

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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• 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

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SC Court of Appeals

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

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RESPONDENTS' MOTION TO DISMISS APPELLANT  
SOUTH CAROLINA STATE PLASTERING, LLC'S APPEAL

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TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

This Motion is brought by the Plaintiffs/Respondents in this Class Action seeking dismissal of an Appeal taken by South Carolina State Plastering, LLC (hereinafter "SCSP") of seven (7) interlocutory Orders issued by the Circuit Court over the past five (5) years. SCSP has already appealed from two (2) of these Orders and that appeal was dismissed. Three (3) of the orders were issued years ago and by any measure are out of time, and the final order which is appealed was issued with no SCSP motions pending and therefore there is no basis procedurally or substantively for an appeal. In support of this Motion, Plaintiffs/Respondents would show as follows

1. This matter is a class action and as of the date of this appeal (February 6, 2017) has been pending before the trial court for 3,539 days.
2. Trial is scheduled on a date certain in April, 70 days forward. The deposition of SCSP's expert was scheduled to be taken February 7, 2017.
3. This appeal is taken for no other purpose, improper as it is, than to avoid discovery and to avoid a date certain trial. It is another in a long series of delay tactics engaged by SCSP. A short procedural history of this long pending case is instructive.
4. The class was certified by Judge Baxley on December 8, 2011 (1,876 days ago) following a hearing on October 5, 2011 (attached hereto as Exhibit A).
5. Prior to Certification, the South Carolina Supreme Court remanded the matter to the trial court emphasizing the utility of the class action device to save the resources of the Courts and the parties, and stating "class actions are favored in this state" (*Grazia v. S.C. State Plastering*, 390 S.C. 562, 703 S.E.2d 197 (S.C. 2010)).

6. SCSP sought to have Judge Baxley reconsider class certification, which motion was denied by order dated May 7, 2012 (1,736 days ago) (attached hereto as Exhibit B).
7. An appeal was taken by SCSP challenging class certification, and, upon motion of the Plaintiff/Respondents, the appeal was dismissed. According to this Court the orders of Judge Baxley were "not immediately appealable" (attached hereto as Exhibit C).
8. There are currently 4,557 houses included in the *Grazia* class. Notice of the class has long ago been sent and the opt-out period closed years ago. The Notice of Appeal (attached hereto as Exhibit D) filed by SCSP separately lists seven (7) interlocutory orders which it now asks this Court to review to wit:
  - 1) The order of the Honorable J. Michael Baxley, "Order Making Preliminary Finding that Plaintiffs' Proposed Class Meets the Requirements of Rule 23(a), SCRPC; Setting Parameters for Putative Class; Dismissing Plaintiffs' Unfair Trade Practices Claim Without Prejudice; Imposing a Stay of Proceedings; and Setting Forth Procedures for Compliance with the Right to Cure Construction Dwelling Defect Act, dated December 8, 2011 and filed December 19, 2011 (1,876 days);
  - 2) The order of the Honorable J. Michael Baxley, "Order Dismissing Defendants' Motions to Reconsider and Denying Defendants' Motions for Clarification of Order Preliminarily Certifying Class, dated May 1, 2012 and filed May 7, 2012 (1,736 days);
  - 3) The order of the Honorable J. Michael Baxley, "Order Approving Class Notice, Mailing List, and Procedures for Right to Cure Process," dated April 9, 2014, and filed April 18, 2014 (825 days);
  - 4) The order of the Honorable Edgar W. Dickson, "Order Granting South Carolina State Plastering LLC's Motion for Destructive Testing," dated January 29, 2016, and filed February 12, 2016 (360 days);
  - 5) The order of the Honorable Edgar W. Dickson, "Scheduling Order," dated May 16, 2016, and filed May 26, 2016 (256 days);

- 6) The order of the Honorable Edgar W. Dickson, "Order (No Motions Pending)", dated September 7, 2016, and filed September 9, 2016 (150 days); and
  - 7) The order of the Honorable Edgar W. Dickson, "Order Dismissing Defendants' Motions to Reconsider Pursuant to Rule 59(e)," dated December 29, 2016 and filed January 6, 2017 (31 days).
9. Not one of the orders is independently appealable; they are not appealable as a group or bundle of orders, nor has this notice of appeal been filed within any time contemplated by any rule of civil procedure, appellate procedure or statutory provision. SCSP rests its entire argument for appealability on the following statement "The statute S.C. Code Ann. § 14-3-330 allows immediate appeal of these orders..."
10. The law addressing the propriety of interlocutory appeals in this state is well settled. "[A]ny judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Wilson*, 367 S.C. at 12, 625 S.E.2d at 208; *Mid-State Distribs, Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) ("South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory."); *see also* Toal, *supra* at 86 (" 'Final judgment' is a term of art denoting the disposition of *all* issues in the action." (emphasis supplied)).
11. Further, "absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within [S.C. Code Ann.] § 14-3-330." *Wilson*, 367 S.C. at 13, 625 S.E.2d at 208.
12. There is no "specialized statute" that guides the procedure or substance of this case.
13. In pertinent part, § 14-3-330 provides as follows:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;...

14. This Court uses the same standards as the Supreme Court to determine if an Order or Judgment is appealable in the case it hears.
15. The Supreme Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.
16. The "mode of trial" exception to the general rule that only final orders are appealable *is confined* to orders which abridge a party's constitutional right to trial by jury. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (S.C. 2008).
17. Notwithstanding the clear rule of law in this state, this Court's prior dismissal of SCSP's interlocutory appeal, and the fact that class certification was long ago decided, on February 6, 2017, SCSP filed an appeal seeking review of the previously noted seven (7) interlocutory Orders, including two (2) Orders from which it has already taken an appeal and which appeal was dismissed.

18. It appears that SCSP now seeks review by this Court on two (2) grounds. The first is that the trial court has somehow created an "opt-in class" and that impermissibly and negatively impacts SCSP and the "mode of trial." The second is that, notwithstanding a long line of jurisprudence to the contrary, this court should review the trial court's class certification process.
19. 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." This plain language shows it is a well-defined class requiring no action on the part of a member to participate.
20. Notice was sent to all homeowners that meet the class definition (attached hereto as Exhibit E) as was an opt-out form (attached hereto as Exhibit F). The opt-out period closed on December 23, 2015, some 411 days ago. The mode of trial is by jury. The fact that class members were asked to fill out a questionnaire (drafted by SCSP) does not alter the mode of trial nor does it (or could it possibly) have any adverse impact on SCSP.
21. As for the class itself, it was long ago certified as SCSP is well aware and as the following statement from Judge Baxley during a motion hearing four (4) years ago shows, "It takes us back to the issue...that you continue to argue, which is that we

shouldn't have a class. Well, I made that decision against you," (*Motion Hearing 71: 21-23, April 30, 2012*) (attached hereto as Exhibit G).

22. On February 1, 2013, Judge Baxley again addressed the issue:

**COUNSEL:** - - - and one of the first places that appears is in that statement, It should include, at a very minimum, it should include the words "the Court has preliminarily certified.

**THE COURT:** Well, let me just broach that now. I don't believe that's appropriate... because when I said I preliminarily certified it, what I meant was that's a certification... (*Tr. R. 37:9-16, Feb. 1, 2013*) (attached hereto as Exhibit H).

23. Judge Baxley's observations are consistent with all of his rulings and continued rejections of challenges to the class "The Court specifically rejects the Defendant's and Third-Party Defendants' contention...that the factual and legal components within the cases automatically defeat a class action approach to resolution of this litigation, or the typicality, commonality, or adequacy of the named Plaintiff's representation of the class." He continued to address the arguments and subsequently dismissed them, stating that "it is the firm belief of this Court that common, core issues are present in all the cases and that a *class approach is not only the best, but the only method available* to enhance judicial economy, promote efficient disposition of these cases, and reduce litigation costs" (*Order* dated Dec. 8, 2011 at 11) (*emphasis added*) (see Exhibit A).

24. Moreover, Judge Baxley noted that the Supreme Court had the clear opportunity to deny class status in this very case but affirmatively chose not to do so, instead emphasizing in its decision the vitality of the class action doctrine to preserve the resources of the court and the parties (*Id.* at 11).

25. Lastly, in his Order Approving Class Notice (that Judge Baxley himself wrote), he once again declined to refer to the class as "preliminary," for the reason that it was not and is not preliminary. Judge Baxley's failure to do so even further evidences his intention that the class was, indeed, already certified.
26. The years of rulings by the trial court could not be clearer, nor could the procedural history of this case. All of the orders that SCSP now seeks this Court to review are interlocutory and none are immediately appealable under § 14-3-330. And, by observation, even if there was some mechanism that would allow for appeal, none of them were "immediately appealed". The collective number of days that has elapsed between the issuance of the appealed Orders and the date of this appeal totals 5,234.

### CONCLUSION

This appeal is nothing more than another attempt at reconsideration of an order long ago issued, and it is an extreme and desperate attempt at that. The appeal should be immediately dismissed by this Court.

SO MOVED.

Respectfully Submitted,

  
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# EXHIBIT A

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOURTEENTH JUDICIAL CIRCUIT  
 COUNTY OF BEAUFORT ) 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, )  
 Defendants. )

**ORDER MAKING PRELIMINARY  
 FINDING THAT PLAINTIFFS'  
 PROPOSED CLASS MEETS THE  
 REQUIRMENTS OF RULE 23(a),  
 SCRCP; SETTING PARAMETERS FOR  
 PUTATIVE CLASS; DISMISSING  
 PLAINTIFFS'  
 UNFAIR TRADE PRACTICES CLAIM  
 WITHOUT PREJUDICE; IMPOSING A  
 STAY OF PROCEEDINGS; AND,  
 SETTING FORTH PROCEDURES FOR  
 COMPLIANCE WITH THE RIGHT TO  
 CURE CONSTRUCTION DWELLING  
 DEFECT ACT**

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SOUTH CAROLINA STATE )  
 PLASTERING, LLC, )  
 Third-Party Plaintiff, )

vs. )

DEL WEBB COMMUNITIES, INC., )  
 PULTE HOMES, INC., and KEPHART )  
 ARCHITECTS, INC., )  
 Third-Party Defendants. )

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 JERRI A. BROWN, CLERK OF COURT  
 BEAUFORT COUNTY, S.C.

*J.B.*

This matter comes before the Court pursuant to Plaintiffs' Motion to Certify a Class in accordance with the provisions of Rule 23, SCRCP, and is on remand from the South Carolina Supreme Court after its majority decision that the class action provisions of Rule 23, SCRCP, are not incompatible with the requirements of the Right to Cure Construction Dwelling Defect Act (hereafter, Act) (S. C. Code Ann. 40-59-810, et. seq.). See *Grazia v. S. C. State Plastering, LLC, et. al.*, 390 SC 562, 703 SE 2d 197 (2010). After a thorough review of the South Carolina

Rules of Civil Procedure, relevant case law, the specific appellate decision in this case, extensive memoranda of law and correspondence submitted by counsel, affidavits, and the various oral arguments presented by all parties at multiple hearings, the Court finds that Plaintiffs' proposed Class preliminarily meets the requirements for certification, hereby establishes the parameters of the putative Class, approves the proposed Class representatives and counsel, imposes a stay of proceedings in order to permit Plaintiffs and Defendant to comply with the Act, and sets forth the procedures and requirements for compliance in this putative class setting. Thereafter, the Court will make a final decision as to whether a class action vehicle is practicable under the specific facts and circumstances disclosed by the notices and responses required under the Act. See Rule 23(d)(1), SCRCF.

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The named Plaintiffs (Anthony and Barbara Grazia) and those they represent as proposed class members are all individuals or legal entities who own stucco-clad residences in the Sun City development of Bluffton, Beaufort County, South Carolina ("Sun City"). There are currently about 140 individual cases already pending in Beaufort County, and Plaintiffs allege there are an approximate additional 4,000 similar housing units that are not yet in litigation. The pending cases have been declared complex and assigned to this Court for disposition. To attempt to individually try the already pending cases and those yet unfiled would be overwhelming to this Court and all judicial resources available within the Fourteenth Judicial Circuit, and has the potential impact of denying meaningful access to the justice system for some of the parties.

The Plaintiffs' complaint focuses on damages allegedly flowing from defects in exterior wall stucco design, construction, manufacture, and application. Plaintiffs allege that the Defendants participated in the design and installed the stucco system in the Grazia residence and

many other Sun City residences as well, and the Third-Party Defendants, who have extensively participated in opposing this motion, were the designers and sellers of the residences.

As a threshold issue, Plaintiffs attempt to certify a Class that consists of all stucco-clad residences within the Sun City Development, but have named as the sole Defendant South Carolina State Plastering, LLC (SCSP), the entity that performed the stucco work on the vast majority of the homes at Sun City. South Carolina State Plastering in turn filed suit against third-party Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. as the entities engaged in the development, layout, design, and were allegedly ultimately responsible for construction of the Sun City Development, asserting that any work done by SCSP was at the direction of and in accordance with the specifications and instructions of Del Webb/Pulte. Kephart Architects, Inc., who designed some of the Sun City homes, was also brought in as a third-party Defendant. Of the 140 Sun City stucco cases already pending, counsel agree that less than ten (10) do not involve stucco applied in whole or in part by SCSP. Of the approximate 4000 cases not yet filed, counsel agree that almost all, if not every one, involve stucco applied in whole or in part by SCSP. Accordingly, because no other stucco applicators are a party to this action and have not been permitted to contest the allegations or afforded due process of notice and an opportunity to be heard on the issue of class certification, the putative class is limited those homes on which SCSP installed the stucco in whole or in part.

With regard to those homes, by competent evidence presented to this Court, including affidavits and testimony of an architect, engineer, and a general contractor, the Court finds that the Plaintiffs' case presents a single critical issue that is common in law and fact: the improper design, mix, and installation of stucco exterior wall systems by SCSP on the houses at Sun City Hilton Head built before July 31, 2007. These design, manufacture, and installation issues have

led to generally consistent claimed problems within these structures, and generally consistent damages flowing therefrom. These damages include, according to the complaint, cost of repairs, loss of use, depreciation, incidental and consequential losses, and sums previously paid for attempted repairs. A discussion of the specific certification requirements of Rule 23(a), SCRPC, follows.

#### The "Numerosity" Requirement of Rule 23(a)(1)

The numerosity requirement of 23(a)(1) is often referred to as the impracticality of joinder requirement. Wright, Miller & Kane, Federal Practice and Procedure, Civil 2d, § 1762. No arbitrary measure of impracticability or numerosity has been established, and this issue is determined by the facts of each case. The objective of this requirement is to prevent members of a class from being unnecessarily deprived of their rights and a day in court by either the opposing party or by a few members of the proposed class. Ripply v. Denver U.S. National Bank, 260 F. Supp. 704, 712 (D. Colo. 1966). In this case, the Court finds that the numerosity requirement is met. The Plaintiffs have presented credible evidence, including testimony of Pulte representatives, that the number of houses clad with stucco in a similar manner as the Plaintiffs' house is over 4,000. There is no possibility that each case could be tried individually or joined as individual cases. Because the volume of cases presented here would certainly overwhelm the Beaufort County docket, and because joinder is impractical, this Court finds that the Rule 23 requirement of numerosity has been met.

#### Questions of Law and Fact Common to the Class

The Court finds that this case satisfies the commonality requirement because it is limited to claims related to the design, installation, and condition of the stucco cladding, and common issues of fact and law exist. To establish commonality, a party must show that "there are

questions of law or fact common to the class.” SCRPC, Rule 23(a)(2). See McGann v. Mungo, 287 S.C. 561, 567-568, 340 S.E. 2d 254, 157-158 (Ct. App. 1986). In practical terms, this means the party must articulate the existence of “significant common, legal, or factual issues” that bind the proposed class together. Gardner v. S.C. Dep’t of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003). The Court must examine whether, in its judgment, the issues are similar such that class resolution will provide a more efficient method of resolving the litigation.

After a thorough review of the allegations, defenses, and facts distilled thus far in the cases, this Court finds that all of the owners in the class are similarly affected by the alleged acts of the Defendants, and each owner may face significant costs to repair their houses. Common legal and factual questions that exist in each case include, but are not limited to, whether (1) the original design of the stucco system was proper and (2) the installation of the system was proper.

The Court finds that Plaintiffs have met their burden of proving commonality. Specifically, pursuant to South Carolina law, Plaintiffs have established the following three elements of commonality:

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- 1) That there is a common determinative issue of fact or law that overshadows all other issues; namely, the structures in question have problems with (a) head flashing above doors and windows, (b) stucco control joints, and/or (c) moisture encapsulation by failing to leave a gap between the stucco exterior and the structure slab.
- 2) That the Court will not have to investigate each class member’s individual claim for purposes of establishing or failing to establish liability; and,
- 3) That the damages determination, should Plaintiffs prevail on liability, will be comprised of a core set of similar inquiries for each structure.

**The “Typicality” Requirements of Rule 23(a)(3)**

South Carolina requires that a plaintiff prove that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Rule 23(a)(3), SCRPC.

These requirements "ensure that only [those] who can advance similar factual and legal arguments are grouped together as a class." Mace v. Van Ru Credit Corp., 109 F.3d 338, 341 (7<sup>th</sup> Cir. 1997). See also, General Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 157 n. 13, 102 S.Ct. 2364, 2370 n. 13, 72 L.Ed.2d 740 (1982)(commonality and typicality "serve as guideposts" to determine whether "a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence"); Sprague v. Gen. Motors Corp., 133 F.3d 388, 399 (6<sup>th</sup> Cir. 1998)(commonality and typicality not satisfied when "taken as a whole the class claims were based on widely divergent facts").

The typicality requirements focus on the characteristics of the class representative. Typicality entails an inquiry into whether the named plaintiff's individual circumstances and the legal theory upon which the claims are based are typical with respect to the claims of other class members. The typicality requirement focuses on the consideration of whether the representative's interests are truly aligned and consistent with those of the class members. Smith v. The B&O Railroad Company, 473 F. Supp. 572 (D. Md. 1979). The Court finds that Plaintiffs satisfy these requirements.

In this case, plaintiffs assert that the design and installation of the stucco is improper on over 4000 Sun City Homes. Evidence has been reviewed by this Court in the form of expert testimony and affidavit. This Court finds that evidence establishes typicality.

The proposed class representatives' claims are typical because each class member owns a residence with a similar allegedly defective stucco system allegedly designed, installed, and/or sold by the Defendants/third-party Defendants. Rule 23(a)(3) requires that "the claims or defenses of the representative parties" be "typical of the claims or defenses of the class."

Decisions construing Rule 23(a)(3) have given it a liberal construction, holding that a claim is typical if it arises from the same events, practices, or course of conduct that gives rise to the claims of other class members and if the claims are based on the same legal theories. See, e.g., Senter v. General Motors Corp., 532 F.2d 511 (6th. Cir.), *cert. denied* 429 U.S. 870 (1976); 1 H. Newberg, *Newberg on Class Actions* §3:13 (2002) (cases collected). The typicality requirement “may be satisfied even though varying fact patterns support the claims or defenses of individual class members, or there is a disparity in the damages claimed by the representative parties and the other members of the class.” 7A Wright and Miller, *Federal Practice & Procedure* §1764 (1986). Here, the Court finds that the claims of Anthony and Barbara Grazia are typical of the claims of the other homeowners.

#### Adequacy of Class Representatives and Counsel

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Rule 23(a) also requires that “the representative parties will fairly and adequately protect the interests of the class.” SCRCP, Rule 23(a)(4). Adequacy of representation consists of two components: (1) there must be no disabling conflicts of interest between the class representative and the class and (2) the class representative must be represented by counsel competent and experienced in the kind of litigation to be undertaken. See Runion v. U.S. Shelter, 98 F.R.D. 313, 317 (D.S.C. 1983), *cited with approval in Waller v. Seabrook Island Property Owners Ass’n.*, 300 S.C. 465, 388 S.E. 2d 799 (1990). In this case, the Court finds that the proposed class representatives and the class members’ interests are identically aligned. They seek to have their homes repaired and hold liable those responsible for the damages. This Court notes that the Grazia complaint was filed in 2007 and that the Grazias have pursued this claim in a representative capacity for four (4) years, including a trip to the Supreme Court and back, as have their counsel. Plaintiffs’ counsel are qualified, experienced, and able to conduct class

litigation. Attorney W. Jefferson Leath, Jr. has approximately thirty (30) years of experience in construction litigation and is familiar with issues surrounding class litigation, as is Attorney Michael S. Seekings with more than twenty (20) years' experience, and Attorneys John T. Chakeris and Phillip W. Segui, Jr., are similarly experienced.

**The Amount in Controversy Meets the Statutory Requirement**

Defendants argue that some houses in the putative class have no damage at all; thus, they further argue that Plaintiffs do not meet the one hundred dollar (\$100.00) per claim threshold amount for a class to be certified. This argument is disputed by the Plaintiffs, who counter that even if damage is not currently visible on a particular structure, the defective stucco system will eventually cause damage. Plaintiffs allege that the only appropriate repair is to de-clad and then re-clad the houses with an appropriate stucco system, at a cost of approximately \$75,000.00 per structure. Clearly, after reviewing the pleadings and the evidence of record, the Court finds that plaintiffs' allegations of the amount in controversy well exceed Rule 23's threshold requirement.

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**Responses of the Defendants in Opposition to Class Certification**

The Defendants have raised numerous legal and factual arguments in opposition to class certification, contesting all requirements of Rule 23. First, Defendants argue Plaintiffs' claims under the SC Unfair Trade Practices Act are by law not amenable to class action prosecution. This position is correct, and as a part of this preliminary Order, these claims will be dismissed without prejudice by the Court. See *Grazia v. S. Carolina State Plastering, LLC*, at id. The dismissal is without prejudice at this juncture; however, in the event a Class is certified with finality in this case, the dismissal will be with prejudice.

On the issue of dismissing the Unfair Trade Practices Claim (UTPA), counsel for Del Webb/Pulte argues that the Court does not have the authority to *sua sponte* dismiss this claim

without a motion from Plaintiffs or any other party to do so; rather, the Court's only option is to deny certification of the class. The Court does not accept this argument. In moving for class certification, Plaintiffs have implicitly requested the dismissal of the UTPA claim, and in open Court on the record acknowledged that South Carolina law does not permit the UTPA claim to be prosecuted in a representative capacity, and acquiesced in the dismissal. Rule 23(d), SCRPC, permits the Court to impose such terms as are necessary to protect the interests of the parties. This dismissal protects the interests of the third-party Defendant, who now complains of it. Thus, third-party Defendant's objection is overruled.

The Defendants further argue that a class action will be of no benefit to the parties because each claim will still have to be individually investigated and determined, including individual structure destructive testing, and the damages for each home separately calculated. Moreover, Defendants argue that similarity of claims, in and of itself, does not meet the commonality requirement of Rule 23, and the alleged specific defects at the Grazia home are not probative as to the alleged problems at other claimants' residences.

To demonstrate this argument, Defendants raised factual points in opposition to class certification. They argue that some of the homes in question may have alleged defects as to inadequate or thin application of stucco, while others have a problem with the mix of ingredients used to create the stucco. Some houses have alleged problems with head flashing, some with sealant joints, others with control joints, some have cracking stucco while others do not, and some houses have alleged problems with weep configurations while others do not. The houses in question do not all use the same type stucco system or stucco product, and the stucco systems may be manufactured by different companies. Moreover, because the completion date of these structures spans a period of almost ten years, construction standards may differ. Some houses

may have had multiple owners who may have altered the stucco. Defendants also argue that certain members of the putative class are subject to certain affirmative defenses, while others are not, and that the class action procedure cannot be used to alter substantive law and deprive Defendants of these defenses with respect to any individual claim.

The Court is cognizant of Defendant's and third-party Defendants' arguments, and recognizes that factual and legal differences may exist within the putative class. For these reasons, this Order makes only a preliminary finding that the requirements of Rule 23 have been met by Plaintiffs. The Court intends to employ the Right to Cure process as outlined below to further analyze and perhaps organize the various claims that exist in these cases. The Court opines that there may be certain sub-groups formed within the class action to facilitate the determination of liability and damages issues, if such procedure is found to be fair and efficient. See McGann v. Mungo, 287 S.C. at 570-71, 340 S.E.2d at 159 ("In any case, the problem of determining initial membership in the class affords no basis for dismissal of the action since the circuit court can either require the plaintiffs to replead, redefine the alleged class itself, or designate subclasses."). Moreover, should a Class be finally certified, after the passage of an appropriate period for discovery as to the applicability of affirmative defenses, the Court will require the Defendants to provide a listing of claimants for whom Defendants allege a specific affirmative defense is applicable, and the Court may thereafter form additional sub-groups within the Class to accommodate these defenses. The specifics of these procedures, if necessary, will be deferred until further development of the evidence through the discovery process. The Court specifically rejects Defendant's and third-party Defendants' contention, however, that the factual and legal components within the cases automatically defeat a class action approach to resolution

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of this litigation, or the typicality, commonality, or adequacy of the named Plaintiff's representation of the class.

After hearing arguments of counsel and reviewing the pleadings and exhibits submitted, it appears to the Court that common issues exist for all homes to which SCSP applied the exterior stucco in whole or in part prior to July 31, 2007, as specifically defined below. While the Court recognizes Defendants' argument that not all of the pending stucco cases are exactly the same, it is the firm belief of this Court that common, core issues are present in all the cases and that a class approach is not only the best, but the only method available to enhance judicial economy, promote efficient disposition of these cases, and reduce litigation costs.

State case law directs that this Court take an expansive rather than narrow view of class action motions. Littlefield v. South Carolina Forestry Comm'n, 337 S.C. 348, 354-55, 523 S.E.2d 781, 784 (1999) ("Rule 23, SCRPC, endorses a more expansive view of class action availability than its federal counterpart"). This Court finds that this case presents a core set of facts contemplated by Rule 23 when considering certification. Moreover, the Supreme Court had the clear opportunity to deny class status in this very case but affirmatively chose not to do so, instead emphasizing in its decision the vitality of the class action doctrine to preserve the resources of the Court and the parties. See Grazia v. S. Carolina State Plastering, LLC, *Id.*, rehearing denied (Jan. 20, 2011).

Accordingly, for purposes of attempted compliance with the Right to Cure Construction Dwelling Defect Act, this Court finds that Plaintiffs have met the requirements of Rule 23(a), and are entitled to a preliminary determination that Plaintiffs may proceed at this juncture using a class approach. The class is preliminarily recognized 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. Further, Anthony and Barbara Grazia are approved as representatives of the putative class, and attorneys W. Jefferson Leath, Jr., Michael S. Seekings, John T. Chakeris, and Phillip W. Segui, Jr., are found to be competent and capable class counsel.

**Requirement of Notice to Putative Class Members**

The Court has requested the parties to reach an agreement on the contents of an opt-out class notice to all potential members. Counsel has been unable to do so. Accordingly, each party is requested to present to the Court a proposed opt-out Notice of Class Action and Exclusion Request Form for distribution to all potential class members within thirty (30) days of the date of this Order, consistent with the remaining provisions of this Order. This Notice must contain the standard information concerning the obligations, rights, and ramifications of acceptance or rejection of class membership, and include a date certain for closure of the opt-out period. Additionally, this Notice should inform the potential members that class certification is preliminary at this juncture pending the results of the Right to Cure process; that once the opt-out period has ended, a Right to Cure document must be individually completed for each claimant; a brief description of the Right to Cure process (a more detailed description will come with the Right to Cure document itself); that based upon the Right to Cure responses, the Court will make a final determination of class certification; and, that the potential class members will be notified of this final decision and the legal ramifications thereof.

Once the parties have submitted a proposed Notice to Potential Class Members and Exclusion form, the Court will either choose one party's form or combine portions of the submitted forms to reach its decision as to the final format of the document. It is likely that an additional hearing may be conducted on this matter prior to a final decision, and in such hearing the Court will resolve related issues such as the timetable for initiating the notice process, the necessity and authorization of permission to enter a property for inspection, and the result of failure of cooperation by a particular claimant.

**Compliance with the Right to Cure Act and Future Imposition of Stay**

The following procedures are imposed, pursuant to Rule 23(d)(2), SCRPC, to fairly and adequately protect the divergent interests of the multiple parties before the Court. Within seven (7) days following the closure of the opt-out period, Plaintiffs shall be required to provide to this Court at the Hartsville office, Defendants, third-party Defendants, and filed with the Clerk of Court a complete list of the proposed class, identifying the properties by name of owner(s) and street address. This listing shall be organized in two separate ways – one shall be in alphabetical order by name of the owner with street address and contact information included (mailing address if different from street address and home telephone number, or cellular number if no home number exists), and a second shall be a listing by street address, set forth street by street in sequential address number, with name of owner(s) included. Once this listing is filed and distributed as outlined above, it may only be amended (except for a change in contact information) by motion of a party and written permission of the Court, which shall not be freely given. At the time this listing is filed with the Clerk, pursuant to S. C. Code Ann 40-59-830, a Stay of proceedings shall be imposed until the requirements of the Act are met and procedures set out thereunder are completed. This Stay shall be automatic without need of issuance of a

*JMB*  
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further Order from this Court. This Stay shall remain in effect until the conclusion of the claims procedure for all properties as outlined below, and shall be ended only upon issuance of an Order Lifting Stay from this Court after proper motion of any party.

To provide structure for compliance in such a large number of cases, Plaintiffs shall be given a period of one hundred and eighty (180) days from the imposition of the Stay to provide Defendants with the notice of claim required by Section 40-59-840 for all properties within the proposed class. Rather than provide all notices at once at the end of this entire period, working from either the alphabetical list or the sequential street list at the choice of Plaintiffs' counsel, Plaintiffs must provide one fourth of the total notices due on the final day of each forty-five day period within the given one hundred eighty days. In setting these deadlines, the Court realizes that this is an ambitious schedule; however, given the current age of this case and the number of potential claims, the need for timely disposition of this litigation demands that both parties acquire adequate staff to meet the timetables set forth herein.

Jan 3  
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Because there is no specific exclusion in either case law or the language of the Act, the notice to the contractor required under the Act must be filed in a representative capacity by proposed class counsel, and must be signed by counsel and dated as to the date of service to contractor. For purposes of record keeping and administration, Contractor SCSP shall receive service of the notices in a representative capacity through counsel. The date of service on each individual notice shall trigger the response dates as set forth herein. Because of the magnitude of the number of claims, the amount of work required in the initial investigation of the claims by contractor, and the fact that Plaintiffs have chosen to proceed by class action, the Court will grant a period of sixty (60) days to contractor to provide the individual claim response required by Section 40-59-850, and failure to respond within sixty (60) days shall be deemed a denial of the

claim. These claim responses shall be signed and dated by counsel, and shall be served upon class counsel. If contractor does respond with an offer of settlement, claimant shall be given thirty (30) days after the date of service to respond to contractor's offer as required by Section 40-59-850(b).

The required content for each notice of claim is set forth in Section 40-59-840. Proposed class counsel is hereby advised that, for purposes of analyzing and organizing class certification issues, specificity of the exact nature of the stucco defect and defect results with regard to each individual property shall be required. A uniform notice listing all possible defects and all possible damages within the class will not suffice.

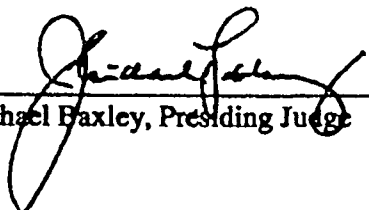
*Jan 15*  
The Court is aware that the original purpose of the Act is to provide an opportunity for a claim to settled between parties without litigation occurring. To this end, the Court neither requires counsel to attend home inspections that occur as a result of Section 40-59-850(a) of the Act, nor is counsel specifically excluded. However, an inspection may not be cancelled or postponed because one or more of the attorneys for any party cannot be present. The contact information is provided on the alphabetical list of potential class members so that the parties may engage in the inspection process directly between themselves without need of counsel, if such is determined to be practicable by all concerned.

### Conclusion

Compliance with all of the procedures and requirements contained in this Order will prove beneficial for everyone involved in this dispute. At this juncture in this litigation, the use of the class action vehicle will operate to conserve valuable judicial resources as well as concentrate and clarify the common issues of law and fact that predominate this dispute. At the

same time, the rights and interests of all parties will be fully protected by adhering to the guidelines outlined by the Court.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
J. Michael Faxley, Presiding Judge

Hartsville, South Carolina

December 8, 2011

# EXHIBIT B

FORM 4

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT )

Case No. 2007-CP-07-1396

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

Plaintiffs, )

v. )

SOUTH CAROLINA STATE )  
PLASTERING, LLC, )

Defendant, )

and )

SOUTH CAROLINA STATE )  
PLASTERING, LLC, )

Third-Party Plaintiff, )

v. )

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

Third-Party Defendants. )

**ORDER DISMISSING DEFENDANTS'  
MOTIONS TO RECONSIDER AND  
DENYING DEFENDANTS' MOTIONS  
FOR CLARIFICATION  
OF ORDER PRELIMINARILY  
CERTIFYING CLASS**

2012 MAY -7 PM 3:49  
JERRI ANN ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

*Just*

This civil litigation involves allegations of defective construction relating to stucco application on approximately 4,000 homes located at the Sun City Development in Beaufort County, South Carolina. The case has been declared complex and assigned to this Court for disposition. On December 8, 2011, this Court issued an Order making a preliminary finding that Plaintiffs' proposed class meets the requirements of Rule 23(a), SCRCF, and this Order was filed with the Clerk of Court on December 15, 2011. Subsequently, on January 3, 2012, Defendant South Carolina State Plastering, LLC and Third-Party Defendants Del

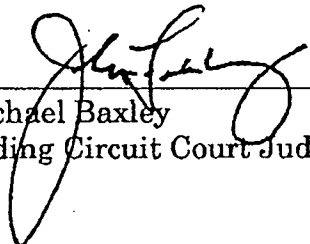
Webb Communities, Inc. and Pulte Homes, Inc. filed Motions to Reconsider and/or Motions for Clarification, pursuant to Rule 59(e), the matter that is presently before the Court. The Court heard arguments on these motions on April 30, 2012, and after hearing these arguments and reviewing the memoranda submitted by the parties, the Court dismisses the Motion to Reconsider and denies the Motion for Clarification.

The Court's Order dated December 8, 2011 was interlocutory in nature, and thus Defendants' Motions to Reconsider were improvidently filed. There is no provision in Rule 59(e), SCRCP, allowing a party to challenge an interlocutory order. Indeed, Rule 59 motions are permitted only after final, appealable adjudications on the merits. Accordingly, **the Court hereby dismisses Defendants' Motions to Reconsider as improper.**

During the April 30 hearing, Defendants were also permitted to address the various portions of the Court's Order for which they sought clarification. After carefully considering on the record each of the concerns raised by Defendants, the Court determined that the Order was clear and complete as originally issued and thus no further clarification was necessary. Therefore, **the Court hereby denies Defendants' motions for clarification.**

Accordingly, the parties have thirty (30) days from the date this Order denying clarification is served upon them to submit a proposed opt-out notice to putative class members as outlined in the initial Order.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
J. Michael Baxley  
Presiding Circuit Court Judge

May 1, 2012  
Hartsville, SC



State of South Carolina  
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL  
BAXLEY  
JUDGE

531 EAST CAROLINA AVENUE  
HARTSVILLE, SOUTH CAROLINA 29550  
TELEPHONE: (843) 383-4114  
FAX: (843) 383-4116  
E-MAIL: jbxleyj@sccourts.org

May 3, 2012

The Honorable Jerri Ann Roseneau  
Beaufort County Clerk of Court  
Attention: Jamie  
Post Office Box 1128  
Beaufort, SC 29901

12 MAY -7 PM 3:54  
JERRI ANN ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

Re: Grazia, et al v. SC State Plastering, LLC, et al  
Case Number: 07-CP-07-1396

Dear Jamie:

Enclosed is a Form 4 Order that has been prepared in the above matter. Please file this order and serve it on the parties. Thank you for your assistance in this matter.

Sincerely yours,

*J. Michael Baxley*  
J. Michael Baxley

JMB/jlc  
Enclosure



# EXHIBIT C

# The South Carolina Court of Appeals

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

v.

South Carolina State Plastering, LLC, Appellant.

South Carolina State Plastering, Appellant,

v.

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

Appellate Case No. 2012-212212

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## ORDER

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Appellant has filed a Notice of Appeal from an "Order Making Preliminary Finding that Plaintiffs' Proposed Class Meets the Requirements of Rule 23(a), SCRCF; Setting Parameters for Putative Class; Dismissing Plaintiffs' Unfair Trade Practices Claim Without Prejudice; Imposing a Stay of Proceedings; and Setting Forth Procedures for Compliance with the Right to Cure Construction Dwelling Defect Act" and an order denying reconsideration and clarification. Respondents have filed a motion to dismiss contending the underlying orders are not immediately appealable and Appellant has filed a "Motion to Determine Appealability." After careful consideration, Respondents' motion to dismiss is granted because these orders are not immediately appealable. Because this appeal is dismissed, this Court need not act on Appellant's "Motion to Determine Appealability."

*Asp...*  
FOR THE COURT

Columbia, South Carolina

cc:

Everett Augustus Kendall, II

Christy Elizabeth Mahon

Phillip Ward Segui, Jr.

John T. Chakeris

W. Jefferson Leath, Jr.

Michael S. Seekings

**FILED**  
8-31-12 JLY

# **EXHIBIT D**

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

RECEIVED

FEB 06 2017

SC COURT OF APPEALS

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 Kephait Architects, Inc.,

Third-Party Defendants,

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

Respondents.

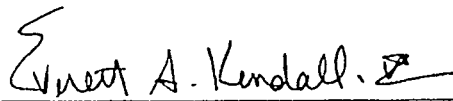
NOTICE OF APPEAL

South Carolina State Plastering, LLC appeals from certain orders, to wit:

1. The order of the Honorable J. Michael Baxley, "Order Making Preliminary Finding that Plaintiffs' Proposed Class Meets the Requirements of Rule 23(a), SCRCF; Setting Parameters for Putative Class; Dismissing Plaintiffs' Unfair Trade Practices Claim Without Prejudice; Imposing a Stay of Proceedings; and Setting Forth Procedures for Compliance with the Right to Cure Construction Dwelling Defect Act, dated December 8, 2011 and filed December 19, 2011;

2. The order of the Honorable J. Michael Baxley, "Order Dismissing Defendants' Motions to Reconsider and Denying Defendants' Motions for Clarification of Order Preliminarily Certifying Class, dated May 1, 2012 and filed May 7, 2012;
3. The order of the Honorable J. Michael Baxley, "Order Approving Class Notice, Mailing List, and Procedures for Right to Cure Process," dated April 9, 2014, and filed April 18, 2014;
4. The order of the Honorable Edgar W. Dickson, "Order Granting South Carolina State Plastering LLC's Motion for Destructive Testing," dated January 29, 2016, and filed February 12, 2016;
5. The order of the Honorable Edgar W. Dickson, "Scheduling Order," dated May 16, 2016, and filed May 26, 2016;
6. The order of the Honorable Edgar W. Dickson, "Order (No Motions Pending)", dated September 7, 2016, and filed September 9, 2016; and
7. The order of the Honorable Edgar W. Dickson, "Order Dismissing Defendants' Motions to Reconsider Pursuant to Rule 59(e)," dated December 29, 2016 and filed January 6, 2017.

Counsel for the Appellant received the most recent (January 6, 2017) orders of Judge Dickson, on January 11, 2017.



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eak@swblaw.com  
Attorneys for Appellant  
South Carolina State Plastering, LLC

Other Counsel of Record:

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Michael S. Seekings  
Leath, Bouch & Seekings, LLP  
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Charleston, South Carolina 29402

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(843) 937-8811

Phillip W. Segui, Jr.

Segui Law Firm, LLC

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John T. Chakeris

The Chakeris Law Firm

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David S. Cobb

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Attorney for Third-Party Defendant Kephart Architects, Inc

(843) 576-2800

A. Victor Rawl, Jr.

Robert L. Widener

McNair Law Firm, P.A.

1221 Main Street

Columbia, South Carolina 29201

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

(803) 799-9800

# EXHIBIT E

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

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

NOTICE OF CLASS ACTION

vs. )  
 )  
SOUTH CAROLINA STATE PLASTERING, )  
LLC, )  
 )  
Defendant. )

\_\_\_\_\_)  
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, Padgett, 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 F

**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 G

THE STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOURTEENTH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT )  
 )

Anthony and Barbara Grazia, )  
Individually and on Behalf of All ) April 30, 2012  
Other Similarly Situated Plaintiffs )  
Plaintiff, )

Versus ) 2007-cp-07-01396  
 )

South Carolina State Plastering, LLC )  
 )  
Defendant. )  
 )

---

South Carolina State Plastering, LLC, )  
 )  
Third-party Plaintiff, )

Versus )  
 )

Del Webb Communities, Inc., )  
Pulte Homes, Inc., and )  
Kephart Architects, Inc., )  
 )  
Third-party Defendant. )  
 )

**BEFORE**

**THE HONORABLE J. MICHAEL BAXLEY**

Pamela Ozment-Cartee  
Circuit Court Reporter

1 moisture encapsulation by failing to leave a gap between the  
2 stucco exterior and the structure slab." end quote. And I  
3 apologize, I do not understand what the Court means. Is that  
4 anybody who receives a notice with this class definition have  
5 a hard time understanding what that means.

6 **THE COURT:** Again, I am going to decline to give you a  
7 more further technical definition other than the order which I  
8 do not believe, does not need clarification on that issue. It  
9 speaks fairly clearly as to what it means, and if you wish to  
10 describe it further in the opt out notice, please put that in  
11 the recommended notice that you will provide to the Court  
12 within thirty days of today. I simply cannot at this point  
13 begin to parse and start -- we will be so confounded by the  
14 time we get twenty minutes further into the parts of the  
15 definitions, that we will be back to square one. So, I  
16 decline to do it.

17 **MR. RAWL:** I apologize, Your Honor. I think that is  
18 actually absolutely true, that the more we look at it, the  
19 harder it is to determine who would be in the class, and who  
20 would not be in the class.

21 **THE COURT:** Right. ~~It takes us back to the issue, Mr.~~  
22 ~~Rawl, that you continue to argue, which is that we shouldn't~~  
23 ~~have a class. Well, I made that decision against you.~~ And  
24 again ultimately, who knows where this case will go. But,  
25 that decision in this case, hard fought, preliminarily made in

# EXHIBIT H

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) CASE NO.: 2007-CP-07-01396

ANTHONY GRAZIA AND BARBARA )  
GRAZIA, INDIVIDUALLY AND ON )  
BEHALF OF ALL OTHERS SIMILARLY )  
SITUATED, )

PLAINTIFFS, )

vs. )

SOUTH CAROLINA STATE )  
PLASTERING, LLC., )

DEFENDANT. )

TRANSCRIPT OF RECORD

---

SOUTH CAROLINA STATE )  
PLASTERING, LLC., )

THIRD-PARTY PLAINTIFF, )

vs. )

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

THIRD-PARTY DEFENDANTS. )

---

February 1, 2013

Charleston, South Carolina

1 that the Court certified this civil action to proceed as a  
2 Class action. Your order made very clear that this was in  
3 all respects to indicate that this was a preliminary  
4 certification and there would be subsequent discussions  
5 and refinements and/or un-certifications down the road.  
6 That's -- that's a problem with me throughout this order,  
7 ---

8 THE COURT: Right.

9 MR. KENDALL: --- and one of the first places that  
10 appears is in that statement. It should include, at a  
11 very minimum, it should include the words "the Court has  
12 preliminarily certified."

13 THE COURT: Well, let me just broach that now. I  
14 don't believe that's appropriate, Mr. Kendall, because  
15 when I said I preliminarily certified it, what I meant was  
16 that's a certification, it's just not in its final form  
17 because we have to deal with the Right to Cure Statute.  
18 But I don't want to confuse the homeowners with the  
19 concept that, well, all of these pages you're looking at  
20 may be reversed at some later point in the process.

21 I would say that the presumption is that it will not  
22 be reversed, or it would not have been preliminarily  
23 certified to begin with. But secondly, I believe that's  
24 going to inject confusion and uncertainty into this entire  
25 process, particularly when we're dealing with laymen.