by any person regarding this incident. If any privilege is claimed with respect to any such written or recorded statement, identify the nature of the privilege, the date, time and location where the statement was taken or created, and any and all persons present at the time the statement was created.

11. Please state whether anyone has fallen at the subject property and made a claim against you, and if so any such persons, identify by name, address, and telephone number each such person.

12. If you contend that any person other than the responding Defendant contributed in any way to the cause of the incident upon which Plaintiff's claim is based, set forth the following:

- a. Identity of all such persons; and
- b. Basis for such contention.

13. If you have, within the past seven (7) years, been involved in litigation or had a claim made against you arising from a similar occurrence, set forth for each:

- a. the claimant's or party's name and address;
- b. the attorney's name and address;

- c. the date of the underlying occurrence;
- d. the date you were notified of same;
- e. the ultimate resolution;
- f. produce a copy of each Summons and Complaint served if suit was filed.

14. Produce copies of all documents obtained by the Defendant or anyone acting on his behalf via Subpoena *Duces Tecum*, signed authorization form, FOIA request, or other legal process. This is intended as an ongoing request pursuant to SCRCP 34 and 45(c)(2)(A) and applies to any Subpoena *Duces Tecum* or other request, form, or process issued or sent either before or after these Requests for Production.

15. Identify any policies or procedures utilized by the Defendant for inspection of the premises for the purposes of identifying hazardous or defective property conditions that could cause injury to individuals visiting the Defendant's premises at the time of Plaintiff's injuries.

16. Identify with particularity each document that provided any instructions, directives, orders, policies or procedures in effect for maintaining and promoting the safety of individuals visiting the Defendant's premises at the time of Plaintiff's injuries.

17. Describe in detail for the area where the subject incident occurred.

18. Identify all agents and/or employees of the Defendant who were present, or on duty at the premises where Plaintiff was injured, at the time of Plaintiff's injury. Provide current or last known addresses for all such persons.

19. How did the Defendant first learn of the subject incident?

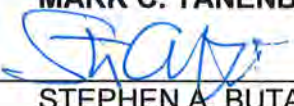
20. If you contend that any Defendant is not properly named in the caption of the Complaint, state what you contend to be the proper name of such Defendant entity or

person.

21. Identify who the builder and/or general contractor was for the subject property at the time of the subject incident. Provide addresses for all such persons and/or entities.

These Discovery Requests shall be deemed to continue from time of service until the trial of this case so that if any information sought herein comes to your knowledge or the knowledge of your representatives or attorneys after the Answers to Plaintiffs' Discovery Request have been submitted, you are required to supplement your Answers with additional responses in accordance with Rule 33(b)(5) of the Rules of Practice for the Circuit Court of South Carolina.

MARK C. TANENBAUM, P.A.

By: 

STEPHEN A. BUTAITIS
steve@tanenbaumlaw.com
241-243 East Bay Street
Post Office Box 20757
Charleston, SC 29413-0757
Telephone: (843) 577-5100
Facsimile: (843) 722-4688

**BLUESTEIN, JOHNSON &
BURKE, LLC**

BRIAN C. JOHNSON
bjohnson@bjblawfirm.com
1024 eWall Street, Suite 101
Mt. Pleasant, SC 29464
Telephone (843) 571-7161
Facsimile (843) 571-4919

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina

December , 2016

Full docket text for document 19:

TEXT ORDER: The Court held an informal telephone conference with counsel regarding Plaintiff's motion to compel [18]. After hearing from counsel, it was agreed by counsel that Defendant's counsel will send to Plaintiff's counsel responses to the discovery requests by next Wednesday, May 23, 2012. Defendant's counsel and Plaintiff's counsel both indicated that the case may be appropriate for arbitration, and Plaintiff's counsel indicated she would like to have some basic discovery prior to her consideration of a formal consent to arbitration.

Therefore, Defendant's counsel shall provide responses to discovery—reserving the right to raise appropriate objections—by Wednesday, May 23, 2012. Plaintiff's motion to compel [18] is **DISMISSED without prejudice**, and Plaintiff's counsel shall have the right to re-file another motion to compel if the discovery responses are still unsatisfactory. Signed by The Honorable R. Bryan Harwell on 05/16/2012.(wtin)

PACER Service Center			
Transaction Receipt			
08/16/2022 10:12:39			
PACER Login:	brooklynwest	Client Code:	
Description:	History/Documents	Search Criteria:	4:11-cv-02903-RBH
Billable Pages:	1	Cost:	0.10

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Williams Carpet Contractors, Inc.,	)	CASE NO.: 4:11-cv-02903-RBH
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION TO
	)	COMPEL
D. R. Horton, Inc.,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff hereby moves for an Order compelling discovery pursuant to Rule 37 of the Federal Rules of Civil Procedure. Plaintiff respectfully requests this Court to enter an Order, compelling Defendant to provide responses to Plaintiff's First Interrogatories to Defendant and Plaintiff's First Requests for Production of Documents to Defendant, both dated September 28, 2011. A copy of Plaintiff's First Interrogatories to Defendant is attached hereto as Exhibit A, and a copy of Plaintiff's First Requests for Production of Documents to Defendant is attached hereto as Exhibit B.

The undersigned, as counsel for Plaintiff, hereby affirms that an attempt was made in good faith to resolve this matter with opposing counsel prior to filing this Motion.

McNAIR LAW FIRM, P.A.

s/Henrietta U. Golding
Henrietta U. Golding, Fed. ID #2125
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: (843) 444-1107
Fax: (843) 443-9137
Email: hgolding@mcnair.net
Attorneys for the Plaintiff

Myrtle Beach, South Carolina
May 14, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A No. 2011-CP-26-7995
	)	
Williams Carpet Contractors, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S FIRST
	)	INTERROGATORIES TO
DR Horton, Inc.,	)	DEFENDANT
	)	
Defendant.	)	
	)	

TO: DR HORTON, INC., DEFENDANT

Plaintiff Williams Carpet Contractors, Inc., (hereafter "Plaintiff"), by and through their undersigned attorneys, and pursuant to Rules 33 of the *South Carolina Rules of Civil Procedure*, hereby serve the following Interrogatories upon you to be answered separately and fully in writing under oath. A copy of the sworn answers are to be served on the undersigned attorneys for Plaintiff within thirty (30) days of the date of service of these discovery requests. You are hereby notified that your answers may be used as evidence at trial. Please refer to the *South Carolina Rules of Civil Procedure* regarding your duty to supplement your answers to this discovery and the sanctions imposed for failure to supplement your answers.

A. DEFINITIONS

For the purposes of these Interrogatories, the following words shall be defined as follows:

1. The words “You,” “Your,” or “Defendant,” “DR Horton, Inc.,” or any synonyms thereof, are intended to and shall embrace and include, in addition to each individual party, said party’s attorneys and all officers, agents, servants, employees, representatives, investigators and all others in any way related to or who may have obtained information for or on behalf of said party.
2. **“Document”** or **“Record”** shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is or has been in Your possession, custody, or control, including, but not limited to, **Electronically Stored Information**, correspondence, electronic mail, memoranda, tapes, stenographic or handwritten notes, written forms of any kind, drafts of documents, exhibits, work papers, schedules, forms, elections, audits, charts, plans, articles, specifications, diaries, letters, telegraphs, photographs, minutes, contracts, agreements, reports, surveys, data compilations of any kind, teletypes, telexes, facsimiles, invoices, checks, drafts, statements, receipts, summaries, books, ledgers, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced and also including, but not limited to, drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found in the original documents or that are otherwise not identical to the original documents.
3. **“Electronically Stored Information”** shall mean electronically stored data of any kind whatsoever, including but not limited to electronic mail, internet based mail, instant messaging, web logs, as well as any electronic files and/or documents generated, received or stored upon any devise or in any database whatsoever. Please note that Electronically Stored Information specifically includes all electronic

information regardless of its location and regardless of the medium or type of device in Your custody or control, Your Internet Service Provider, or of which you have knowledge, including but not by way of limitation any portable electronic media, cd, dvd, tape, thumbdrive, pda, cell phone, data phone, laptop computer, home or work desktop computers, other data storage devices, servers, backup and archive devices, minicomputers, mainframes, or Internet computers.

- (a) You are hereby on notice that under the *South Carolina Rules of Civil Procedure* and applicable law, You have a duty to locate, identify, and preserve any and all Electronically Stored Information;
 - (b) This Duty of Preservation requires that You affirmatively take action to suspend any document destruction procedure or policy which is in place. If it is not possible to suspend Your destruction policies and procedures You are to notify Plaintiff immediately to make arrangements to prevent any sanctions or penalty for the destruction of discoverable evidence;
 - (c) This Duty of Preservation commenced with the filing of this Action, and continue for the pendency of this Action.
4. "Communication" or "Correspondence" is used in its broadest sense to encompass any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether face-to-face, by telephone, whether oral or in writing, or by means of electronic, or other medium.
5. "Person" means any natural person, corporation, company, partnership, joint venture, association, or any other association, organization, or entity.

6. "Meeting" means the contemporaneous presence of two or more persons (whether in person or via any telephonic or electronic form of communication), regardless of whether such presence was pre-arranged or by chance, formal or informal, business or personal, or occurred in connection with or as part of some other activity or purpose.
7. "Identify" or "List" when referring to a natural person, shall mean to specifically state the person's name, title, position or office, current business address, current residence address, or most recent known addresses, and such person's telephone number.
8. "Identify" or "List" when referring to a person other than a natural person, shall mean to specifically state the full name of such entity, its form of organization, its present address, and the telephone number of its principal address.
9. "Identify" or "List" when referring to a meeting means to give the date of the meeting, the attendees, the subject matter of the meeting, and the Bates number of any documents that relate to the meeting (if available).
10. "Identify" or "List" when referring to documents means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), address(es), and recipient(s); (v) location of the document; and (vi) Bates number (if available).
11. "Relate to" or "Relating to" means analyzing, containing, concerning, dealing with, constituting defining, describing, discussing, embodying, evidencing, explaining, identifying, mentioning, reflecting, referring to, setting forth, showing, stating, summarizing, supporting, or in any way pertaining to the subject matter of the relevant request.

12. The terms “and” as well as “or” shall be read in the disjunctive, conjunctive, or both, as the case may be, consistent with an interpretation that results in the more extensive response.
13. “Any” refers to any and all documents, persons, or entities inclusively, not the option of responding as to some but not others.
14. “Participate” means to receive or have a part or share of, to help create, form, draft, or write.
15. “Terms” in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.

B. INSTRUCTIONS

1. Each Interrogatory is to be read, construed, and responded to separately and independently without reference to or being limited by any other request.
2. These instructions and definitions should be construed to require answers based upon the knowledge of and information available to the responding party as well as its agents and representatives.
3. These Interrogatories are continuing in nature so as to require that supplemental answers be filed separately if further or different information is obtained with respect to any Interrogatory.
4. To the extent responsive documents or data are maintained as Electronically Stored Information, including but not limited to on a disk, tape, or other magnetic or machine-readable format, please produce the electronic version along with manual and all other documents sufficient to operate, display, read and interpret the programs, documents, or data.

5. If a claim of privilege is asserted with respect to any Interrogatory, in whole or in part, or you refuse to answer any Interrogatory on any other ground, specify the exact basis for your claim that such Interrogatory need not be answered with sufficient specificity to permit the Court to determine the validity of your objection or position.
6. In the event you file a proper and timely objection to a portion of an Interrogatory, please respond to all portions of the Interrogatory that do not fall within the ambit of your objection. For example, if you object to an Interrogatory on the grounds that it is too broad insofar as it covers time periods that you contend are not relevant to this litigation, you should answer as to all time periods which you contend are relevant.
7. If a period is not identified in the individual interrogatory, the relevant time period that shall apply to that Interrogatory is the year 2002 through the present. If, in answering these Interrogatories, you claim an ambiguity in interpreting an Interrogatory or any definition, instruction, or request, that claim shall not be used as a basis for refusing to respond, but there shall be set forth as a part of the response the language deemed to be ambiguous and the interpretation chosen or used in responding to the Interrogatory.
8. If more than one copy of a responsive document exists, produce each copy that includes (a) any notations or markings not on other copies, including handwritten notations or routing or filing instructions; and/or (b) attachments not included as part of other copies.

NOTE A: These Interrogatories shall be deemed continuing so as to require supplemental answers pursuant to Rule 26(e) and Rule 33(b) of the South Carolina Rules of Civil Procedure.

C. INTERROGATORIES

1. Set forth the name of Defendant's information systems for handling and/or processing work to be completed by and/or materials to be supplied by Plaintiff during the development of the subdivisions which are the subject of this Action; and,
 - a. Specifically set forth the identification numbers or other attributes dedicated and/or assigned to Plaintiff within Defendant's information systems; and,
 - b. Specifically set forth the identification numbers or other attributes dedicated and/or assigned to flooring vendors other than Plaintiff within Defendant's information systems.
2. Set forth the name and detailed contact information as to any subcontractor, vendor, and/or supplier of Defendant who has made a claim of non-payment against Defendant in any jurisdiction whatsoever for any reason whatsoever, irregardless of whether said claim resulted in litigation, since 2007.
3. Please set forth a list specifically naming each and every contractor or vendor, other than Plaintiff, who supplied flooring materials and/or labor within the subdivisions which are the subject of this Action. Please set forth detailed contact information as to each and every flooring contractor or vendor named in response to this Interrogatory.
4. Please set forth the name of each and every individual who was charged, in any way whatsoever, with the evaluation of Plaintiff's demands for payment prior to the initiation of this Action.

5. Please set forth a detailed explanation, along with any and all reasons of which Defendant has for failing to pay Plaintiff for the materials and labor provided to and actually employed and/or used within Defendant's subdivisions.
6. Please set forth all contact information for any and all individuals who acted as agents of Defendant in discussing the transactions which are the subject of this Action with anyone, specifically including but not by way of limitation, Plaintiff.
 - a. Please provide detailed contact information as to each individual named, and indicate whether said individual is still employed by Defendant in any way whatsoever; and,
 - b. As to any and all correspondence and/or telephone communications by and between Defendant and any of the persons or the entity identified, please set forth a detailed and specific summary of any and all matters discussed and/or addressed during any said communication.
7. Please set forth a list of any and all contracts, agreements, and/or understandings, whether written and/or oral, with any person that is in any way related to the subject matter of this lawsuit.
8. Please set forth a list of any known Correspondence between the parties to this Action that in any way relate to any claim or defense in this Action.
9. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to

inform the other party of the important facts known to or observed by such witness, or, provide a copy of any written or recorded statements taken from such witness.

(An answer that a given witness will testify "as to their knowledge of the facts," or similar responses will be deemed non-responsive).

10. Set forth the name of each fact witness you intend to call at the trial of this matter.
11. Please give the full names and addresses of all expert witnesses whom you have consulted or whom you expect to call upon at the trial of this case and with respect to each witness state the following:
 - (a) The subject matter on which each said expert witness is expected to testify;
 - (b) The substance of the facts and opinions to which each said expert witness is expected to testify;
 - (c) A summary of the grounds of each opinion;
 - (d) Whether or not any such expert witness is employed by you and in what capacity; and
 - (e) The financial interest each said expert witness has in this litigation.
12. Set forth a list of any and all Documents, Records, and/or Correspondence, as defined above, or other material which in may any way relate to any aspect of any claims or defenses in this matter as follows:
 - (a) All such materials in possession of the party.
 - (b) All such materials which you know or believe to be in the possession of others, together with the identity of the person or entity in possession of the materials.
 - (c) Specify all such materials which you intend to introduce as evidence at the trial of this matter.

13. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
14. Please set forth the names of those individuals, other than Counsel of Record, who assisted in the preparation of Plaintiff's discovery responses.

AS TO ALL DISCOVERY REQUESTS: The Interrogatories above set forth shall continue from the time of service until the time of trial of the case, and any information requested herein which shall come to your knowledge or the knowledge of the parties, after answers have been submitted, shall be promptly submitted to the undersigned.

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P.O. Box 357

Myrtle Beach, SC 29578

(843) 448-2400

Attorneys for Plaintiff



George W. Redman, III

Myrtle Beach, South Carolina

September 27, 2011.

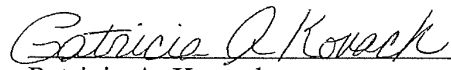
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
C/A No. 2011-CP-26-7995
Williams Carpet Contractors, Inc.,)
and Trevis J. Williams, Individually,)
Plaintiff,)
vs.) CERTIFICATE OF MAILING
DR Horton, Inc.,)
Defendant.)

I, Patricia A. Kovach, as an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., **counsel for Plaintiff Williams Carpet Contractors, Inc.** in the above entitled Action, certify that I have this day served one copy each of the following documents:

1. Plaintiff's First Interrogatories to Defendant;
2. Plaintiff's First Requests for Production of Documents to Defendant;
3. Plaintiff's First Requests for Admissions to Defendant;
4. Plaintiff's Notice of Taking of Deposition of Defendant (Pursuant to Rule 30(b)(6)), and related Subpoena

via First Class U.S. Certified Mail, Return Receipt Requested, Restricted Delivery, on the Registered Agent for the Defendant, at its address of record, with sufficient postage attached thereto as follows:

CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223


Patricia A. Kovach

Myrtle Beach, South Carolina

September 28, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A No. 2011-CP-26-7995
	)	
Williams Carpet Contractors, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S FIRST REQUESTS
	)	FOR PRODUCTION OF DOCUMENTS
DR Horton, Inc.,	)	TO DEFENDANT
	)	
Defendant.	)	
_____	)	

TO: DR HORTON, INC., DEFENDANT

You are hereby requested under the provisions of Rule 34 of the *South Carolina Rules of Civil Procedure* to produce and permit Plaintiff Williams Carpet Contractors, Inc., (hereafter "Plaintiff") or persons acting on Plaintiff's behalf, to inspect, measure, photograph, and copy the documents and tangible things designated hereafter which are in your possession, custody, control, or are otherwise available to you and are responsive to the requests contained in the paragraphs below. You shall specify which documents are produced in response to each of the paragraphs. Please refer to the *South Carolina Rules of Civil Procedure* regarding your duty to supplement your answers to this discovery and the sanctions imposed for failure to supplement your answers.

I. DEFINITIONS

For the purposes of these Requests, the following words shall be defined as follows:

- (a) The words “You,” “Your,” or “Defendant,” “DR Horton, Inc.,” or any synonyms thereof, are intended to and shall embrace and include, in addition to each individual Defendant, said Defendant’s attorneys and all officers, agents, servants, employees, representatives, investigators and all others in any way related to or who may have obtained information for or on behalf of said Defendant.
- (b) “**Document**” or “Record” shall mean each and every written, recorded, or graphic matter of any kind, type, nature, or description that is or has been in Your possession, custody, or control, including, but not limited to, **Electronically Stored Information**, correspondence, electronic mail, memoranda, tapes, stenographic or handwritten notes, written forms of any kind, drafts of documents, exhibits, work papers, schedules, forms, elections, audits, charts, plans, articles, specifications, diaries, letters, telegraphs, photographs, minutes, contracts, agreements, reports, surveys, data compilations of any kind, teletypes, telexes, facsimiles, invoices, checks, drafts, statements, receipts, summaries, books, ledgers, or any written or recorded materials of any other kind, however stored, recorded, produced, or reproduced.

Please note that the terms Document and Record includes, but is not necessarily limited to, drafts or copies of any of the foregoing that contain any notes, comments, or markings of any kind not found in the original documents or that are otherwise not identical to the original documents.

“Electronically Stored Information” shall mean electronically stored data of any kind whatsoever, including but not limited to electronic mail, internet based mail, instant messaging, web logs, as well as any electronic files and/or documents generated, received or stored upon any device or in any database whatsoever. Please note that Electronically Stored Information specifically includes all electronic information regardless of its location and regardless of the medium or type of device in Your custody or control, Your Internet Service Provider, or of which you have knowledge, including but not by way of limitation any portable electronic media, cd, dvd, tape, thumbdrive, pda, cell phone, data phone, laptop computer, home or work desktop computers, other data storage devices, servers, backup and archive devices, minicomputers, mainframes, or Internet computers.

- (I) You are hereby on notice that under the South Carolina Rules of Civil Procedure and applicable law, You have a duty to locate, identify, and preserve any and all Electronically Stored Information;
- (ii) This Duty of Preservation requires that You affirmatively take action to suspend any document destruction procedure or policy which is in place. If it is not possible to suspend Your destruction policies and procedures You are to notify Plaintiff immediately to make arrangements to prevent any sanctions or penalty for the destruction of discoverable evidence;
- (iii) This Duty of Preservation commenced with the filing of this Action, and continue for the pendency of this Action.

- (c) “Communication” or “Correspondence” is used in its broadest sense to encompass any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether face-to-face, by telephone, whether oral or in writing, or by means of electronic, or other medium.
- (d) The terms “and” as well as “or” shall be read in the disjunctive, conjunctive, or both, as the case may be, consistent with an interpretation that results in the more extensive response.
- (e) “Any” refers to any and all documents, persons, or entities inclusively, not the option of responding as to some but not others.

II. INSTRUCTIONS

- (a) Defendant can comply with this request by making copies of the Documents and forwarding such copies to Plaintiff at the offices of the Plaintiff’s counsel, Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, along with the bill for copying expenses within thirty (30) days after service of this request.
- (b) To the extent responsive Documents or data are maintained as Electronically Stored Information, as defined above, please produce the electronic version along with manual and all other documents sufficient to operate, display, read and interpret the programs, documents, or data.

- (c) If more than one copy of a responsive Document exists, produce each copy that includes (a) any notations or markings not on other copies, including handwritten notations or routing or filing instructions; and/or (b) attachments not included as part of other copies.
- (d) Each Request is to be read, construed, and responded to separately and independently without reference to or being limited by any other request.
- (e) If the Defendant responds that the Documents requested are not in their control, the identity of the party who has control and the location of the documents shall be stated.
- (f) If any documents otherwise required to be produced by this request are withheld, Defendant shall identify the document by stating its date, author, recipients, and the reason for withholding. If a claim of privilege is asserted, or you refuse to answer any Request upon any other ground, specify the exact basis for your claim that such Request is answered with sufficient specificity to permit the Court to determine the validity of your objection or position.
- (g) In the event you file a proper and timely objection to a portion of any Request, please respond to all portions of the Interrogatory that do not fall within the ambit of your objection. For example, if you object to an Interrogatory on the grounds that it is too broad insofar as it covers time periods that you contend are not relevant to this litigation, you should answer as to all time periods which you contend are relevant.

- (h) If, in answering these Requests, you claim an ambiguity in interpreting any definition, instruction, or Request, that claim shall not be used as a basis for refusing to respond, but there shall be set forth as a part of the response the language deemed to be ambiguous and the interpretation chosen or used in responding to the Interrogatory.
- (i) Please produce truthful and accurate copies of all Documents and materials. If you produce Documents or materials that you contend are not truthful and accurate copies, please so state in your response to this request.
- (j) This Request for Production of Documents shall be deemed continuing so as to require supplemental answers pursuant to Rule 26(e) of the *South Carolina Rules of Civil Procedure*.

III. REQUESTS

1. Provide a complete and legible copy of any and all contracts and/or agreements between the Parties to this Action.
2. Provide a complete copy of any Documents or Correspondence (as defined above) which explains why Plaintiff was not and is not to be paid for having supplied materials and/or labor within Defendant's subdivisions.
3. Provide any and all Documents and Correspondence between Plaintiff and Defendant and any other entities and individuals, including any and all suppliers, which may in any way relate to claims and defenses which are the subject of this Action.

4. Provide copies of any and all Documents, agreements, contracts, sub-contracts, invoices, plans, specifications, blueprints, correspondence, drawings, renderings, notes, memos, interoffice memos, appraisals, studies and any other Documents pertaining to any work performed that relates to the Property that is in any way related to the claims and defenses which are the subject of this Action.
5. Provide any and all Documents photographs, videotapes, movies, plans, plats, diagrams, sketches, or other prepared Documents, records, studies, and reports in possession of the Defendant, or said Defendant's attorneys and all officers, agents, servants, employees, representatives, investigators and any others who may have obtained information for or on behalf of said Defendant, which relate in any way to the subject Project and have not been previously requested herein.
6. Provide any and all Documents or physical evidence which may be used at the trial of this case, to establish proof of claims, damages, or refutation of claims, or that may pertain to the subject of this action and which may be utilized at the time of trial as evidence, for the purpose of examining or cross-examining a witness, for demonstrative purposes, or in any manner whatsoever, regardless of whether those documents may tend to be adverse or favorable to the interest of any party in this action.
7. Provide any and all Documents received as a result of any subpoena served by any party in this action.
8. Provide any and all Documents referred to in response to Plaintiff's Interrogatories served simultaneously herewith.

AS TO ALL DISCOVERY REQUESTS: The Requests set forth above shall continue from the time of service until the time of trial of the case, and any information requested herein which shall come to your knowledge or the knowledge of the Parties, after answers have been submitted, shall be promptly submitted to the undersigned.

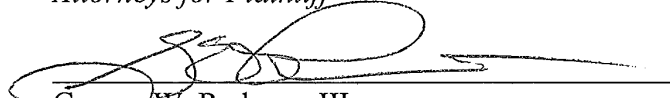
**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

P.O. Box 357

Myrtle Beach, SC 29578

(843) 448-2400

Attorneys for Plaintiff


George W. Redman, III

Myrtle Beach, South Carolina

September 27, 2011.

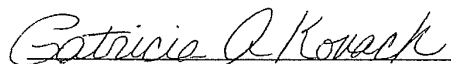
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
C/A No. 2011-CP-26-7995
Williams Carpet Contractors, Inc.,)
and Trevis J. Williams, Individually,)
Plaintiff,)
vs.) CERTIFICATE OF MAILING
DR Horton, Inc.,)
Defendant.)

I, Patricia A. Kovach, as an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., **counsel for Plaintiff Williams Carpet Contractors, Inc.** in the above entitled Action, certify that I have this day served one copy each of the following documents:

1. Plaintiff's First Interrogatories to Defendant;
2. Plaintiff's First Requests for Production of Documents to Defendant;
3. Plaintiff's First Requests for Admissions to Defendant;
4. Plaintiff's Notice of Taking of Deposition of Defendant (Pursuant to Rule 30(b)(6)), and related Subpoena

via First Class U.S. Certified Mail, Return Receipt Requested, Restricted Delivery, on the Registered Agent for the Defendant, at its address of record, with sufficient postage attached thereto as follows:

CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223


Patricia A. Kovach

Myrtle Beach, South Carolina

September 28, 2011

EXHIBIT 5

ELECTRONICALLY FILED DECEMBER 20, 2021 AT 7:56 AM AKAHARSETHON COMMONWEALTHS CASAS E202002P0006939

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Edward Scopelitis and Eric Rehmann,

Plaintiffs,

v.

D.R. Horton, Inc. and Oyster Point
Developers, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-04939

CONSENT ORDER

This matter is before me on the following motions:

- Defendant D.R. Horton, Inc.'s ("DRH") Motion to Stay Discovery, filed January 21st, 2021;
- The Plaintiffs' Motion to Compel against DRH, filed March 17th, 2021;
- DRH's Motion to Dismiss, filed April 7th, 2021, and
- DRH's Amended Motion to Stay Discovery, filed April 8th, 2021.

Attorneys for the parties involved in these motions inform the Court that they have resolved all issues underlying these motions and ask the Court to enter an order memorializing the terms of their agreement. Finding that the parties at issue have consented to this order; and that the terms proposed are reasonable, economical, and in accordance with the letter and spirit of the applicable rules, I find and order as follows:

1. That the Plaintiffs have fully complied with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. Section 40-59-810 *et seq.*

2. That discovery may commence in the usual fashion, and that DRH shall have thirty (30) days from the date of this order to respond to the Plaintiffs' Interrogatories and Requests for

Production referenced in the March 17th, 2021, Motion to Compel.

3. That this order resolves all five (5) motions referenced herein.

AND IT IS SO ORDERED.

Presiding Judge, Court of Common Pleas
Ninth Judicial Circuit

July __, 2021
Charleston County, South Carolina

WE CONSENT:

s/Alexandra Scott Williams
Benjamin A.C. Traywick, SC Bar #74027
Alexandra Scott Williams, SC Bar #102862
BEN TRAYWICK LAW FIRM, LLC
171 Church Street, Suite 340
Charleston, SC 29401
P: 843-872-1709
F: 843-695-7839
ben@bentraywicklaw.com
ali@bentraywicklaw.com

Attorneys for the Plaintiffs

WE CONSENT:

s/Jason M. Imhoff
John T. Crawford, Jr. (SC Bar # 69682)
Jason M. Imhoff (SC Bar # 69355)
KENISON, DUDLEY & CRAWFORD,
LLC
704 East McBee Avenue
Greenville, South Carolina 29601
Telephone: (864) 242-4899
Facsimile: (864) 242-4844
crawford@conlaw.com
imhoff@conlaw.com

Attorneys for D.R. Horton, Inc.



It is so ordered.

Electronically signed on 2021-07-26 14:16:26 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Edward Scopelitis and Eric Rehmann,

Plaintiffs,

v.

D.R. Horton, Inc. and Oyster Point
Developers, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-04939

**PLAINTIFFS' MOTION TO COMPEL
DEFENDANT D.R. HORTON, INC.**

TO THE ABOVE-NAMED DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned counsel, will move pursuant to Rules 26, 33, 34 and 37, *SCRCP*, for an order compelling Defendant D.R. Horton, Inc. (hereinafter "DR Horton") to provide complete responses to the Plaintiffs' First Interrogatories and Requests for Production. The basis for this motion is that the time provided by rules for DR Horton's responses to have been served has elapsed, and no responses have been provided by the Defendant. DR Horton was served discovery on December 7, 2020. Pursuant to Rule 11, *SCRCP*, Plaintiffs' counsel has consulted with DR Horton's counsel, to no avail.

To date, DR Horton has not provided any response. Should DR Horton serve responses between the date of this notice and the date this matter is set for hearing, Plaintiffs' counsel will work with defense counsel to narrow the range of issues to be addressed by the court.

[SIGNATURE PAGE FOLLOWS]

BEN TRAYWICK LAW FIRM, LLC

s/Alexandra Williams

Benjamin A. C. Traywick (SC Bar No. 74027)

Alexandra S. Williams (SC Bar No. 102862)

171 Church Street, Suite 340

Charleston, SC 29401

T: 843-872-1709

F: 843-695-7839

ben@bentraywicklaw.com

ali@bentraywicklaw.com

Attorneys for the Plaintiffs

March 17, 2021

Charleston, South Carolina

EXHIBIT 6

ELECTRONICALLY FILED - 2022 Aug 17 9:39 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069

From: Benjamin Shelton
To: Stephanie Simpson <brooklyn.valentine@conlaw.com>; Jason Imhoff
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC
Date: Thursday, September 30, 2021 2:35:08 PM
Attachments: maw001.png
maw001.png

Hi Stephanie,

Do you have a timeline in mind? I do not want this hanging out there perpetually, and without any response I may need to file a motion.

Thank you—

Ben



SHELTON LAW FIRM

Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Stephanie Simpson <simpson@conlaw.com>
Sent: Thursday, September 30, 2021 2:28 PM
To: Brooklyn Valentine <brooklyn@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Benjamin Shelton <ben@sheltonlawsc.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC
Importance: High

Brooklyn/Ben,

I apologize we have not responded yet. We are still trying to obtain the file from our client. We will provide responses as soon as we get the file.

Thank you for your patience in this matter.



Stephanie S. Simpson
Paralegal
KENNISON, DUDLEY & CRAWFORD, LLC
778 East McIver Avenue
Greenville, SC 29601
Email: simpson@conlaw.com
Main: (843) 342-4899
Mobile: (843) 347-0520
Website: www.conlaw.com

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Kennison, Dudley & Crawford, LLC by replying to this email and delete the original and reply emails. Thank you.

From: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Sent: Friday, September 17, 2021 4:37 PM
To: Jason Imhoff <jimhoff@conlaw.com>; Stephanie Simpson <simpson@conlaw.com>
Cc: Benjamin Shelton <ben@sheltonlawsc.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Dear Attorney Imhoff,

Please see the attached correspondence from Ben Shelton.

With kindest regards,



SHELTON LAW FIRM

BROOKLYN VALENTINE WEST

Litigation Paralegal
Shelton Law Firm, LLC
10 Hospital Center Commons, Suite 400
(Mailing: P.O. Box 21009)
Hilton Head Island, SC 29926 (29925)

phone | 843-802-0087
fax | 843-459-7908
email | brooklyn@sheltonlawsc.com
web | www.sheltonlawsc.com

CONFIDENTIALITY NOTICE: THIS E-MAIL TRANSMISSION, INCLUDING ANY ATTACHMENTS, MAY CONTAIN CONFIDENTIAL OR PRIVILEGED INFORMATION AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. RECEIPT OF THIS TRANSMISSION BY ANY PERSON OTHER THAN THE INTENDED RECIPIENT, OR BY A RECIPIENT WHICH IS IN NOT THE INTENDED RECIPIENT BY THE CONTEXT, DOES NOT CONSTITUTE PERMISSION TO EXAMINE, COPY OR DISTRIBUTE THE ACCOMPANYING MATERIAL. IF YOU RECEIVE THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER BY REPLY E-MAIL AND DESTROY ALL COPIES OF THE ORIGINAL MESSAGE.

PROSPECTIVE CLIENTS: NO ATTORNEY-CLIENT ENGAGEMENT IS CREATED WITHOUT EXPRESS INTENT OR UNDERSTANDING OF THE SAME.
UNDERSTANDING OF THE SAME.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Friday, September 3, 2021 2:56 PM
To: Stephanie Simpson <simpson@conlaw.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Yes, of course. Thanks—have a great weekend!

Ben



SHELTON LAW FIRM

Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Stephanie Simpson <simpson@conlaw.com>
Sent: Friday, September 3, 2021 2:43 PM
To: Benjamin Shelton <ben@sheltonlawsc.com>; Jason Imhoff <jimhoff@conlaw.com>
Cc: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Ben,

Thank you for adding me. Can you please give us an extension until September 15th? We have them due as 8/23 but we have been snowed under.

Thank you for your consideration and have a great weekend!



Stephanie S. Simpson
Paralegal
KENNISON, DUDLEY & CRAWFORD, LLC
778 East McIver Avenue
Greenville, SC 29601
Email: simpson@conlaw.com
Main: (843) 342-4899
Mobile: (843) 347-0520
Website: www.conlaw.com

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Kennison, Dudley & Crawford, LLC by replying to this email and delete the original and reply emails. Thank you.

From: Benjamin Shelton <ben@sheltonlawsc.com>
Sent: Friday, September 03, 2021 2:41 PM
To: Jason Imhoff <jimhoff@conlaw.com>
Cc: Brooklyn Valentine <brooklyn@sheltonlawsc.com>; Stephanie Simpson <simpson@conlaw.com>
Subject: RE: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Jason,

Replying all and adding Stephanie to this.

Ben



Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Benjamin Shelton
Sent: Friday, September 3, 2021 2:39 PM
To: imhoff@conlaw.com
Cc: Brooklyn Valentine (brooklyn@sheltonlawsc.com) <brooklyn@sheltonlawsc.com>
Subject: FW: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC
Importance: High

Hi Jason,

I hope all is well. I do not believe we received answers to these discovery requests and do not have an extension noted on my calendar. Please advise, and confirm that answers and responses will be forthcoming soon.

Best regards,

Ben



Benjamin T. Shelton
ben@sheltonlawsc.com
office | 843-802-0087
mobile | 843-295-0915
fax | 843-459-7908

From: Brooklyn Valentine <brooklyn@sheltonlawsc.com>
Sent: Thursday, July 22, 2021 12:06 PM
To: imhoff@conlaw.com
Cc: Benjamin Shelton <ben@sheltonlawsc.com>; Paralegal <paralegal@sheltonlawsc.com>; sbrown@yclaw.com; griffith@yclaw.com; trusparelia@hsblawfirm.com
Subject: Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC, and Lotty Trucking LLC

Dear Mr. Imhoff,

I hope this e-mail finds you well. Attached for service upon you by e-mail only is a copy of the First Request for Production and First Set of Interrogatories regarding the above-referenced matter. Hard copies will only be mailed upon request.

Please let us know if you have any questions or concerns.

With kindest regards,



BROOKLYN VALENTINE WEST

Litigation Paralegal
Shelton Law Firm, LLC
10 Hospital Center Commons, Suite 400
(Mailing: P.O. Box 21069)
Hilton Head Island, SC 29926 (29925)

phone | 843-802-0087
fax | 843-459-7908
email | paralegal@sheltonlawsc.com
web | www.sheltonlawsc.com

CONFIDENTIALITY NOTICE: THIS E-MAIL TRANSMISSION, INCLUDING ANY ATTACHMENTS, MAY CONTAIN CONFIDENTIAL OR PRIVILEGED INFORMATION AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. RECEIPT OF THIS TRANSMISSION BY ANY PERSON OTHER THAN THE INTENDED RECIPIENT, OR BY A RECIPIENT WHICH IS IN NOT THE INTENDED RECIPIENT BY THE CONTEXT, DOES NOT CONSTITUTE PERMISSION TO EXAMINE, COPY OR DISTRIBUTE THE ACCOMPANYING MATERIAL. IF YOU RECEIVE THIS E-MAIL IN ERROR, PLEASE NOTIFY THE SENDER BY REPLY E-MAIL AND DESTROY ALL COPIES OF THE ORIGINAL MESSAGE.

PROSPECTIVE CLIENTS: NO ATTORNEY-CLIENT ENGAGEMENT IS CREATED WITHOUT EXPRESS INTENT OR UNDERSTANDING OF THE SAME.
UNDERSTANDING OF THE SAME.

EXHIBIT 7

SHELTON LAW FIRM



A Litigation Practice
INSURANCE • INJURY • BUSINESS

August 10, 2022

imhoff@conlaw.com

Mr. Jason Imhoff
Kenson, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601

Re: *Mark McGilton v. DR Horton, Inc., 1223 May River Road, LLC,
and Lotty Trucking LLC*

Dear Jason,

I am writing in regard to D.R. Horton's ("DRH") discovery responses, which were served on July 15, 2022. After our review of said responses, we note several deficiencies, and we hereby request that you supplement the responses of DRH to bring them into compliance with the South Carolina Rules of Civil Procedure. Please provide this firm with supplemental discovery responses by August 25, 2022, otherwise we will file a motion to compel same. This letter is our Rule 11, SCRCP, consultation in this regard. Specifically, please correct the following deficiencies:

- General Interrogatory No. 1: DRH's Answer refuses to name the directors and officers of DRH. This information is clearly discoverable within the scope of the SCRCP. Further, DRH's Answer references its "business records" as the responsive information. Not only does this Answer not comply with the SCRCP by not specifying the specific page numbers or location of the documents with the responsive information, none of the roughly 400 pages of documents produced pursuant to these discovery requests provide an Answer to this Interrogatory. Please supplement accordingly.
- General Interrogatories Nos. 10 & 11: DRH Answers these Interrogatories by generally stating that DRH is an additional insured on its subcontractors' insurance policies. These Answers are nonresponsive and deficient. Please supplement to provide sufficient Answers to the Interrogatories that list the requested information.

BENJAMIN T. SHELTON
SHELTON LAW FIRM, LLC, a South Carolina limited liability company
PO BOX 21069
HILTON HEAD ISLAND, SC 29925

ben@sheltonlawsc.com
(843) 802-0087

ELECTRONICALLY FILED - 2022 Aug 17 9:39 AM - JASPER - COMMON PLEAS - CASE#2021CP2700069

- General Interrogatory No. 12: DRH objects to this Interrogatory claiming it is overbroad, and then states that DRH is investigating this matter. As you are aware, DRH took over eleven months to respond to Plaintiff's discovery requests. This is more than a reasonable amount of time in which to make an investigation into this matter so that DRH could provide a sufficient response. Please supplement accordingly.
- General Interrogatory No. 13: DRH objects to this Interrogatory, refers Plaintiff to its business records, which have not been produced, and states that DRH's investigation is ongoing into the matter. This Interrogatory requests DRH's purpose in developing Cypress Ridge. It is unreasonable for DRH to take the position that it is investigating its purpose into developing Cypress Ridge as DRH would have been aware of its purpose when it started the development process. As DRH's objections are not applicable and unreasonable, please supplement accordingly.
- General Interrogatory No. 14: DRH objects to this Interrogatory claiming it is overbroad and seeks privileged information. This is not the case. The Interrogatory requests the names of individuals and/or entities DRH has communicated with regarding this lawsuit. Obviously, Plaintiff is not asking for the name, date, and substance of its attorney-client communications. Plaintiff is asking for all non-privileged communications DRH has had regarding this lawsuit. Please provide the requested information. Further, DRH's document production contains at most 10 pages of emails. It defies reason that DRH is in possession of such few emails with regard to a multimillion-dollar development. Please supplement accordingly.
- General Interrogatory No. 17: DRH refers to Interrogatory No. 1 in response. This Answer is nonsensical as Interrogatory No. 1 is a list of DRH's fact witnesses. This Interrogatory requests the facts, witnesses, and documents that DRH contends supports each of its affirmative defenses. DRH's reference to its Answer to Interrogatory No. 1 is wholly inadequate. Please supplement accordingly.
- Failure to Specifically Identify Documents: DRH references its "business records" in response to many of Plaintiff's Interrogatories, but DRH fails to specify the specific pages that are responsive thereto. This is in violation of Rule 33(c), SCRPC, which states that the "specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained." After our examination of the purported "business records"

RULE 11 LETTER TO DR HORTON RE INITIAL DISCOVERY RESPONSES

that DRH produced, we are unable to ascertain which records respond to the following Interrogatory Answers: General Interrogatories 1, 2, 3, 5, 6, 7, 8, 9, 13, 16, 19, 27, 28, 29, and 30. Please supplement these responses by providing the specific pages of DRH's "business records" that DRH is referring to in its respective Answers.

As stated above, please provide us with supplemental discovery responses by August 25, 2022, or we will file a motion to compel same. Please know that this letter does not identify all deficiencies related to DRH's discovery responses. Instead, the issues above constitute some of the most glaring issues we have initially identified, and does not waive any argument to identify and demand answers and more thorough responses to other deficiencies in the future. Please let us know if you have any questions.

With kind regards, I am

Most Sincerely Yours,

SHELTON LAW FIRM, LLC

s/ Benjamin T. Shelton

Attorney at Law / Founding Member
SC Bar No. 77207

Enclosure:

cc: