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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

In Its Common Law Jurisdiction

Re: Circuit Court Case No. 2022-CP-23-03974

Robert Baddorf and Jo Anne Gregory, individually,
and on behalf of all others similarly situated, ……Respondents,

v.

D.R. Horton, Inc., ……..Petitioner,

AND

D.R. Horton, Inc., ……Third-Party Plaintiff,

v.

Southern States Resources, LLC; Raby Construction Company, LLC; Builders FirstSource – Southeast Group, LLC; Lansing Building Products, LLC; Cannady's Siding & Gutter, Inc., P&L Enterprises, LLC; Southern Siding & Gutters, LLC; Meridian Brick, LLC; General Shale Brick, Inc.; M&L Reyna Construction, LLC; Saldana Brothers, Inc.; VL Concrete, Inc.; Sandlapper Concrete, LLC; Five Star Foundation, LLC; Star Concrete Specialists, LLC; Brundage Bone Concrete Pumping, Inc.; RL Grading, Inc.; Bold Mountain, LLC f/k/a Bold Mountain, Inc.; Kodiak Company, LLC f/k/a Kodiak Construction, LLC; Gun Range Builder, LLC; and Signature Scapes, Inc., ……Third-Party Defendants.

PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

1. This lawsuit concerns alleged construction defects in a 127-single-family-home neighborhood. The circuit court certified seven separate class actions related to seven separate construction systems (Windows; Siding; Concrete; Grading; HVAC; Stone; and Brick), within which Plaintiffs have alleged upwards of 44 unique defects. Was it error, and a denial of due process, for the circuit court to certify class actions across such a broad range of alleged defects where Rule 23 will preclude individualized discovery and defenses, and where Plaintiffs will not be required to prove the existence of defects, causation, and damages at every home?
2. Did the circuit court err by certifying seven separate class actions in this multi-home, multi-issue construction defect case without identifying or certifying an overarching class?
3. Did the circuit court exceed its authority by failing to address the Court's recent decision in *Henson v. South Carolina Department of Corrections* holding that South Carolina's class action procedures, like their federal counterparts, contain a "predominance" requirement?

INTRODUCTION

These seven putative class actions concern alleged construction defects in a 127-single-family-home neighborhood. Plaintiffs have alleged potential defects across seven separate construction systems—Windows; Siding; Concrete; Grading/Stormwater; HVAC; Stone; and Brick. Within these seven systems, Plaintiffs have alleged upwards of 44 unique defects that *could* exist at each home. Allowing this lawsuit to move forward as a conglomerate of seven separate class actions will either completely gut the efficiencies Rule 23 seeks to provide to parties suffering from a common injury or, more likely, deny D.R. Horton, Inc. and every other defendant their due process rights to conduct individualized discovery, present individualized defenses, and require each plaintiff to prove the existence of specific construction defects and damages caused thereby. Additionally, given the limited presentation of evidence in a class action trial, it is highly possible that a jury will never hear evidence about defects on homes worked on by certain defendant–subcontractors that performed limited work in the neighborhood.

This misuse of Rule 23 to resolve neighborhood-wide, single-family-home construction-defect cases is on the rise across South Carolina and should be stopped. Accordingly, Petitioner D.R. Horton, Inc. ("Petitioner" or "D.R. Horton") respectfully seeks a common law writ of certiorari to review the circuit court's certification of seven classes in the above-captioned matter. The lower court's decision in this putative class action ignores recent precedent from this Court. That same precedent makes clear that the lower court's decision is not immediately appealable. Therefore, Petitioner seeks an extraordinary writ in the Court's common law jurisdiction to correct this error of law and prevent prejudice both to Petitioner and the courts. While it is understood that this Court only issues these writs in extraordinary circumstances, because of the impact of the

lower court's order on many pending and future class actions, and for the reasons set forth below, such circumstances exist in this case.

STATEMENT OF THE CASE

This case began in July 2022 as a single-issue construction-defect case alleging defects in grading and storm water drainage. (*See* Compl. ¶¶ 20, 34, attached hereto as **Exhibit A**.) After several suspiciously timed amended complaints,[1] the case morphed into a putative class action with alleged defects across seven different construction systems. (*See* Fourth Am. Compl. ¶ 49, attached hereto as **Exhibit C**.) The circuit court denied Plaintiffs' first motion for class certification; however, the court invited Plaintiffs to refile and seek certification of separate classes, which the court described as "subclasses," declaring that "there will be no overarching class." (Order Denying Class Certification at 16, June 4, 2025, attached hereto as **Exhibit D**.) Plaintiffs accepted the invitation and filed a second motion for class certification. (*See* Pls.' Notice of Mot. & Mot. for Class Certification(s) at 1–2, Mar. 17, 2026, attached hereto as **Exhibit E**.) The circuit court granted this second motion. (Order Granting Pls.' Mot. for Certification Defect Classes, July 15, 2026, attached hereto as **Exhibit F**.) That decision, along with the circuit court's denial of D.R. Horton's motion to reconsider, (Form 4 Order, Oct. 13, 2026, attached hereto as **Exhibit G**), are the subjects of this petition.

ARGUMENTS

This Court recently clarified that class certification orders are—without exception—not immediately appealable. *Henson v. S.C. Dep't of Corr.*, Op. No. 28343, slip op. at 4, 2026 S.C. LEXIS 122, at *6 (S.C. Sup. Ct. filed July 22, 2026) (Howard Adv. Sh. No. 27 at 12, 15–16).

[1] Petitioner discussed this issue in detail in its opposition to Plaintiffs' motion for class certification. (*See* D.R. Horton's Mem. Opp'n Pls.' Second Mot. for Subclass Certification at 6–10 & Ex. 1, excerpted and attached hereto as **Exhibit B**.)

However, the Court also recognized its authority to issue common law writs, including writs of certiorari, to review lower court decisions. *Id.* at *4–5; *see* S.C. Const. art. V, § 5; S.C. Code Ann. § 14-3-310. These writs are not "writ[s] of right, but will be granted or denied in the discretion of the Court, according to the circumstances of each particular case, as justice may require." *State ex rel. Martin v. Moore*, 54 S.C. 556, 562–63, 32 S.E. 700, 702 (1899).

The Court exercises this authority in "exceptional circumstances," such as where there are "novel question[s] of law in a matter that ha[ve] been the subject of numerous claims," and immediate resolution would "best serve[] the interests of judicial economy by eliminating the numerous inevitable appeals raising th[at] novel issue of significant public interest." *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471–72, 674 S.E.2d 154, 160–61 (2009). The Court is particularly likely to issue such writs "to correct errors of law . . . where a trial court exceeded its authority." *State v. Price*, 441 S.C. 423, 433, 895 S.E.2d 633, 638 (2023). The present case raises both concerns.

I. Due Process Cannot Be Afforded in Multi-Home, Multi-Defect Class Actions, and Certifying Seven "Subclasses" Exacerbates this Constitutional Deficiency

Allowing multi-defect, single-family-home, neighborhood-wide construction-defect cases to proceed under the rubric of Rule 23 will either gut the efficiencies Rule 23 seeks to provide or it will deny due process to those parties forced to defend against such actions. This Court should allow neither.

Rule 23 is designed to provide efficiencies where a group of plaintiffs have suffered a common injury from a common cause, most typically perpetrated by a common defendant. Rule 23 limits discovery of absent class members and instead relies on a representative plaintiff, under the theory that an injury proven to the representative plaintiff is an injury proven to the absent class members. This same logic does not apply in residential construction-defect cases when the alleged

construction defects are not product-related, but are based on the quality of workmanship, which varies contractor to contractor and home to home, and resultant damages, if any, that vary home to home.

Under this scenario, the only way to identify the existence and cause of any defect, and determine resultant damages, is to evaluate each alleged defect on a home-by-home basis. Here, however, Plaintiffs alleged upwards of 44 unique defects stemming from seven different construction systems . In these circumstances, the efficiencies of the class action procedure cannot be maintained while also preserving defendants' due process rights.

The specifics of this case demonstrate the danger of letting the circuit court's order stand—to Petitioner, other homebuilders in South Carolina, and the court system itself. Single-family residential construction-defect cases are ill-suited for class treatment, but such cases have recently become a cottage industry in South Carolina.

Plaintiffs' counsel alone are currently litigating *five* putative class actions against Petitioner,[2] and Petitioner is facing another putative class action brought by different counsel.[3] Petitioner is aware of at least twelve additional recent or ongoing class actions against homebuilders or contractors in South Carolina involving single-family-home neighborhoods[4] and

[2] In addition to this case, Plaintiffs' counsel have ongoing putative class actions against Petitioner in **(1)** *Vriens v. Tip-Top Roofing & Constr., LLC*, No. 2:23-cv-6797-DCN (D.S.C.); **(2)** *Williams v. D.R. Horton, Inc.*, No. 2025-CP-04-02216 (S.C. Ct. Com. Pl. Anderson County), *removed*, No. 8:26-CV-00097-DCC (D.S.C.), *appealed*, No. 26-1713 (4th Cir.); **(3)** *Tyler v. D.R. Horton, Inc.*, No. 2022-CP-08-02548 (S.C. Ct. Com. Pl. Berkeley County); and **(4)** *Brunetti v. D.R. Horton, Inc.*, No. 2023-CP-08-02903 (S.C. Ct. Com. Pl. Berkeley County).

[3] *Fernandes v. D.R. Horton, Inc.*, No. 2024-CP-18-00821 (S.C. Ct. Com. Pl. Dorchester County).

[4] **(1)** *Griffith v. JMC Cmtys., Inc.*, No. 2024-CP-39-00465 (S.C. Ct. Com. Pl. Pickens County); **(2)** *Rivers v. Lennar Carolinas, LLC*, No. 2023-CP-18-01209 (S.C. Ct. Com. Pl. Dorchester County); **(3)** *Ridge at Chukker Creek Owners Ass'n v. FPA, Inc.*, No. 2022-CP-02-00481 (S.C. Ct. Com. Pl. Aiken County); **(4)** *Davis v. Mills Grading, Inc.*, No. 2021-CP-29-01494 (S.C. Ct. Com. Pl. Lancaster County); **(5)** *Russo v. Eastwood Constr. Partners*, No. 2020-CP-10-03786 (S.C. Ct.

townhome communities.[5] This is despite the fact that, as courts in other states have recognized, "single-family residence constructional defect cases will rarely be appropriate for class action treatment." *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 542 (Nev. 2005).

To begin with, class certification "is incompatible with the fundamental maxim that each parcel of land is unique." *City of San Jose v. Superior Court*, 525 P.2d 701, 711 (Cal. 1974).[6] This uniqueness "weigh[s] heavily in favor of requiring independent litigation." *Id.* at 711. Any damages calculation will inevitably "implicate myriad 'house specific' issues, including but not limited to the type of repair needed on each house" and "the costs of materials needed for the repairs." *In re Stucco Litig.*, 175 F.R.D. 210, 215 (E.D.N.C. 1997). Moreover, the construction of each home involves different contractors, suppliers, and manufacturers, making classwide resolution of comparative fault impossible.[7] *See id.* (noting that "comparative fault would have to

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Com. Pl. Charleston County); **(6)** *Zitek v. D.R. Horton, Inc.*, No. 2019-CP-04-1942 (S.C. Ct. Com. Pl. Anderson County); **(7)** *Bleier v. Spring Grove Plantation Dev.*, 2016-CP-08-02895 (S.C. Ct. Com. Pl. Berkeley County); **(8)** *Damico v. Lennar Carolinas, LLC*, No. 2014-CP-08-02424 (S.C. Ct. Com. Pl. Berkeley County).

[5] **(1)** *Kierspe v. Invesco, LLC*, No. 2020-CP-02-02183 (S.C. Ct. Com. Pl. Aiken County); **(2)** *Summerlake Townhomes Homeowners' Ass'n v. True Homes, LLC*, No. 2020-CP-46-03592 (S.C. Ct. Com. Pl. York County); **(3)** *Atkins v. Clam Farm P'ship*, 2019-CP-10-05277 (S.C. Ct. Com. Pl. Charleston County); **(4)** *Rhoden v. Lennar Carolinas, LLC*, No. 2019-CP-10-04807 (S.C. Ct. Com. Pl. Charleston County).

[6] The California Supreme Court found the trial court's class certification order worthy of a writ of mandamus and directed the trial court to vacate the order and dismiss the class action claims. *San Jose*, 525 P.2d at 705, 713.

[7] The circuit court seemed to recognize this, as it noted that class certification applied only to Plaintiffs' claims against Petitioner. (Order Granting Pls.' Mot. for Certification Defect Classes at 15.) Be that as it may, it cannot supersede Petitioner's and other defendants' right to have liability apportioned among Plaintiffs and themselves. *Cf. Smith v. Tiffany*, 419 S.C. 548, 560–65, 799 S.E.2d 479, 486–88 (2017) (rejecting the idea that rules of procedure trump the method for allocating fault prescribed by the Uniform Contribution Among Tortfeasors Act). The fact that this could require a "second round of litigation calls into question the superiority of the class action procedure." *In re Stucco Litig.*, 175 F.R.D. at 215.

be decided individually for each class member's claim"). These concerns are equally present in this case and are the same concerns the Court expressed in *Henson*.

Crucially, the circuit court's certification of "subclasses" does not ameliorate these concerns. For one, Plaintiffs have identified no South Carolina authority to support combining several "mini-class actions" into a single case. On the contrary, subclasses are appropriate only to address differences *within* a class. *Compare McGann v. Mungo*, 287 S.C. 561, 569–71, 340 S.E.2d 154, 158–59 (Ct. App. 1986) (refusing to dismiss class action allegations *at the pleadings stage* because of possible differences among members of the proposed class and noting that the plaintiffs could designate appropriate subclasses if needed to account for relevant differences *within the class*), *with Mulcahey v. Columbia Organic Chems. Co.*, No. 91-CP-40-3491, 1995 S.C. C.P. LEXIS 1, at *10 (S.C. Ct. Com. Pl. Mar. 31, 1995) (finding no authority to support the creation of the subclasses requested by the plaintiffs). Moreover, even if the circuit court could certify unrelated subclasses, it would not address "th[e] underlying problem of the individuality of the Plaintiffs' claims" in this case. *Mulcahey*, 1995 S.C. C.P. LEXIS 1, at *10; *see, e.g.*, *Hicks v. Kaufman & Broad Home Corp.*, 107 Cal. Rptr. 2d 761, 773 (Ct. App. 2001) (stating that "[g]iven th[e] need for individualized proof, commonality of facts is lost and the action splits into more pieces than the allegedly defective foundations" that were at issue in the case).

For instance, to prevail on their negligence cause of action, Plaintiffs must establish the familiar elements of duty, breach, causation, and damages. *E.g.*, *Magnolia N. Prop. Owners' Ass'n v. Heritage Cmtys., Inc.*, 397 S.C. 348, 368, 725 S.E.2d 112, 123 (Ct. App. 2012). With the exception of the duty Petitioner owes as a homebuilder, Plaintiffs will have to present evidence on *each of these elements* for *each class member*. *Cf. Henson*, 2026 S.C. LEXIS 122, at *10–12 (describing how a jury would have to determine, for each member of the putative class, (1) whether

the inmate was sexually assaulted, (2) whether the state was negligent in failing to prevent the assault, (3) whether the state's negligence was the proximate cause of the assault, and (4) the inmate's damages from the assault).

Consider how this would play out with the stone subclass, which itself consists of *seven* alleged defects.[8] (Order Granting Pls.' Mot. for Certification Defect Classes at 10.) The circuit court acknowledged that all seven alleged defects might not be present in all ninety-two homes with stone facades; nonetheless, the court concluded that they were common enough for classwide resolution. (*Id.* at 10–11.) The court never explained how a factfinder could determine *which* defect or defects are present at each particular home without individualized inquiries. *Cf. Henson*, 2026 S.C. LEXIS 122, at *12–13 (stating that simply determining whether an inmate was a member of the putative class would require "mini-trials in which a jury makes at least 1,768 separate findings of fact" and for which the defendants would be "entitled to make an opening statement, present their own testimony and evidence, and then make a closing argument"). As in *Henson*, due process requires the same here, i.e., Petitioner and Plaintiffs will have to present evidence as to *what* defects (if any) are present in *which* homes, after which a factfinder will make a determination based on the evidence for each house.

The damages inquiry would be equally individualized, if not more so. For instance, Plaintiffs seek damages because they will have to "disclose the existence of the defects to subsequent purchasers and suffer the consequential loss of resale value." (Fourth Am. Compl. ¶ 45.) However, many Plaintiffs are themselves "subsequent purchasers" who did not buy their

[8] Other subclasses also contain multiple alleged defects, which the circuit court acknowledged might not be relevant to all members of the putative subclasses. (*See, e.g.*, Order Granting Pls.' Mot. for Certification Defect Classes at 23 (referencing multiple brick defects and stating that those defects were sufficiently common for class certification "even if not present in every home").)

homes from D.R. Horton. Therefore, Plaintiffs may have already received a "discount," which would mitigate any damages they have allegedly suffered; again, the only way to know is to conduct an independent inquiry into each home.

Petitioner's defenses, such as the statute of limitations, will also require individualized inquires. *See, e.g.*, *Naparala v. Pella Corp.*, Nos. 2:14-mn-00001-DCN, 2:14-cv-03465-DCN, 2016 U.S. Dist. LEXIS 72442, at *34–35 (D.S.C. June 3, 2016) (discussing the "fact-intensive analysis" necessary to determine "when particular class members realized" they had a cause of action and whether they "did not unreasonably delay filing suit" after doing so). Indeed, the circuit court noted that defendants had filed a motion for summary judgment based on the statute of limitations against one of the proposed class representatives. (Order Granting Pls.' Mot. for Certification Defect Classes at 13 n.2.) There is no reason to think similar inquiries will not need to be made into other members of the proposed classes.

These are just some of the myriad factual variations that could affect Petitioner's liability to a particular Plaintiff, all of which will have to be determined on a case-by-case and house-by-house basis, making the class action procedure ineffectual, even with the creation of subclasses. *See, e.g.*, *San Jose*, 525 P.2d at 711 (concluding that the number of subclasses that would need to be created meant there would be "little or no benefit in maintaining the action as a class").

Accordingly, class treatment of multi-home, multi-defect single-family residential neighborhood should be denied as violating due process.

II. The Circuit Court Exceeded Its Authority

Even if due process concerns could be ameliorated, the circuit court failed to follow the Court's ruling in *Henson*. This Court issued *Henson*, discussed above, on July 22, a mere week after the circuit court granted Plaintiffs' motion to certify subclasses. *Henson* confirmed that,

although the South Carolina Rules of Civil Procedure do not explicitly require common questions of law to "'predominate over any questions affecting only individual members,'" *Henson*, 2026 S.C. LEXIS 122, at *23 (quoting Fed. R. Civ. P. 23(b)(3)), the Rules' commonality requirement implicitly does so by "requir[ing] that the issues [be] sufficiently similar so that the class action will be a more efficient means of resolving the problem," *id.* at *22 (citation and internal quotation marks omitted). Therefore, "the simple fact there are one or more common issues will not suffice" for class certification. *Id.* at *22. Rather, common questions must be "of such a critical degree of importance to the overall resolution of the litigation that the class-wide answers to those common questions are determinative, and thus *overshadow the necessity of trying any individualized questions*." *Id.* at *27 (emphasis added).

Petitioner informed the circuit court of this decision in its motion to reconsider, and discussion of the ruling formed a significant part of D.R. Horton's argument.[9] (*E.g.*, D.R. Horton's Mot. Recons. & Mem. Supp. at 6–9, attached hereto as **Exhibit H**.) The circuit court acknowledged the ruling in its order denying Petitioner's motion. (Form 4 Order at 2.) However, the order contains no discussion of the opinion or analysis about its impact on class certification decisions. Instead, the order contains conclusory statements about "significant common issues" and "a common contention in each of the Defect Classes which is capable of class wide resolution." *Id.* In short, the lower court paid lip service to this Court's opinion rather than undertake "the rigorous analysis" of the "predominance" and other Rule 23 requirements that the law requires. *Henson*, 2026 S.C. LEXIS 122, at *27 (citation and internal quotation marks omitted).

The Court will not issue a writ of certiorari to address an error that can be resolved on appeal. *See Moore*, 54 S.C. at 560, 32 S.E. at 701 (observing that "where the right to appeal is

[9] Indeed, the word "Henson" appears 79 times in the motion and supporting memorandum.

provided for, that mode of correcting errors of law in an inferior tribunal must be resorted to"). However, as this Court has made clear, there is no right to immediate review of a class certification order. *Henson*, 2026 S.C. LEXIS 122, at *6. As a result, a writ of certiorari is necessary "to keep [the trial court] within the scope of its powers," *City of Columbia v. South Carolina Public Service Commission*, 242 S.C. 528, 532, 131 S.E.2d 705, 707 (1963), and to provide Petitioner effective relief, lest Petitioner be forced to simultaneously defend seven erroneously certified class actions. *Cf. Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 251–52, 791 S.E.2d 719, 722–23 (2016) (finding "extraordinary circumstances" to allow the interlocutory appeal of a decision by the Workers' Compensation Commission Appellate Panel that was issued "without regard to the matters raised by the appealing party and without any explanation why such an extreme remedy [was] appropriate" because "requiring [the employee] to wait to appeal until the final agency decision would not provide an adequate remedy").

CONCLUSION

Due process precludes class certification for multi-home, multi-issue, residential construction-defect cases. The circuit court identified *no* South Carolina authority to support this "Frankenstein" of a class action. In so doing, the lower court not only exceeded its authority, it acted in direct violation of this Court's recent precedent. Therefore, Petitioner requests the Court vacate the circuit court's certification of seven classes and enter an order denying class certification, consistent with the Court's opinion in *Henson* and for all the reasons stated in D.R. Horton's motion to reconsider. (*See, e.g.*, D.R. Horton's Mot. Recons. & Mem. Supp. at 81–82 (discussing Plaintiffs' failure to demonstrate that common issues predominate).) In the alternative, the Court should vacate the circuit court's order and remand to the circuit court to conduct the rigorous analysis required by *Henson*.

Sincerely,

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