

# EXHIBIT A

RECEIVED  
MAR 16 2017  
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

**APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas**

J. Michael Baxley, Circuit Court Judge  
Edgar W. Dickson, Circuit Court Judge

Case No. 2007-CP-07-1396

---

Anthony and Barbara Grazia, individually and on behalf of all other similarly situated  
Plaintiffs,.....Respondents,

v.

South Carolina State Plastering, LLC,.....Appellant.

and

South Carolina State Plastering, LLC,.....Appellant,

v.

Del Webb Communities, Inc., Pulte Homes, Inc.,  
and Kephart Architects, Inc.,.....Third-Party Defendants,

Of Whom Del Webb Communities, Inc. and  
Pulte Homes, Inc., are.....Respondents.

Appellate Case No. 2017-000218

---

**RESPONDENTS', ANTOHNY AND BARBARA GRAZIA, INDIVIDUALLY AND ON  
BEHALF OF ALL OTHER SIMILARLY SITUATED PLAINTIFFS, REPLY TO  
APPELLANT SOUTH CAROLINA STATE PLASTERING, LLC'S RETURN TO  
MOTION TO DISMISS APPEAL**

---

W. Jefferson Leath, Jr., Esq.  
Michael S. Seekings, Esq.  
Leath, Bouch & Seekings, LLP  
92 Broad Street  
P.O. Box 59  
Charleston, SC 29402  
(843) 937-8811

John T. Chakeris, Esq.  
The Chakeris Law Firm  
231 Calhoun Street  
P.O. Box 397  
Charleston, SC 29402  
(843) 853-5678

Phillip W. Segui, Jr., Esq.  
Segui Law Firm, LLC  
864 Lowcountry Blvd., Suite A  
Mt. Pleasant, SC 29465  
(843) 884-1865

*Attorneys for the Respondents*

Respondents, Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs, (hereinafter referred to as "Respondents") hereby Reply to Appellant's, South Carolina State Plastering, LLC's (hereinafter referred to as "SCSP") Return to Motion to Dismiss Appeal, as follows:

### **INTRODUCTION**

By its filing, with this court, SCSP is attempting to appeal from interlocutory orders and case management directives that it knows are not appealable in an effort to further delay the ultimate resolution of a case that has now been pending for a decade. In support of its effort to get this Court to review the unreviewable, SCSP focuses on four (4) incorrect assertions: (1) that interlocutory case management directives are immediately appealable (and that by filing this appeal, SCSP somehow has revived the time to appeal long out-of-time orders of the court, some of which have already been rejected by this Court); (2) that Judge Baxley did not certify a Class Action (when the record below is directly to the contrary); (3) that the Class is an "opt-in" Class (when the record directly contradicts this notion); and, (4) that SCSP has been unable to conduct sufficient discovery (when the record reveals that a) SCSP has inspected every house, b) one-half (1/2) of all the houses in Sun City have been tested by Pulte, the results of which are available to SCSP, c) SCSP has been provided answers to more than 3,500 questionnaires, and d) depositions of individual class members have been taken.) This Court should dismiss this Appeal, as it has previously done when SCSP attempted the same strategy of appealing that which was not appealable.

**THE ORDERS SOUGHT TO BE APPEALED ARE INTERLOCUTORY, AND ARE SIMILAR IF NOT IDENTICAL TO THOSE ALREADY DISMISSED BY THIS COURT**

As has been pointed out to this Court in numerous filings, and as stated in Judge Dickson's Order of September 9, 2016, SCSP previously asked Judge Baxley to reconsider his Class Certification Order. Judge Baxley declined, and SCSP appealed to this Court. The appeal was dismissed in August of 2012. This Appeal is identical to that effort. SCSP failed to file any Motions before Judge Dickson, but sought instead to have Judge Dickson reconsider Class Certification. He declined to do so, citing the record. Notwithstanding its numerous attempts at collaterally attacking the Court's interlocutory orders, SCSP again filed a Motion to Reconsider and Amend dated September 19, 2016. Judge Dickson dismissed these Motions, noting, "The Court's Order dated September 9, 2016, was interlocutory, and therefore Defendants' Motions to Reconsider were improvidently filed. As this Court has previously ruled, there is no provision in Rule 59(e), South Carolina Rules of Civil Procedure (hereinafter referred to as "SCRCP"), allowing a party to challenge an interlocutory order." (Order of Jan. 6, 2017 – the subject of this Appeal). There is nothing to Appeal here – no underlying Motion to Reconsider Class Certification, only an attempt to appeal a *dismissal* of an improvidently filed Rule 59(e) Motion to Reconsider, an interlocutory case management directive. Here, unlike the 2012 attempt at an appeal, there is not even an underlying Motion, nor a denial of such a motion – the entire matter being interlocutory. The Class Certification at issue was made nearly five (5) years ago by Judge Baxley, and SCSP then-attempted appeal of that Certification which was rejected by this Court in August of 2012.

Now, SCSP propounds an even farther-fetched theory which goes something like this: Since Judge Dickson's Order Dismissing the Rule 59(e) Motion was arguably timely

appealed (although not in-fact appealable), then somehow, this Appellate filing resurrects SCSP's ability to appeal all of the Courts' previous interlocutory orders, including those already rejected by this Court in 2012. There is no precedent for such a theory, and SCSP does not provide any. Instead, it cites *Edge v. State Farm Mut. Auto. Ins. Co.*, 623 S.E.2d 387, 366 S.C. 511 (S.C. 2005). *Edge*, and its predecessors do not stand for this proposition. To the contrary, *Edge* holds that an Appellate Court may consider some orders which may not have been directly appealable for reasons of judicial economy "if there is an appealable issue before the Court." *Cox v. Woodmen of the World Insurance Company*, 556 S.E.2d 397, 402, 347 S.C. 460 (S.C.App. 2001). Here, there is no appealable issue before the Court, and even if there were, these decisions do not revive SCSP's ability to appeal time-barred orders.

**THE RECORD DEMONSTRATES THAT JUDGE BAXLEY  
CERTIFIED THIS CLASS IN 2012**

As noted above, Judge Baxley did not, as SCSP continues to urge, certify a "preliminary" class. SCSP attempted to appeal his Class Certification in 2012. This Class was certified, and the Notice to the putative class members was approved by Judge Baxley after hours of exhaustive hearings. Judge Dickson in his September 9, 2016 Order, cited the record, and the hearing transcript wherein Judge Baxley stated his certification was not preliminary. Judge Baxley also approved the very detailed and specific Notice and Exclusion forms which went out to all Class members. Nowhere in the Notice is there any mention of "preliminary" certification. Judge Dickson is careful to cite Judge Baxley's Order Approving Class Notice – an order Judge Baxley himself composed – in which he "declined to refer to the class as 'preliminary', for the reason that it was not and is not preliminary." (Order of 9/09/16 at pp. 3-4). SCSP does not have any evidence

to challenge these orders. Instead, SCSP simply continues to argue that the orders and transcripts somehow do not mean what they say.

**THE RECORD DEMONSTRATES THAT THIS CERTIFIED CLASS IS AN OPT-OUT CLASS, THERE IS NO EVIDENCE TO THE CONTRARY**

The certification of the Class here is no more nor less than the classic opt-out class permitted in this state, and elsewhere, as is clear when reading the Notice and Exclusion (Opt-Out) forms sent to all members of the class (attached hereto as Exhibits A and B, respectively).

Orders granting class certification are not appealable. *Salmonsens v. CGD, Inc.* 661 S.E.2d 81, 87, 377 S.C. 442 (S.C. 2008). ("Because a decision by this Court to grant immediate appellate review of a class certification order would represent a significant departure from this states *[sic]* established appealability jurisprudence, we decline to do so.")<sup>1</sup> There is nothing here to appeal. There was no timely notice of appeal made. There is no opt-in class. There is nothing for this Court to do but to dismiss this improvidently filed appeal, taken for the sole purpose of delay, and remand this case back to the Circuit Court with directions to move it expeditiously to a trial on the merits.

**EVEN THOUGH DISCOVERY FROM INDIVIDUAL CLASS MEMBERS IS GENERALLY NOT PERMITTED, SCSP HAS ENGAGED IN MASSIVE INDIVIDUAL DISCOVERY**

This is a group of some 4,500 single family homes, involving more than 8,000 individuals. Apparently SCSP wants to depose each of these people, contemplating a discovery period exceeding the class members' life expectancy, and/or the careers of all

---

<sup>1</sup> *Salmonsens* permitted an appeal only because the improper "opt-in" class would have barred some of the claims of the putative class members due to the statute of limitations, and this was agreed to by all parties, so that those persons might have been denied a trial at all, thus "affecting a mode of trial." Nothing like that situation exists here.

counsel involved. This notion strikes at the very concept of judicial economy envisioned by Rules 1 and 23, SCRPC, and the decisional law favoring class actions in this State.

The General Rule regarding discovery of individual class members is as follows, "Unlike a defendant in a normal civil suit, an absent class-action plaintiff is not required to do anything. He may sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for his protection." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 (1985).

While some courts have permitted discovery of absent class members, they have done so only where the proponent of the discovery establishes that (1) the discovery is not designed to take undue advantage of class members or to reduce the size of the class, (2) the discovery is necessary, (3) responding to the discovery requests would not require the assistance of counsel, and (4) the discovery seeks information that is not already known by the proponent. *McPhail v. First Command Fin. Planning, Inc.*, 251 F.R.D. 514, 517 (S.D. Cal. 2008) (citing *Clark v. Universal Builders, Inc.*, 501 F.2d 324, 340-42 (7th Cir. 1974)).

There are superior and more efficient ways for individual issues to be handled in this case in a manner more consistent with Rule 23, SCRPC. For example, inquiry into individual issues can take place during a second phase of trial or during the claims administration process:

"Class members are sometimes called upon to provide the court with information regarding their individual claims. This may be appropriate in connection with preparation for the second stage of a bifurcated trial (with adequate time allowed for discovery) or the determination of entitlement to individual relief under a judgment or settlement... Class members should not, however, be required to submit proofs of claim as a condition of membership in the class, which would be equivalent to establishing an opt-in procedure. Nor should such claim forms or questionnaires be used to evade the general limitation on discovery from absent class members."

*McPhail v. First Command Fin. Planning, Inc.*, 251 F.R.D. 514, 519-520 (S.D. Cal. 2008) (quoting Federal Judicial Center, Manual for Complex Litigation Sec. 30.232 (3d Ed. 1995)).

“[T]he most appropriate time to gather any necessary information from individual class members is generally after a determination of liability and before payment of individual claims.” *On the House Syndication, Inc. v. Fed. Exp. Corp.*, 203 F.R.D. 452, 458 (S.D. Cal. 2001).

In spite of this concept, it is useful to examine the extent to which SCSP has in fact been permitted to conduct discovery.

1. Respondents Del Webb Communities, Inc. and Pulte Homes, Inc. (hereinafter referred to as “Webb/Pulte”) has conducted moisture meter testing and/or infrared testing, and has destructively tested and partially repaired some 2,000+ houses at a cost of \$23 million, and has shared the test results, repairs, and extensive photographic evidence (see examples attached below).





2. SCSP has physically inspected more than 4,000 homes.
3. SCSP has, with its own experts, destructively tested, photographed, and documented, some 47 houses (see examples attached below).





4. All parties have received responses to extensive questionnaires from more than 3,500 homeowners (see example attached hereto as Exhibit C), and
5. Depositions of eighteen (18) individual homeowners have been taken.

#### **CONCLUSION**

This appeal must be dismissed. There is no Appellate jurisdiction, and this Appeal is taken only for the purpose of delaying the trial currently set for April 17, 2017.

Respectfully Submitted,

Jefferson Leath

W. Jefferson Leath, Jr., Esq.  
Michael S. Seekings, Esq.  
Leath, Bouch & Seekings, LLP  
92 Broad Street  
P.O. Box 59  
Charleston, SC 29402  
(843) 937-8811

John T. Chakeris, Esq.  
The Chakeris Law Firm  
231 Calhoun Street  
P.O. Box 397  
Charleston, SC 29402  
(843) 853-5678

Phillip W. Segui, Jr., Esq.  
Segui Law Firm, LLC  
864 Lowcountry Blvd., Suite A  
Mt. Pleasant, SC 29465  
(843) 884-1865

*Attorneys for the Respondents*

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

**APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas**

J. Michael Baxley, Circuit Court Judge  
Edgar W. Dickson, Circuit Court Judge

Case No. 2007-CP-07-1396

---

Anthony and Barbara Grazia, individually and on behalf of all other similarly situated  
Plaintiffs,..... Respondents,

v.

South Carolina State Plastering, LLC,.....Appellant.

and

South Carolina State Plastering, LLC,.....Appellant,

v.

Del Webb Communities, Inc., Pulte Homes, Inc.,  
and Kephart Architects, Inc.,.....Third-Party Defendants,

Of Whom Del Webb Communities, Inc. and  
Pulte Homes, Inc., are.....Respondents.

Appellate Case No. 2017-000218.

---

**PROOF OF SERVICE**

---

Michael S. Seekings, Esq.  
W. Jefferson Leath, Jr., Esq.  
Leath, Bouch & Seekings, LLP  
92 Broad Street  
P.O. Box 59  
Charleston, SC 29402  
(843) 937-8811

**RECEIVED**  
MAR 16 2017  
SC Court of Appeals

John T. Chakeris, Esq.  
The Chakeris Law Firm  
231 Calhoun Street  
P.O. Box 397  
Charleston, SC 29402  
(843) 853-5678

Phillip W. Segui, Jr., Esq.  
Segui Law Firm, LLC  
864 Lowcountry Blvd., Suite A  
Mt. Pleasant, SC 29465  
(843) 884-1865

*Attorneys for the Respondents*

I, W. Jefferson Leath, Jr., Esq., do hereby certify that on March 15, 2017, I served opposing counsel with a copy of the Respondents' Reply to Appellant South Carolina State Plastering, LLC's Return to Motion to Dismiss Appeal via regular first class United States mail, postage prepaid, addressed as follows:

Everett A. Kendall, II, Esq.  
Marshall C. Crane, Esq.  
Sweeny, Wingate & Barrow, P.A.  
P.O. Box 12129  
Columbia, SC 29211

*Attorneys for Appellate South Carolina State Plastering, LLC*

A. Victor Rawl, Jr., Esq.  
Robert L. Widener, Esq.  
McNair Law Firm, P.A.  
Post Office Box 1431  
Charleston, SC 29401

*Attorneys for Third-Party Defendants Del Webb Communities, Inc., and Pulte Homes, Inc.*

David S. Cobb, Esq.  
Turner Padgett, Graham & Laney, P.A.  
P.O. Box 22129  
Charleston, SC 29413-2129

*Attorney for Third-Party Defendant Kephart Architects, Inc.*

R. Michael Ethridge, Esq.  
Ethridge Law Group, LLC  
P.O. Box 20969  
Charleston, SC 29413

*Attorney for Appellant South Carolina State Plastering, LLC*

Jefferson Leath  
W. Jefferson Leath, Jr., Esq.  
Michael S. Seekings, Esq.  
Leath, Bouch & Seekings, LLP  
92 Broad Street  
P.O. Box 59  
Charleston, SC 29402  
(843) 937-8811

# **EXHIBIT A**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) FOURTEENTH JUDICIAL CIRCUIT  
 ) CASE NUMBER: 07-CP-07-1396

ANTHONY AND BARBARA GRAZIA, )  
individually and on behalf of all other )  
similarly situated Plaintiffs, )

Plaintiffs, )

vs. )

SOUTH CAROLINA STATE PLASTERING, )  
LLC, )

Defendant. )

NOTICE OF CLASS ACTION

\_\_\_\_\_  
SOUTH CAROLINA STATE PLASTERING, )  
LLC, )

Third-Party Plaintiff, )

vs. )

DEL WEBB COMMUNITIES, INC., PULTE )  
HOMES, INC., and KEPHART )  
ARCHITECTS, INC., )

Third-Party Defendants. )  
\_\_\_\_\_  
)

TO: ALL OWNERS OF RESIDENCES AT SUN CITY, HILTON HEAD, HAVING  
STUCCO EXTERIORS INSTALLED BY SOUTH CAROLINA STATE  
PLASTERING, LLC, PRIOR TO JULY 31, 2007:

THIS NOTICE MAY AFFECT YOUR RIGHTS.  
PLEASE READ IT CAREFULLY.

**\*\*\*YOU ARE NOT BEING SUED\*\*\***  
**\*\*\*THIS IS NOT A SOLICITATION FROM A LAWYER\*\*\***  
**\*\*\*A SOUTH CAROLINA COURT AUTHORIZED THIS NOTICE\*\*\***

**\*\*\*YOU MUST RETURN THE ENCLOSED FORM BY DECEMBER 23, 2015,  
IF YOU DO NOT WANT TO PARTICIPATE IN THIS CASE**

**1. WHY SHOULD I READ THIS NOTICE?**

The Court has approved this Notice to you and has included information that it believes you need to know to decide whether to remain in the Class or to exclude yourself/opt-out of the Class. You should read this Notice to determine whether your rights are affected, the steps necessary to pursue your rights as a member of the Class, and whether to opt-out of the Class. You should carefully read below to decide whether it is in your best interest to opt-out or stay in the Class.

You have been identified as one of 4,300 potential members of a Class on whose behalf certain claims are being asserted in the above-captioned civil action pending in the Beaufort County Court of Common Pleas (the "Court"). The Court certified this civil action to proceed as a class action on behalf of the Class defined below.

If you own a residence in Sun City having a stucco exterior installed by South Carolina State Plastering, LLC prior to July 31, 2007, your rights may be affected by this action. You should read this Notice to determine whether your rights are affected, the steps necessary to pursue your rights as a member of the Class, and whether to opt-out of the proposed Class. In a Class Action, one or more people, called named Plaintiffs (in this case Anthony and Barbara Grazia), sue on behalf of people who have similar claims. All these similarly situated people are a Class or Class members. One court resolves the issues for all Class members, except for those who exclude themselves from the Class.

This action is pending in the Court of Common Pleas for Beaufort County, South Carolina, in a lawsuit known as Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs vs. South Carolina State Plastering, LLC. While the Plaintiffs (and Class) are only suing (and may only recover against) South Carolina State Plastering, LLC in this case, South Carolina State Plastering (SCSP) has brought a third-party action entitled: South Carolina State Plastering, LLC v. Del Webb Communities, Inc., Pulte Homes, Inc., and Kephart Architects, Inc., Civil Action No. 07-CP-07-1396. If you are a member of the Class, and do not exclude yourself from the Class (i.e., opt out of the Class), the result of this pending litigation will permanently affect your rights against the Defendants.

**The Class is defined as follows: All individuals, corporations, unincorporated associations, or other entities that currently own stucco-clad homes in Sun City Hilton Head to which SCSP applied the exterior stucco in whole or in part prior to July 31, 2007, which allegedly are damaged due to (a) the lack of head flashing above doors and windows, (b) the failure to install stucco control joints, and/or (c) the presence of moisture encapsulation by the failure to leave a gap between the stucco exterior and the structure slab.**

## **2. WHAT IS THE LAWSUIT ABOUT?**

The Plaintiffs have alleged that South Carolina State Plastering has improperly installed stucco on some houses in Sun City Hilton Head. Plaintiffs are requesting that South Carolina State Plastering pay money to the Plaintiffs and Class members to cover the cost to repair alleged damage caused by the alleged improper stucco installation. South Carolina State Plastering denies the allegations made by Plaintiffs and denies that there are any widespread stucco installation problems in Sun City Hilton Head.

### **2.1. WHAT CLAIMS ARE INCLUDED IN THIS LAWSUIT?**

The suit alleges negligence and breach of implied warranty of good and workmanlike services. Plaintiffs are only pursuing three (3) alleged stucco installation issues in this lawsuit. This lawsuit is limited to recovering damages caused by one or more of the following three (3) alleged stucco installation defects:

- (1) The lack of head flashing above doors and windows,
- (2) The failure to install stucco control joints, and/or
- (3) The presence of moisture encapsulation by the failure to leave a gap between the bottom of the stucco exterior and the structure slab.

The Class is seeking to recover money for damages caused by one or more of the above three (3) alleged defects.

### **2.2. WHAT CLAIMS ARE NOT INCLUDED IN THIS LAWSUIT?**

#### **A. Stucco Application Issues Not Included in This Case.**

Any issues other than the three (3) issues in Section 2.1 above will not be included in this lawsuit. If you have damage to your house solely related to a stucco issue not included in Section 2.1, then you will not be able to recover for those damages (in this lawsuit or any other lawsuit) if you remain in this Class.

There may be stucco homeowners in Sun City Hilton Head that have other stucco problems (such as thin application, improper mix, or improper installation) which are not included in Section 2.1 above, and also do not include one of the three (3) conditions listed in Section 2.1 above.

If you have one of these other stucco problems, you will not be able to recover funds for damage caused by those issues if you stay in the Class. You may be able to bring such a claim individually, but only if you opt-out of the Class in accordance with Paragraph 4.

B. Past Repairs Not Included:

The Named Plaintiffs have agreed not to request the recovery of any funds already expended by Class members or to recover funds already paid for repairs to stucco or behind stucco. If you have paid money for stucco related repairs, you will not be able to recover those funds if you stay in the Class. You may be able to bring such a claim individually, but only if you opt-out of the Class in accordance with Paragraph 4.

C. Legal Causes of Action Not Included:

The Named Plaintiffs will not pursue claims brought under the South Carolina Unfair Trade Practices Act (SCUTPA). Under SCUTPA, if a Defendant is found to have acted unfairly, the Plaintiffs and Class members could recover treble (triple) damages, costs, and attorneys' fees. If you stay in the Class, you will not be able to bring a SCUTPA claim against Defendant for stucco related issues, and you will be barred from recovery of treble damages, costs, and attorneys' fees. You may be able to bring such a claim individually, but only if you opt-out of the Class in accordance with Paragraph 4.

**3. WHAT DO I NEED TO DO TO JOIN THE CLASS?**

If you wish to join the Class, you do not need to take any further action and your interest as a member of the Class will be represented by Class Counsel without individual charge to you. (See Paragraph 8 for Class Counsel's fees and costs.) You are not required to hire your own attorney but may do so at your own expense. You will be bound by the result in the case.

**4. HOW DO I EXCLUDE MYSELF FROM THE CLASS?**

To opt-out of the Class, you must complete, sign and submit the Exclusion Request Form which is included with this Notice. Please send your completed form to:

Sun City Administrator  
Leath, Bouch & Seekings, LLP  
P. O. Box 59  
Charleston, SC 29402  
Telephone: (843) 730-5369

You should submit a separate Exclusion Request Form for each property you own. If you do not receive a form or if you desire additional copies, you may obtain such copies by writing or calling the address above.

**AN OWNER OR OWNERS OF A HOME WHO FAIL TO SUBMIT AN EXCLUSION REQUEST FORM BY MIDNIGHT ON MAY 10, 2015, WILL AUTOMATICALLY BE INCLUDED IN THE CLASS. IF YOU DO NOT OPT-OUT OF THE CLASS, YOU WILL BE BOUND BY ALL ORDERS AND JUDGMENTS ENTERED BY THE COURT. THIS IS YOUR**

**ONLY OPPORTUNITY TO OPT-OUT OF THE CLASS.**

IF YOU ARE A PUTATIVE CLASS MEMBER AND PROPERLY AND TIMELY REQUEST EXCLUSION FROM THE CLASS, YOU WILL NOT RECEIVE ANY BENEFITS OF THIS ACTION AND YOU WILL NOT BE BOUND BY ANY FURTHER ORDERS OR JUDGMENTS ENTERED FOR OR AGAINST THE CLASS. YOU MAY PURSUE AT YOUR OWN EXPENSE WHATEVER RIGHTS YOU MAY HAVE AGAINST THE DEFENDANT, IF ANY.

**5. IF I STAY IN THE CLASS, MAY I BRING ANOTHER LAWSUIT LATER AGAINST SOUTH CAROLINA STATE PLASTERING?**

Not related to stucco claims. If you stay in the Class, you will be bound by the result of this lawsuit – win or lose. If you do not submit a timely Exclusion Request Form, you will not be allowed to bring an individual lawsuit against South Carolina State Plastering for stucco claims.

**6. IF I DO NOT EXCLUDE MYSELF FROM THE CLASS, WILL I HAVE ANY RESPONSIBILITIES?**

**YES. SEE BELOW.**

Under South Carolina's Opportunity to Cure Construction Defects statute, the Defendant in this case is granted the opportunity to inspect allegedly defective stucco if it requests to do so. Once the opt-out period in this case has expired, the action will be stayed so that the requirements of the Opportunity To Cure Act can be met. If you remain in the Class, an Opportunity to Cure notice of individual claim will be mailed to you to be completed and returned by mail to Plaintiff's counsel. The notice will ask you to describe any stucco-related problems you are currently experiencing with your home.

After the Notice is issued, the Defendant will be permitted to inspect your home, offer to remedy the defects, and offer to settle or deny the Claim. If you remain in the Class, and the Defendant chooses to do so, you must allow a home inspection which will take place at a time agreed on by Counsel. The inspection, if any, will be non-invasive and non-destructive, and will be done at no cost to you. The inspection, if any, will be conducted by Class Counsel, under the supervision of the Court.

If the Defendant offers to remedy the defect(s) stated in the Notice or if a monetary offer is made to you, Class Counsel will communicate with you and respond on your behalf. Should you choose to accept the offer, the Court will be advised and a settlement of your Claim may occur.

If you and the Defendant cannot settle the dispute regarding your house pursuant to the Opportunity to Cure Act, then the class action will proceed, and you will be bound by the decision of the court with regard to judgments and rulings in this class action.

## **6.1. PARTICIPATION IN THE LITIGATION.**

If you do not opt-out of the Class pursuant to Section 4 above, and if you do not settle/resolve your claim pursuant to Section 6 above, then you will be required to take part in the litigation. The claims brought on behalf of the Class and/or the defenses asserted by Defendant may require one or more of the following: 1) you may be required to provide documents and/or information related to you, your house, your house purchase, and any house repairs; 2) you may be required to testify at a deposition about these same issues; 3) your house may be inspected, 4) testing may be conducted on your house, and/or 5) you may be required to testify at the trial of the case.

As a Class member, you will not have any right to control the litigation. In the event that a settlement is reached, you will have the right to submit an objection to the Court. If trial results in an unfavorable outcome, you will not have an individual right to appeal your claim, or to direct that the class representative pursue an appeal.

## **7. WHO REPRESENTS THE PARTIES:**

Class Counsel for the Plaintiffs is as follows:

John T. Chakeris, Esq.  
The Chakeris Law Firm  
231 Calhoun Street  
P.O. Box 397  
Charleston, SC 29402

W. Jefferson Leath, Jr., Esq.  
Michael S. Seekings, Esq.  
Leath, Bouch & Seekings, LLP  
92 Broad Street  
P.O. Box 59  
Charleston, SC 29402  
Telephone: (843) 730-5369

Phillip W. Segui, Jr., Esq.  
Segui Law Firm, PC  
864 Lowcountry Blvd, Suite A  
Mt. Pleasant, SC 29465

Counsel for Defendant and Third-Party Defendants is as follows:

Attorney for Defendant South Carolina State Plastering, LLC:

Everett A. Kendall, II, Esq.

Christy E. Mahon, Esq.

Sweeny Wingate & Barrow, P.A.

1515 Lady Street

P.O. Box 12129

Columbia, SC 29211

R. Michael Ethridge, Esq.

Laura Paris Paton, Esq.

Carlock, Copeland & Stair, LLP

40 Calhoun St., Suite 400

Charleston, SC 29401

Attorney for Third-Party Defendants Del Webb Communities, Inc., and Pulte Homes, Inc.:

A. Victor Rawl, Jr., Esq.

McNair Law Firm

P.O. Box 1431

Charleston, SC 29402

Attorney for Third-Party Defendant Kephart Architects, Inc.:

David S. Cobb, Esq.

Turner, Padget, Graham & Laney, P.A.

40 Calhoun Street, Suite 200

P. O. Box 22129

Charleston, SC 29413

#### **8. HOW WILL CLASS COUNSELS' FEES AND EXPENSES BE PAID?**

If any funds are generated for any class member(s) (either through settlement or judgment), then Class Counsel will request that the Court award to Class Counsel a portion of the funds generated as attorneys' fees for all services rendered to the Class, plus their costs and expenses. **THE ATTORNEYS' FEES AND COSTS AWARDED BY THE COURT SHALL BE PAID ONLY FROM ANY FUNDS GENERATED AS A RESULT OF THE CLASS AND NO INDIVIDUALS WILL BE RESPONSIBLE FOR ANY FEES, COSTS, OR EXPENSES OUT OF POCKET.** All payments to Class Counsel must be approved by the Court, and will be considered at a Fairness Hearing or at other hearings to be scheduled by the Court. Any Attorneys' Fees and Costs that may be awarded as part of the settlement of any claims resolved through the South Carolina Right To Cure process will be addressed similarly.

#### **9. WHERE DO I GET ADDITIONAL INFORMATION?**

This Notice provides only a summary of matters regarding the case. You may seek the advice and guidance of your own private attorney, at your own expense, if you wish. For more

details about matters discussed in this Notice, you may desire to review certain documents related to the litigation such as the Complaint, the Answer of the Defendant, and the Court's Order certifying the Class. If you wish to obtain additional information, you may do so by writing or calling Plaintiffs' Counsel at one of the addresses listed above. DO NOT CONTACT THE COURT.

AN OWNER OF A RESIDENCE IN SUN CITY WHO FAILS TO SUBMIT A COMPLETE, VALID AND TIMELY EXCLUSION REQUEST PURSUANT TO THIS COURT-APPROVED NOTICE WILL BE AUTOMATICALLY INCLUDED IN THE CLASS. IF YOU DO NOT OPT-OUT OF THE CLASS BY TIMELY RETURNING A VALID EXCLUSION REQUEST AS REFERENCED IN PARAGRAPH 4 ABOVE, YOU WILL BE A MEMBER OF THE CLASS AND BOUND BY ALL ORDERS AND JUDGMENTS OF THE COURT.

# **EXHIBIT B**

**EXCLUSION REQUEST**

This is a request to be excluded from a class action.

READ THE ATTACHED LEGAL NOTICE CAREFULLY BEFORE  
FILLING OUT THIS FORM

To: Sun City Administrator  
Leath, Bouch & Seekings, LLP  
P. O. Box 59  
Charleston, SC 29402

Re: Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs vs. South Carolina State Plastering, LLC

**THIS FORM IS TO BE FILLED OUT ONLY IF YOU DESIRE TO BE  
EXCLUDED FROM THE CLASS**

DO NOT fill out this form if you wish to be included in the class. If you wish to be excluded, this form must be mailed no later than **December 23, 2015**.

I acknowledge receipt of the Notice of Class Certification in this case, describing the class and my rights therein. **Please exclude me from membership in the class and from this lawsuit.** I understand that by signing below that I may be able to pursue my own claim separately. I also understand that if I wish to pursue a claim, I must do so separately using my own attorney at my own expense. I understand that I will not be bound by any ruling in this lawsuit and that I will not receive any funds that may be generated by this lawsuit.

I certify by signing below that I own the below referenced house in Sun City Hilton Head. **This form must be signed by ALL owners of the house.**

Sun City Hilton Head House Address: \_\_\_\_\_

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Co-Owner Signature

\_\_\_\_\_  
Owner Name (Print)

\_\_\_\_\_  
Co- Owner Name (Print)

# **EXHIBIT C**



**QUESTIONNAIRE**  
**PLEASE COMPLETE BOTH SIDES**

Name of Claimant: 

Address of property: 88 Redtail Drive, Son City, Bluffton, SC 29909

**SOUTH CAROLINA NOTICE AND OPPORTUNITY TO CURE DWELLING DEFECTS ACT**  
**INDIVIDUAL NOTICE OF STUCCO CLAIM TO SOUTH CAROLINA STATE PLASTERING, LLC**

1. Do you have stucco on the exterior of your home?  
 Yes     No     I don't know
2. Does the stucco on your home lack head flashing above any windows or doors?  
 Yes     No     I don't know
3. Does the stucco on your home lack control joints?  
 Yes     No     I don't know
4. Does the stucco on your home lack control joints specifically at corners of windows and doors?  
 Yes     No     I don't know
5. Does the stucco on your home have a gap between the bottom of the exterior stucco and the structure slab?  
 Yes     No     I don't know
6. Are there visible cracks in the exterior stucco on your home?  
 Yes     No     I don't know
7. Are there cracks in your exterior stucco greater than 1/16 of an Inch wide (you can fit a quarter sideways into the crack)?  
 Yes     No     I don't know
8. Are there places on your home where the exterior stucco is falling off?  
 Yes     No     I don't know
9. Is there any noticeable damage to the exterior stucco on your home?  
 Yes     No     I don't know

If yes, please describe:  
Noticeable cracks which have since been repaired

See other side →

10. Is there any damage to the Interior of your home resulting from defective exterior stucco installation or design?

\_\_\_\_\_ Yes \_\_\_\_\_ No   P   I don't know

If yes, please describe:

\_\_\_\_\_  
\_\_\_\_\_

11. What year was your home built? Year: 2004 or \_\_\_\_\_ I don't know

12. Have any repairs been made to the exterior stucco of your home since the time that it was built?

  P   Yes \_\_\_\_\_ No \_\_\_\_\_ I don't know

If yes, when were the repairs made, by whom were they made, and what was the nature of the repair:

September 2013 - Affordable Stucco Repair

Seal and paint cracks in stucco

13. Please describe any stucco-related problems you are currently experiencing with your home, if any:

Have not been to house since March 2014.

At that time repairs to stucco appeared effective.

14. Do you have any comments, photographs, Inspection reports or other Information that you would like for South Carolina State Plastering to consider in evaluating your claim? If so, please attach.

Attached Professional Home Inspections report -

Putte Inspection/Conclusion

Affordable Stucco Repair work record

I certify that the above answers are true to the best of my knowledge.



Homeowner's signature



Printed Name



Phone number and email address

8/17/14

Date

Return to:  
Attn: Sun City Administrator  
Leath, Bouch & Seekings, LLP  
P.O. Box 59  
Charleston, SC 29402

# PROFESSIONAL HOME INSPECTIONS, INC.

TONY KUNICH

SCRBI# 2474 / SCRB #19230 / SCDHEC EPSCI #2858 / SC Safe Home Cert. Wind Inspector

Date: 10/30/12

To: [REDACTED]

RE: #88 Redtail Drive

Sun City, Bluffton, S.C. 29909

## STUCCO INSPECTION dated 10/30/12: SUMMARY

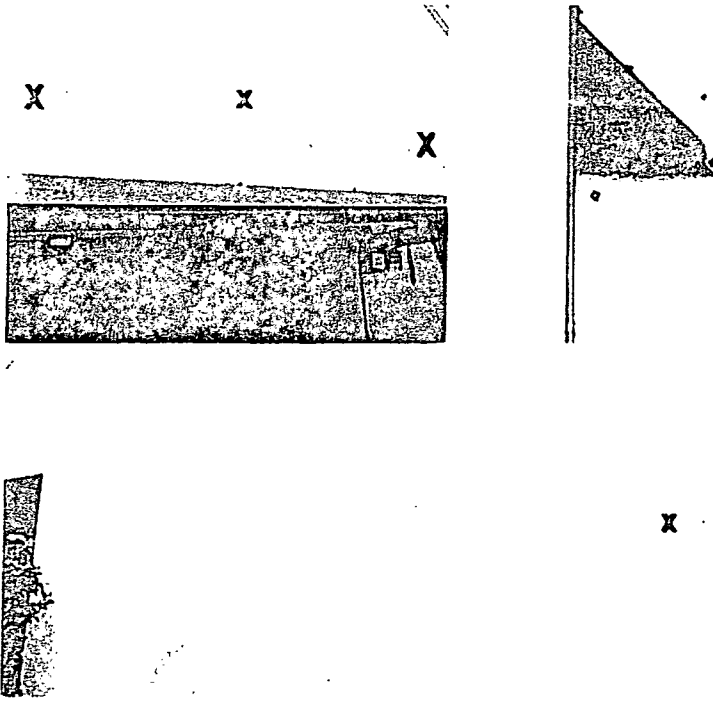


- 1) There are **insufficient weep holes visible in the bottom stucco weep screed strip (INCLUSION)**. It is VERY important the weep screed vent holes be exposed and not covered with stucco or elastomeric finish for proper ventilation and draining of any moisture. If moisture does not drain from the weep screed it can be trapped behind the stucco; possibly causing damage to the interior walls. We recommend the stucco product manufacturer be contacted regarding proper repairs to any stucco.

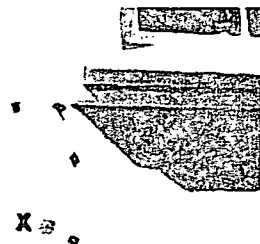
X

X

2) There are **several cracks in the stucco walls on the front, right, and left sides of the home.** The source of the cracking may be due to improper installation, moisture accumulation, and/ or the failure to control stress build-up (i.e. control joints). The existing cracks should be repaired and sealed to prevent water intrusion into the walls.

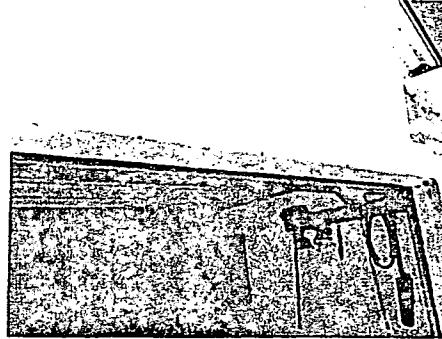


3) There are **cracks in the stucco walls beneath (5) of the windows; (3) at the right and (2) at the left side of the house.** There may be water intrusion at the base of the windows or at the shutter bracket bolts that has caused water to seep behind the stucco below, or the lack of control joints may have caused the stucco to crack in random places. The windows and bolts should be properly sealed. The stucco walls should be examined by the contractor for repair recommendations.



**RE #2 & 3: We recommend that the builder conduct a bore test to determine the existence/ condition of moisture beneath the stucco.** All affected wood/ stucco/ walls should be replaced or repaired as needed to prevent further damage to the home. **We have marked the areas that should be bore tested with green tape.**

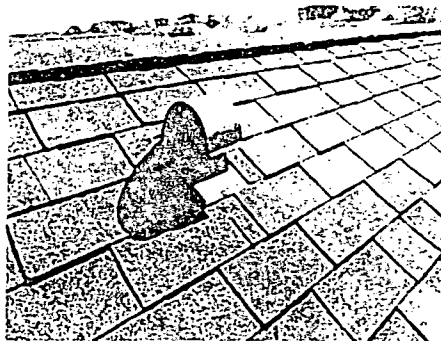
4) There are cracks in the stucco at the garage trim; possibly caused by stress or movement in this area or by water intrusion from the wall cracks above. The cracks should be sealed after wall repairs have been made.



**NOTE: The stucco control joints were not properly installed. According to the manufacturer's specifications (INCLUSION), control joints should be installed at dissimilar materials such as windows and at regular intervals. No control joints are installed at dissimilar materials, or at the front or rear of this home.**

5) There are (2) fogged thermo-pane windows; (1) at the right and (1) at the left side of the house. The thermo-pane seals have failed. The manufacturer should be contacted for replacements. We have marked the fogged windows with blue tape.

6) There is NO damper in BOTH of the roof mounted goose-neck vent housings. The dampers are needed to open when the vents are operating and to close when not operating; preventing insects or rodents from entering the ducts (INCLUSION).



7) There are **(2) damaged roof cap shingles on the roof above the front entry porch**. The damaged shingles should be removed and properly replaced with new shingles to prevent rain water from leaking into the attic or wall.



**NOTE: This was not a complete home inspection. Only the stucco and roof were inspected.**

**NOTE: It is important to properly repair and seal ALL damage; bulges, gaps, cracks, holes, and chipped or peeling areas in stucco to prevent water intrusion or insects into the wall behind the stucco. If further cracks, bulges, or other problems are found, or if moisture develops behind the stucco, the problem should be evaluated for cause and severity, and then proper repairs should be performed.**

**NOTE: Please refer to the builder's repair recommendations if bore test moisture levels are not excessive.**



November 12 2012

[REDACTED]

88 Redtail Drive  
Bluffton, SC 29909

Dear [REDACTED].

Thank you for the opportunity to review the Professional Home Inspections report you received on your home. Enclosed please find the results of our onsite testing done in 11/14/2012. We have included the moisture readings taken at the locations specified on the Professional Home Inspections report as well as some helpful information we have compiled to assist you in understanding the testing method and results. Additionally, we have included reference materials regarding the stucco cladding installed on your home.

The final section of our report includes the conclusions of our testing and a list of items that you should monitor in the future.

Please do not hesitate to contact us with any further questions or concerns.

Sincerely,

Michael Thomas  
Customer Service Manager  
PulteGroup  
Coastal Carolinas Division – Hilton Head

PulteFinds.txt

Moisture readings from Pulte Report of 11/14/2012

Left side of house under right corner of 2nd window. 12.3% moisture reading.

Left side of house under left corner of 2nd window. 8.7%

Left side of house middle panel. 7.9%

Front side of house above garage header. 10.9%

Right side of house below right corner of 4th window. 6.6%

Right side of house below left corner of 4th window. 7.6%

Right side of house to the right of 3rd window. 8.2%

Right side of house below right corner of 2nd window. 7.7%

Right side of house below left corner of 2nd window. 6%

Normal cladding cracks on gable walls and other areas.

## CONCLUSIONS 88 Redtail Drive

11/14/2012

Test holes and moisture readings were taken at the locations indicated by Professional Home Inspections as having the potential for elevated moisture levels in the wall. The moisture content of the underlying wood sheathing at these test locations indicated moisture levels lower than the 15% threshold that would signify excessive moisture behind the stucco cladding and drainage plane. These results indicate that no elevated moisture levels are currently present in the wood framing of the home and adjacent wall cavities in these locations.

At this time further destructive testing or removal of stucco cladding is not needed or warranted in the other areas of the home. We would recommend monitoring the exterior of the home by looking for any changes in the exterior appearance of the stucco cladding. Additionally, please monitor the interior areas adjacent to these locations for signs of elevated moisture. Things to look for in these areas include:

Discolored or wet drywall

Discolored or wet baseboards or other millwork

Inside backs of cabinets rough or delaminating

Marble shower surrounds are showing signs of separating from wall

Please monitor exterior stucco areas for signs of tannins coming out of cracks in the stucco cladding. These tannins would show up as brown or tan drips at the cracks in the cladding. This would indicate moisture breaching the weather resistant barrier that forms the drain plane behind the stucco cladding and causing the wetting of wood fibers in the sheathing and framing behind.

September 4, 2013

[REDACTED]  
88 Redtail Drive  
SunCity Bluffton,  
SC 29909

[REDACTED] Home Phone [REDACTED]

Before any work can be done your house needs to be power washed. Stucco soft wash on your house at 88 Redtail Drive the cost is \$100.00

#### Front of house

Seal all window sills and garage door sill. Seal all cracks in front of the home over garage door and repair 1 set of stucco test holes then paint to match the color or the stucco as close as possible.

#### Right side of house

Seal all window sills. Seal all cracks on the side of the house and repair 5 set of stucco test holes and then remove 11 screws from the side of the stucco from where the old owner of the house had dish TV then repair the 11 other screw holes with stucco then paint to match the color or the stucco as close as possible.

#### Rear (back of house)

Seal all window sills. Seal all and repair 1 set of stucco test holes then paint to match the color or the stucco as close as possible.

#### Left side of house

Seal all window sills. Seal all cracks and repair 3 set of stucco test holes then paint to match the color or the stucco as close as possible.

Affordable Stucco Proposal.txt

Seal all expansion joints around the house from top to bottom and side to side.

(Stucco sealing carries a 5 year manufacturer's warranty and I give 5 years on the labor on stucco sealing.)

Stucco crack sealing.....\$350.00

Stucco repair and paint to match as close as possible.....\$350.00

Total amount due for job \$700.00 plus \$100.00 for power wash.

Thank you for the opportunity of working with you.

Michael Caracappa

Affordable Stucco  
Crack Repair and Sealing LLC

S.C. Residential  
Builders Commission to#54940

Local County  
License #14331

Hilton Head Town  
License #15223

Bluffton Town  
License # LIC-3-13-10069

Liability  
Coverage-The Main Street America Group Insurance  
Company #1451505-01

Affordable Stucco Crack Repair and Sealing  
LLC. [www.affordablestuccorepair.com](http://www.affordablestuccorepair.com)  
Call for  
appointment (843) 321-8882  
or (843) 771-7521 [mike@affordablestuccorepair.com](mailto:mike@affordablestuccorepair.com)