

EXHIBIT

A

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 VACATING TEMPORARY  
INJUNCTION, DISMISSING AS MOOT  
DEFENDANTS' MOTION TO AMEND  
INJUNCTION, AND DENYING  
MOTION TO RENEW INJUNCTION**

2012 MAY 16 PM 1:21  
JENNIFER ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

This class action concerns allegations of defective stucco on approximately 4000 residences within the Sun City development in Hilton Head, South Carolina. The case has been declared complex and assigned to this Court for disposition. On January 13, 2012, Defendant South Carolina State Plastering ("SCSP") filed a Motion for Temporary Injunction, and on January 18, 2012, Third-Party Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. likewise filed a Motion for Injunctive Relief. Both of these motions sought to enjoin Plaintiffs' counsel from communicating with stucco homeowners in Sun City Hilton Head prior to the

expiration of any opt-out period for inclusion in the class. According to Defendants, the motions were filed because Plaintiffs' counsel intended to conduct a "community meeting" with reference to this pending lawsuit, and published notice of such meeting in the local newspaper. Before a hearing could be scheduled on the motions, Plaintiffs' counsel submitted a proposed Order to the Court granting the injunction, presented as a consent Order, and the Court signed Plaintiffs' counsel's proposed order.

After the Court signed and issued the Order, Defendant SCSP and Third-Party Defendants Del Webb and Pulte moved to alter the Order. The Court conducted a hearing on this motion, during which Defendants asserted that the timeframe they had requested for the injunction to remain in place in their motions was different from the one actually outlined in the signed Order presented by Plaintiff's counsel. At that point, the Court learned that Defendants had not in fact consented to the proposed Order submitted by Plaintiffs' counsel.

After considering this issue with the knowledge that there was no true consent among the parties, the Court has determined that the Order was improvidently granted; moreover, after close review, the requested injunction was unilateral in nature and failed to require a bond in the event of Plaintiffs' counsels' failure to abide thereby, which is reversible error. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009); Rule 65, SCRPC. Therefore, the Court hereby vacates the Order Granting Temporary Injunction entered on March 15, 2012. As a result, the Court further now dismisses as moot Defendants' motion to alter or amend that injunction.

After learning that the Court intended to vacate the previous injunction, Defendants have now moved to renew the injunction. A telephone conference was conducted on the record on May 9, 2012 to hear arguments on the issue of whether an injunction should issue. In considering this renewed motion, the Court is aware that class actions serve an important function in our system of civil justice, but they also present opportunities for abuse as well as problems for courts and counsel in the management of cases. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99, 101 S.Ct. 2193, 2200 (1981). Therefore, because of the potential for abuse, courts have been given the discretion to "impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended." Rule 23, SCRPC; *Eldridge v. City of Greenwood*, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992). To ensure that these interests are protected, courts may find it necessary to issue orders, like the previous one in this case, that limit communication between the parties and potential members of the class.

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But a court's power to issue an order curtailing communication is not unlimited. In fact, one such limitation flows from the framework and general policies contained in Rule 23 itself. As the South Carolina Supreme Court has stated, the specific grant of power to a court under Rule 23(d), SCRPC, are directed towards notifying the parties of the pending litigation. *Id.* Therefore, while it may be necessary for a court to issue an order limiting communications in certain circumstances, such an order "should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties. Only such a determination can ensure that the court is furthering, rather than hindering, the policies embodied in [Rule 23]." *Id.*, citing *Gulf Oil Co.* at 101, 101 S.Ct. at 2200.

Another, and perhaps more important, limitation on a court's authority to enter an order prohibiting communication under Rule 23 emerges from the constitutional rights enshrined in the First Amendment. The impact of Defendants' motion is broad sweeping and effectively constitutes a prior restraint on speech. It enjoins the named Plaintiffs and Plaintiffs' counsel from "communicating with prospective class members regarding" the pending litigation, "publishing any statement" regarding the litigation, and "taking any action intended to advise or inform residents of Sun City Hilton Head of their legal rights." A prior restraint, of course, is subject to a heavy presumption against its constitutionality; in order for the restraint to be valid, it must prevent "direct, immediate, and irreparable damage" and be the least restrictive means of doing so. *New York Times Co. v. U.S.*, 403 U.S. 713, 732-33, 91 S.Ct. 2140, 2150-51 (1971). While the Court is well aware of the constitutional implications of Defendants' motion, this decision is not made upon constitutional grounds.

With regard to the motion for temporary injunction, the Court makes the following specific findings in weighing the need for limitation of communications between Plaintiffs' counsel and putative class members versus a potential interference with the rights of the parties:

1. The Court's ability to control the flow of information within a class action is superimposed upon the foundational democratic principles of the need for a free flow of information within society generally and specifically within the justice system;
2. The motions as filed are unilateral in nature, applying only to Plaintiffs' counsel, raising an immediate question as to the propriety of

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disparate treatment of the parties. While Defendants now offer to amend the motion so as to apply to all parties, this does not cure the Court's concerns;

3. This case involves a retirement community where the citizenry is similarly situated as to the construction of their residences by Defendants, and where putative class members have the necessary time, fiscal capability, and level of sophistication to fully participate in this case;

4. This case further involves the most substantial investment that most individuals make in a lifetime, their home, and thus is of core interest. Due to the large number of people involved who live in close proximity to one another, one can anticipate that rumor and misunderstanding will abound. The inability to discuss the issues in this litigation with counsel on either side of the case will result in the potential for confusion and frustration, particularly when individuals are attempting to determine whether or not to opt out of the proposed class;

5. This situation would undermine the confidence of potential litigants in the justice system as the ban on information would be imposed by Court order, as opposed to an agreement between counsel, and the Court finds no reason to impose such a ban;

6. The free flow of information, particularly in light of the requirements and directives of the Right to Cure Dwelling Defect Act, S.C. Code Ann. 40-59-810, et. seq., may lead to the settlement of many of these claims without the necessity of joining the class; and,

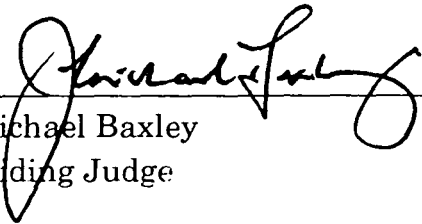
7. The Defendants have shown no "abuse" by Plaintiffs' counsel in their communications with putative class members, and the mere conjecture that such may occur is insufficient for this Court to impose a ban. *Gulf Oil Co.* at 104, 101 S.Ct. at 2202.

After review and consideration of this issue, the Court does not find that direct, immediate, and irreparable harm will result if Plaintiffs' counsel is allowed to communicate with the residents of Sun City Hilton Head. To the contrary, the Court finds that the interests of justice are better served if all counsel are permitted to discuss this case with prospective and potential members of the class, as the free

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flow of information from either side of the case will serve to better inform potential class members as to their rights and the potential to resolve individual claims without the need for litigation prior to the enrollment of the class. For this reason, the Court now declines to issue an injunction, and denies Defendants' motion.

**IT IS SO ORDERED.**



---

J. Michael Baxley  
Presiding Judge

Hartsville, South Carolina  
May 11, 2012

**CERTIFICATE OF SERVICE**

As a ~~Docket~~ Clerk of Court for Common Pleas in Beaufort County, I certify that on 5-18-12, I served a copy of this Order Vacating Temporary Injunction, Dismissing as Moot Defendants' Motion to Amend Injunction, and Denying Motion to Renew Injunction, in this action, dated May 11, 2012, on Michael S. Seekings, Esquire, Everett A. Kendall, II, Esquire, A. Victor Rawl, Jr., Esquire, David S. Cobb, Esquire, by depositing in the U.S. Mail, pre-paid for first class delivery, at the following addresses:

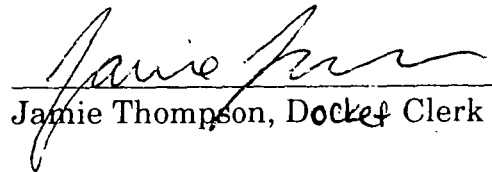
Michael S. Seekings, Esquire  
Post Office Box 59  
Charleston, SC 29402

Everett A. Kendall, II, Esquire  
Post Office Box 12129  
Columbia, SC 29211


A. Victor Rawl, Jr. Esquire  
Post Office Box 11390  
Columbia, SC 29211

David S. Cobb, Esquire  
Post Office Box 22129  
Charleston, SC 29413

2012 MAY 18 AM 11:11  
JENNIFER ANNE ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

  
Jamie Thompson, ~~Docket~~ Clerk

May 18, 2012

SWORN to before me this 18 day of May, 2012  
  
Notary Public for South Carolina  
My Commission Expires: 5-28-18

**EXHIBIT**  
**B**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, 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,..... Defendant,

and

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

v.

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

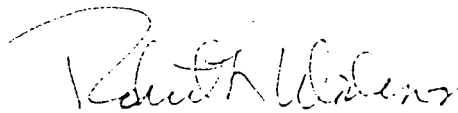
Of whom Del Webb Communities, Inc., and  
Pulte Homes, Inc. are ..... Appellants.

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NOTICE OF APPEAL

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Del Webb Communities, Inc., and Pulte Homes, Inc., appeal the order of the Honorable J. Michael Baxley, dated May 11, 2012 and filed May 16, 2012. Appellants made a timely motion to reconsider this order, and Appellants also appeal the order of the Honorable J. Michael Baxley, dated June 26, 2012 and filed June 29, 2012, which denied the motion to reconsider. Appellants received written notice of the entry of the June 26, 2012 order on July 6, 2012.



Robert L. Widener  
A. Victor Rawl, Jr.  
McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

ATTORNEYS FOR APPELLANTS,  
Del Webb Communities, Inc., and  
Pulte Homes, Inc

Columbia, SC  
July 9, 2012

Other Counsel of Record:

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Attorneys for Defendant Kephart Architects, Inc  
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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, Circuit Court Judge

---

Case No. 2007-CP-07-1396

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

v.

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

and

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

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 ..... Appellants.

---

CERTIFICATE OF SERVICE

---

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the *Notice of Appeal*. by depositing a copy in the United States Mail, postage prepaid, on July 9, 2012, addressed to all attorneys of record, as follows:

Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
Sweeny, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, South Carolina 29211

W. Jefferson Leath, Jr., Esq.  
Michael S. Seekings, Esq.  
Leath, Bouch, Crawford & von Keller, LLP  
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John T. Chakeris, Esq.  
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Charleston, South Carolina 29413-2129

  
Ann Shuler

EXHIBIT

C



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

August 31, 2012

Mr. Everett Augustus Kendall, II  
Ms. Christy Elizabeth Mahon  
PO Box 12129  
Columbia SC 29211

Mr. Robert L. Widener  
Mr. A. Victor Rawl, Jr.  
PO Box 11390  
Columbia SC 29211

Re: Anthony Grazia v. SC State Plastering (2)  
Appellate Case No. 2012-212840  
Lower Court Case No. 2007CP0701396  
Date of Court Orders: 05/11/2012 and 06/29/2012

Dear Counsel:

This Court has received multiple notices of appeal in this matter. These appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on appeal. When appeals are consolidated, the party filing the first notice of appeal, South Carolina State Plastering, LLC, has been designated as the primary appellant and the party filing the second notice of appeal, Del Web Communities, Inc. and Pulte Homes, Inc., have been designated as the secondary appellants. This is to further advise that each party is allowed to serve and file initial appellant's briefs along with a designation of matter to be included in the record on appeal, respondent's briefs and reply briefs as provided for in Rules 208 and 209, SCACR.

In light of this consolidation, the title of this case is amended as follows:

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,

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

Please be advised that the appellants' initial briefs and designations of matter must be served and filed within 30 days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: W. Jefferson Leath, Jr.  
Michael S. Seekings  
Phillip Ward Segui, Jr.  
John T. Chakeris

EXHIBIT  
D

MCNAIR  
ATTORNEYS

July 18, 2012

Robert L. Widener

rwidener@mcnair.net  
T 803.799.9800  
F 803.753.3278

Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

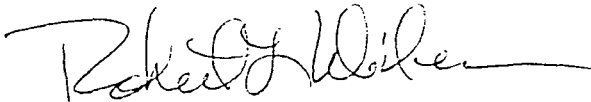
Re: Grazia, Anthony, et al. v. South Carolina State Plastering, LLC, et al.  
Civil Action No. 2007-CP-07-1396

Dear Madam Clerk:

Del Webb Communities and Pulte Homes, Inc. filed an appeal in the above referenced case on July 9, 2012. The appellants are in receipt of all transcripts relevant to this appeal. It is our understanding that the Initial Brief and Designation of Matter will be due on August 8, 2012, thirty days after service of the Notice of Appeal. If this is incorrect, please advise.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

cc: W. Jefferson Leath, Jr., Esq.  
Michael S. Seekings, Esq.  
Phillip W. Segui, Jr., Esq.  
John T. Chakeris, Esq.  
Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
David S. Cobb, Esq.

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EXHIBIT  
E

MCNAIR  
ATTORNEYS

August 8, 2012

Robert L. Widener

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Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Anthony and Barbara Grazia, et al. v. South Carolina State Plastering,  
LLC and South Carolina State Plastering LLC v. Del Webb  
Communities, Inc. and Pulte Homes, Inc.  
Civil Action No. 2007-CP-07-1396

Dear Ms. Kitchings:

Appellants' Initial Brief and Designation of Matter is due August 8, 2012 with regard to the **Notice of Appeal filed on July 9, 2012**, appealing the orders of the Honorable Michael Baxley filed on **May 16, 2012** and **June 29, 2012**. Due to conflicts in the schedule of counsel, Appellants respectfully request a thirty (30) day extension to serve and file their Initial Brief and Designation. This extension would make the Initial Brief and Designation due on September 7, 2012. By copy of this letter, we are advising all counsel of record of this request. Our check in the amount of \$25.00 is enclosed.

Thank you for your consideration of this matter. Please accept my highest regards.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as  
Enclosure

McNair Law Firm, P. A.  
1221 Main Street  
Suite 1800  
Columbia, SC 29201

Mailing Address  
Post Office Box 11390  
Columbia, SC 29211

mcnair.net

Honorable Jenny Abbott Kitchings  
August 8, 2012  
Page 2

M C N A I R  
ATTORNEYS

---

cc: W. Jefferson Leath, Jr., Esq. ✓  
Michael S. Seekings, Esq.  
Phillip W. Segui, Jr., Esq.  
John T. Chakeris, Esq.  
Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
David S. Cobb, Esq.

# EXHIBIT

F

# The South Carolina Court of Appeals

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

v.

South Carolina State Plastering, LLC, Defendant.

South Carolina State Plastering, LLC, Defendant,

v.

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

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

Appellate Case No. 2012-212364

The Honorable J. Michael Baxley  
Beaufort County  
Trial Court Case No. 2007CP0701396

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## ORDER

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The time for serving and filing the appellant's initial brief and designation of  
matter is hereby extended until September 12, 2012.

FOR THE COURT

BY

  
CLERK

Columbia, South Carolina

cc: Robert L. Widener  
A. Victor Rawl, Jr.  
W. Jefferson Leath, Jr.  
Michael S. Seekings  
Phillip Ward Segui, Jr.  
John T. Chakeris

**FILED**  
8-20-2012

EXHIBIT  
G

MCNAIR  
ATTORNEYS

September 10, 2012

Robert L. Widener

Hand Delivery

[rwidener@mcnair.net](mailto:rwidener@mcnair.net)  
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V. Claire Allen  
Deputy Clerk of Court  
S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Anthony and Barbara Grazia, et al. v. South Carolina State Plastering,  
LLC and South Carolina State Plastering LLC v. Del Webb  
Communities, Inc. and Pulte Homes, Inc.  
Civil Action No. 2007-CP-07-1396

Dear Ms. Allen:

We have received your letter of August 31, 2012, referencing Appellate Case No. 2012-212840, which consolidated our appeals in the above-captioned matter from orders dated May 11, 2012 and June 29, 2012. By Order also dated August 31, 2012, bearing Appellate Case No. 2012-212364, the Court dismissed our appeal from the May 11, 2012 Order (we will be filing a petition for rehearing). Based on the foregoing, it is our understanding that our Initial Brief of Appellant and Designation in the appeal from the June 29, 2012 Order is due on October 1, 2012 (your letter stated the brief was due within 30 days from the August 1 date of the letter, making the brief due on September 30, which is a Sunday).

Thank you for your consideration of this matter. Please accept my highest regards.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as

McNair Law Firm, P. A.  
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V. Claire Allen  
September 10, 2012  
Page 2

MCNAIR  
ATTORNEYS

---

cc: W. Jefferson Leath, Jr., Esq. ✓  
Michael S. Seekings, Esq.  
Phillip W. Segui, Jr., Esq.  
John T. Chakeris, Esq.  
Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
David S. Cobb, Esq.

EXHIBIT  
H

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, Circuit Court Judge

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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 ..... Appellants.

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MOTION TO HOLD APPELLATE TIMELINES IN ABEYANCE,  
or in the alternative,  
FOR EXTENSION OF TIME TO SERVE AND FILE INITIAL APPELLANTS' BRIEF

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This is an appeal from an order denying an injunction (the injunction appeal). This appeal was consolidated administratively with another appeal (the first appeal) on August 31, 2012. On that same date, however, this Court granted a motion to dismiss the first appeal, finding the appealed orders were not appealable. All Appellants have filed a petition for

rehearing with this Court in the first appeal. The Appellants' brief in the second appeal (injunction appeal) is currently due to be served and filed on October 1, 2012. Appellants Del Webb and Pulte (Del Webb) move to hold the appellate timelines in the second appeal (injunction appeal) in abeyance upon the grounds set forth below.

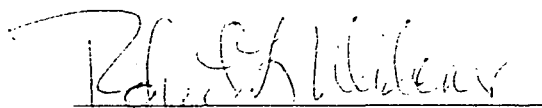
On September 28, 2012, the trial court ruled *sua sponte* that it would not proceed in this case until after the appellate proceedings were complete, *i.e.*, the petition for rehearing in the first appeal that is pending before this Court and, if denied, any certiorari proceedings before the Supreme Court. (See Tab A). Under these circumstances, Del Webb submits that holding the appellate timelines for the instant appeal (injunction appeal) in abeyance best protects the resources of the courts and the parties. If this Court grants rehearing, then it would be most efficient to brief the injunction issue with the issues in the first appeal. If this Court denies rehearing, Appellants intend to seek certiorari and to move to certify the instant appeal (injunction appeal) to the Supreme Court in conjunction with those certiorari proceedings. If the Supreme Court grants certiorari, it would be most efficient to brief the injunction issue with the issues in the first appeal. Accordingly, Del Webb moves to hold the appellate timelines for perfecting the current appeal (injunction appeal), pending the outcome of this Court's decision on the pending petition for rehearing and any certiorari proceedings before the Supreme Court.

Appellant South Carolina State Plastering (State Plastering) has filed its Initial Brief of Appellant. If this Court denies the instant motion, Del Webb requests an extension of time for 10 days after this Court's denial of the instant motion to serve and file its Initial Brief of Appellant and Designation of Matter to Be Included in the Record on Appeal. This will permit Del Webb to review and where appropriate adopt portions of State Plastering's brief rather than burden this Court with repetitious arguments.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should hold the appellate timelines for perfecting the instant appeal from the injunction order in abeyance pending the outcome of the rehearing petition currently before this Court and any certiorari proceedings before the Supreme Court. If this Court does not grant the instant abeyance motion, Del Webb respectfully requests an extension of 10 days from the date of the order denying abeyance to serve and file its initial brief and designation.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Robert L. Widener", is written over a horizontal line.

Robert L. Widener  
A. Victor Rawl, Jr.  
McNAIR LAW FIRM, P.A.  
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ATTORNEYS FOR APPELLANTS,  
Del Webb Communities, Inc., and  
Pulte Homes, Inc

Columbia, SC  
October \_\_\_\_, 2012

# EXHIBIT A

## Widener, Robert

---

**From:** Rawl, Vic  
**Sent:** Friday, September 28, 2012 5:13 PM  
**To:** Widener, Robert; Shuler, Ann  
**Subject:** Fwd: Grazia - Rule to Show Cause

Sent from my iPhone

Begin forwarded message:

**From:** "Baxley, J. Michael Law Clerk (James H. Scruggs, III)" <[JBaxleyLC@sccourts.org](mailto:JBaxleyLC@sccourts.org)>  
**Date:** September 28, 2012, 4:13:11 PM EDT  
**To:** Mike Seekings <[mseekings@leathbouchlaw.com](mailto:mseekings@leathbouchlaw.com)>, "W. Jefferson Leath Jr." ([jl@leathbouchlaw.com](mailto:jl@leathbouchlaw.com)) <[jl@leathbouchlaw.com](mailto:jl@leathbouchlaw.com)>, "Phillip W. Segui, Jr." ([psegui@Seguilawfirm.com](mailto:psegui@Seguilawfirm.com)) <[psegui@Seguilawfirm.com](mailto:psegui@Seguilawfirm.com)>, "John T. Chakeris" ([john@chakerislawfirm.com](mailto:john@chakerislawfirm.com)) <[john@chakerislawfirm.com](mailto:john@chakerislawfirm.com)>, "[dcobb@turnerpadget.com](mailto:dcobb@turnerpadget.com)" <[dcobb@turnerpadget.com](mailto:dcobb@turnerpadget.com)>, "Rawl, Vic" <[VRawlJr@mcnair.net](mailto:VRawlJr@mcnair.net)>, "Rett Kendall" ([EAK@swblaw.com](mailto:EAK@swblaw.com)) <[EAK@swblaw.com](mailto:EAK@swblaw.com)>  
**Cc:** "Baxley, J. Michael Secretary (Jamie L. Capell)" <[JBaxleySC@sccourts.org](mailto:JBaxleySC@sccourts.org)>  
**Subject:** Grazia - Rule to Show Cause

Counsel,

Judge Baxley has asked me to respond to the recent emails from Plaintiffs' counsel, as well as the responses from defense counsel, requesting that we go ahead at this time and finalize the opt-out class notice in this case and proceed forward with the case. We are aware that the Court of Appeals has dismissed Defendants' appeal of the preliminary class certification decision, and that a petition for rehearing of that decision is pending. We are also aware that the Defendants intend to request certiorari to the Supreme Court on this issue in the event there is a denial of rehearing. While we are aware that the Plaintiffs contend they are being prejudiced by delay, it is Judge Baxley's belief at this juncture that we should await the Supreme Court's potential opportunity to weigh in on this issue. This is a novel effort to meld two statutes, has already been to the Supreme Court once, and it would be a significant waste of judicial resources if we proceed now, only to have the Court mid-stream reject our proposed course. Such an occurrence would also result in additional significant confusion to all parties, particularly the proposed class members. In the interim, we are aware that Plaintiffs have filed a RTSC alleging that inappropriate contacts to members of the proposed class are being committed. Because this motion has not been formally withdrawn at the clerk's office, regardless of previous discussions between counsel, we consider the motion to be pending, and are willing to hear it. To start the process of scheduling, would you please advise Jamie Capell in our office, on a reply to all basis so that everyone will be included in the discussion, how long you believe the presentation of your RTSC case/defense will take? To streamline, the judge suggests that any testimony be by affidavit provided to opposing counsel prior to the hearing per the rules. If this presents a problem, please advise how so. Once we determine the time needed for the hearing, we will be in a position to propose a date and location.

Thank you,

Jamie Scruggs

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, 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,

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 ..... Appellants.

---

CERTIFICATE OF SERVICE

---

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Appellants' *Motion to Hold Appellate Timelines in Abeyance, or in the alternative, For Extension of Time to Serve and File Initial Appellants' Brief* by depositing a copy in the United States Mail, postage prepaid, on October 1, 2012, addressed to all attorneys of record, as follows:


Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
Sweeny, Wingate & Barrow, P.A.  
Post Office Box 12129  
Columbia, South Carolina 29211

W. Jefferson Leath, Jr., Esq.  
Michael S. Seekings, Esq.  
Leath, Bouch, Crawford & von Keller, LLP  
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Charleston, South Carolina 29402

John T. Chakeris, Esq.  
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Ann Shuler

# EXHIBIT

## I

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2007-CP-07-1396  
Case Tracking No.: 2012-212840

---

RECEIVED  
OCT 11 2012  
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 ..... Appellants.

---

**RESPONDENTS' RETURN TO MOTION TO HOLD  
APPELLATE TIMELINES IN ABEYANCE, or in the Alternative,  
FOR EXTENSION OF TIME TO SERVE AND  
FILE INITIAL APPELLANTS' BRIEF**

---

This matter before the Court is an Appeal from the dissolution of an Injunction filed  
by the Circuit Court on May 16, 2012. (attached as Exhibit "A"). Two parties to this

litigation, South Carolina State Plastering, LLC, (SCSP) and Pulte/Del Webb (Pulte) have independently filed a Notice of Appeal from that Order. By Order of this Court, these two Appeals of the May 16<sup>th</sup> Order were consolidated (attached as Exhibit “B”). SCSP has filed its Initial Brief. Pulte has not. Instead, Pulte has chosen a route of delay by filing its Notice to Hold Appellate Timelines in Abeyance. For the reasons stated below, this Motion should be denied and an SCRAP 269 inquiry conducted by this Court.

In its moving papers, Pulte states the following:

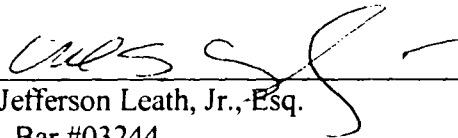
“This is an appeal from an order denying an injunction (the injunction appeal). This appeal was consolidated administratively with another appeal (the first appeal) on August 31, 2012. On that same date, however, this *Court granted a motion to dismiss the first appeal*, finding the appealed orders were not appealable. All Appellants have filed a petition for rehearing with this Court in the first appeal. The Appellants’ brief in the second appeal (injunction appeal) is currently due to be served and filed on October 1, 2012. Appellants Del Webb and Pulte (Del Webb) move to hold the appellate timelines in the second appeal (injunction appeal) in abeyance upon the grounds set forth below.”

This recitation is simply and plainly inaccurate and delivered for the improper purpose of confusion and delay. Pulte states that the Injunction Appeal now before this Court has somehow been consolidated with a previously dismissed Appeal from a case management order that certified a class. This, of course, would be impossible. Upon receipt of Pulte’s “Abeyance Motion,” below signed counsel advised counsel for Pulte of its error and requested that Pulte withdraw its motion (attached as Exhibit “C”). Pulte declined.

The efforts of Pulte to delay this case have been well documented with this Court. This filing is but another in a series of improper filings. (see Exhibit “D”). The Plaintiffs/Respondents are entitled to have their case proceed unburdened by the improper tactics of Pulte. Accordingly, Plaintiffs respectfully request that Pulte’s “Abeyance Motion”

be denied, its "Extension" Motion be denied and that this Court conduct an inquiry and issue an appropriate remedy pursuant to SCRAP 269.

Respectfully Submitted,



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*Attorneys for the Respondents*

Charleston, South Carolina

October 8, 2012

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

---

Case No. 2007-CP-07-1396  
Case Tracking No.: 2012-212840

---

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 ..... Appellants.

---

**PROOF OF SERVICE**

---

W. Jefferson Leath, Jr., Esq.  
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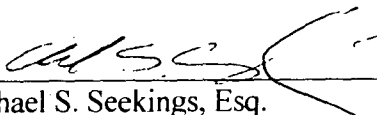
*Attorneys for the Respondents*

I, Michael S. Seekings, Esq., do hereby certify that on October 8, 2012, I served opposing counsel with a copy of Respondents' Return to Motion to Hold Appellate Timelines in Abeyance, or in the Alternative, for Extension of Time to Serve and File Initial Appellants' Brief via regular first class United States mail, postage prepaid, addressed as follows:

Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
Sweeny Wingate & Barrow, P.A.  
1515 Lady Street  
P.O. Box 12129  
Columbia, SC 29211  
*Attorneys for Appellant South Carolina  
State Plastering, LLC*

A. Victor Rawl, Jr., Esq.  
Robert L. Widener, Esq.  
McNair Law Firm  
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Columbia, SC 29211  
*Attorneys for Appellant Del Webb Communities, Inc.,  
and Pulte Homes, Inc.*

David S. Cobb, Esq.  
Turner Padget Graham & Laney, P.A.  
40 Calhoun Street, Suite 200  
P.O. Box 22129  
Charleston, SC 29413  
*Attorney for Third-Party Defendant Kephart  
Architects, Inc.*

  
Michael S. Seekings, Esq.

October 8, 2012  
Charleston, South Carolina

EXHIBIT  
A

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. )

**ORDER VACATING TEMPORARY  
INJUNCTION, DISMISSING AS MOOT  
DEFENDANTS' MOTION TO AMEND  
INJUNCTION, AND DENYING  
MOTION TO RENEW INJUNCTION**

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. )

2012 MAY 16 PM 1:21  
ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

This class action concerns allegations of defective stucco on approximately 4000 residences within the Sun City development in Hilton Head, South Carolina. The case has been declared complex and assigned to this Court for disposition. On January 13, 2012, Defendant South Carolina State Plastering ("SCSP") filed a Motion for Temporary Injunction, and on January 18, 2012, Third-Party Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. likewise filed a Motion for Injunctive Relief. Both of these motions sought to enjoin Plaintiffs' counsel from communicating with stucco homeowners in Sun City Hilton Head prior to the

expiration of any opt-out period for inclusion in the class. According to Defendants, the motions were filed because Plaintiffs' counsel intended to conduct a "community meeting" with reference to this pending lawsuit, and published notice of such meeting in the local newspaper. Before a hearing could be scheduled on the motions, Plaintiffs' counsel submitted a proposed Order to the Court granting the injunction, presented as a consent Order, and the Court signed Plaintiffs' counsel's proposed order.

After the Court signed and issued the Order, Defendant SCSP and Third-Party Defendants Del Webb and Pulte moved to alter the Order. The Court conducted a hearing on this motion, during which Defendants asserted that the timeframe they had requested for the injunction to remain in place in their motions was different from the one actually outlined in the signed Order presented by Plaintiff's counsel. At that point, the Court learned that Defendants had not in fact consented to the proposed Order submitted by Plaintiffs' counsel.

After considering this issue with the knowledge that there was no true consent among the parties, the Court has determined that the Order was improvidently granted; moreover, after close review, the requested injunction was unilateral in nature and failed to require a bond in the event of Plaintiffs' counsel's failure to abide thereby, which is reversible error. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009); Rule 65, SCRPC. Therefore, the Court hereby vacates the Order Granting Temporary Injunction entered on March 15, 2012. As a result, the Court further now dismisses as moot Defendants' motion to alter or amend that injunction.

After learning that the Court intended to vacate the previous injunction, Defendants have now moved to renew the injunction. A telephone conference was conducted on the record on May 9, 2012 to hear arguments on the issue of whether an injunction should issue. In considering this renewed motion, the Court is aware that class actions serve an important function in our system of civil justice, but they also present opportunities for abuse as well as problems for courts and counsel in the management of cases. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99, 101 S.Ct. 2193, 2200 (1981). Therefore, because of the potential for abuse, courts have been given the discretion to "impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended." Rule 23, SCRPC; *Eldridge v. City of Greenwood*, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992). To ensure that these interests are protected, courts may find it necessary to issue orders, like the previous one in this case, that limit communication between the parties and potential members of the class.

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But a court's power to issue an order curtailing communication is not unlimited. In fact, one such limitation flows from the framework and general policies contained in Rule 23 itself. As the South Carolina Supreme Court has stated, the specific grant of power to a court under Rule 23(d), SCRPC, are directed towards notifying the parties of the pending litigation. *Id.* Therefore, while it may be necessary for a court to issue an order limiting communications in certain circumstances, such an order "should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties. Only such a determination can ensure that the court is furthering, rather than hindering, the policies embodied in [Rule 23]." *Id.*, citing *Gulf Oil Co.* at 101, 101 S.Ct. at 2200.

Another, and perhaps more important, limitation on a court's authority to enter an order prohibiting communication under Rule 23 emerges from the constitutional rights enshrined in the First Amendment. The impact of Defendants' motion is broad sweeping and effectively constitutes a prior restraint on speech. It enjoins the named Plaintiffs and Plaintiffs' counsel from "communicating with prospective class members regarding" the pending litigation, "publishing any statement" regarding the litigation, and "taking any action intended to advise or inform residents of Sun City Hilton Head of their legal rights." A prior restraint, of course, is subject to a heavy presumption against its constitutionality; in order for the restraint to be valid, it must prevent "direct, immediate, and irreparable damage" and be the least restrictive means of doing so. *New York Times Co. v. U.S.*, 403 U.S. 713, 732-33, 91 S.Ct. 2140, 2150-51 (1971). While the Court is well aware of the constitutional implications of Defendants' motion, this decision is not made upon constitutional grounds.

With regard to the motion for temporary injunction, the Court makes the following specific findings in weighing the need for limitation of communications between Plaintiffs' counsel and putative class members versus a potential interference with the rights of the parties:

1. The Court's ability to control the flow of information within a class action is superimposed upon the foundational democratic principles of the need for a free flow of information within society generally and specifically within the justice system;
2. The motions as filed are unilateral in nature, applying only to Plaintiffs' counsel, raising an immediate question as to the propriety of

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disparate treatment of the parties. While Defendants now offer to amend the motion so as to apply to all parties, this does not cure the Court's concerns;

3. This case involves a retirement community where the citizenry is similarly situated as to the construction of their residences by Defendants, and where putative class members have the necessary time, fiscal capability, and level of sophistication to fully participate in this case;

4. This case further involves the most substantial investment that most individuals make in a lifetime, their home, and thus is of core interest. Due to the large number of people involved who live in close proximity to one another, one can anticipate that rumor and misunderstanding will abound. The inability to discuss the issues in this litigation with counsel on either side of the case will result in the potential for confusion and frustration, particularly when individuals are attempting to determine whether or not to opt out of the proposed class;

5. This situation would undermine the confidence of potential litigants in the justice system as the ban on information would be imposed by Court order, as opposed to an agreement between counsel, and the Court finds no reason to impose such a ban;

6. The free flow of information, particularly in light of the requirements and directives of the Right to Cure Dwelling Defect Act, S.C. Code Ann. 40-59-810, et. seq., may lead to the settlement of many of these claims without the necessity of joining the class; and,

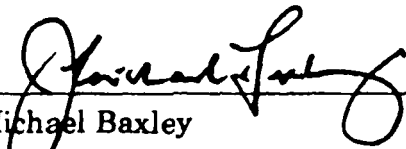
7. The Defendants have shown no "abuse" by Plaintiffs' counsel in their communications with putative class members, and the mere conjecture that such may occur is insufficient for this Court to impose a ban. *Gulf Oil Co.* at 104, 101 S.Ct. at 2202.

After review and consideration of this issue, the Court does not find that direct, immediate, and irreparable harm will result if Plaintiffs' counsel is allowed to communicate with the residents of Sun City Hilton Head. To the contrary, the Court finds that the interests of justice are better served if all counsel are permitted to discuss this case with prospective and potential members of the class, as the free

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flow of information from either side of the case will serve to better inform potential class members as to their rights and the potential to resolve individual claims without the need for litigation prior to the enrollment of the class. For this reason, the Court now declines to issue an injunction, and denies Defendants' motion.

**IT IS SO ORDERED.**



---

J. Michael Baxley  
Presiding Judge

Hartsville, South Carolina  
May 11, 2012

**EXHIBIT**  
**B**



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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[www.sccourts.org](http://www.sccourts.org)

August 31, 2012

Mr. Everett Augustus Kendall, II  
Ms. Christy Elizabeth Mahon  
PO Box 12129  
Columbia SC 29211

Mr. Robert L. Widener  
Mr. A. Victor Rawl, Jr.  
PO Box 11390  
Columbia SC 29211

Re: Anthony Grazia v. SC State Plastering (2)  
Appellate Case No. 2012-212840  
Lower Court Case No. 2007CP0701396  
Date of Court Orders: 05/11/2012 and 06/29/2012

Dear Counsel:

This Court has received multiple notices of appeal in this matter. These appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on appeal. When appeals are consolidated, the party filing the first notice of appeal, South Carolina State Plastering, LLC, has been designated as the primary appellant and the party filing the second notice of appeal, Del Web Communities, Inc. and Pulte Homes, Inc., have been designated as the secondary appellants. This is to further advise that each party is allowed to serve and file initial appellant's briefs along with a designation of matter to be included in the record on appeal, respondent's briefs and reply briefs as provided for in Rules 208 and 209, SCACR.

In light of this consolidation, the title of this case is amended as follows:

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,

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

Please be advised that the appellants' initial briefs and designations of matter must be served and filed within 30 days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: W. Jefferson Leath, Jr.  
Michael S. Seekings  
Phillip Ward Segui, Jr.  
John T. Chakeris

EXHIBIT  
C



# LEATH, BOUCH & SEEKINGS, LLP

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

October 4, 2012

**VIA E-MAIL ONLY**

A. Victor Rawl, Jr., Esq.  
Robert L. Widener, Esq.  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211

RE: Anthony and Barbara Grazia, et al v. South Carolina State Plastering, LLC  
Case No.: 07-CP-07-1396  
LBS No.: 1351.0001

Dear Vic and Robert:

Today I received your "Motion to Hold Appellate Timelines in Abeyance, or in the alternative, for Extension of Time to Serve and File Initial Appellants' Brief." By this letter, I write to advise you of the inaccuracy of your procedural recitation to the Court and ask that you withdraw your Motion. In your Motion, you state the following:

"This is an appeal from an order denying an injunction (the injunction appeal). This appeal was consolidated administratively with another appeal (the first appeal) on August 31, 2012. On that same date, however, this *Court granted a motion to dismiss the first appeal*, finding the appealed orders were not appealable. All Appellants have filed a petition for rehearing with this Court in the first appeal. The Appellants' brief in the second appeal (injunction appeal) is currently due to be served and filed on October 1, 2012. Appellants Del Webb and Pulte (Del Webb) move to hold the appellate timelines in the second appeal (injunction appeal) in abeyance upon the grounds set forth below."

The implication is that the injunction appeal, appellate case no. 2012-212840, has been consolidated with the now dismissed class certification appeals, nos. 2012-212212 and 2012-212364. Such an assertion is incorrect. Attached to this correspondence is a copy of the Administrative Order to which you refer. It is clear that what has been consolidated are the two (2) appeals filed on the injunction order. All you need to do is look at the "Re:" line of the Court's correspondence which appears as follows:

"Re: Anthony Grazia v. SC State Plastering (2)  
Appellate Case No. 2012-212840  
Lower Court Case No. 2007CP0701396  
Date of Court Orders: 05/11/2012 and 06/29/2012"

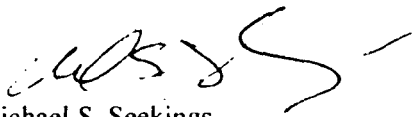
A. Victor Rawl, Jr., Esq.  
Robert L. Widener, Esq.  
October 4, 2012  
Page 2

The two (2) Court Orders referenced both relate to the injunction. There is no suggestion, nor would it be possible, that the dismissed appeals also be consolidated, because those appeals have been dismissed.

I am certain that upon receipt of this letter you will immediately take the necessary steps to withdraw your Motion, advise the Court of your error, and timely file your brief.

Yours truly,

LEATH, BOUCH & SEEKINGS, LLP



Michael S. Seekings

MSS/dmc  
Enclosure

cc: John T. Chakeris, Esq.  
Phillip W. Segui, Jr., Esq.  
Everett A. Kendall, II, Esq.  
David S. Cobb, Esq.

EXHIBIT  
D

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

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Case No. 2007-CP-07-1396  
Case Tracking No.: 2012-212364

---

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

v.

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

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

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 ..... Appellants.

---

**RESPONDENTS' RETURN TO DEL WEBB/PULTE'S  
PETITION FOR REHEARING AND  
MEMORANDUM IN SUPPORT OF RULE 269 SCRAP MOTION**

---

## INTRODUCTION AND SUMMARY

This brief is filed in opposition to Pulte's Petition for Rehearing. For the reasons stated below, not only should Pulte's Petition be denied but this Court should issue an Order pursuant to SCRAP 269 finding that this Appeal and Petition is frivolous and filed solely for the purpose of delay and fashion an appropriate remedy. After receiving notice of this Court's dismissal of its Appeal of the Court's Class Certification Order, Del Webb/Pulte has now petitioned for a rehearing. In so doing, it cites nothing new but rather relies on arguments which were fully briefed by both sides prior to the Dismissal. In their Motion to Dismiss the Appeal filed on June 21, 2012, Respondents also moved this Court to conduct a Rule 269 SCRAP inquiry into the issue of whether, instead of filing legitimate Appeals, Webb/Pulte's actual motive was delay in violation of that Rule. As is shown below, Pulte's entire strategy in this case is centered on delay, not only in this Appeal, but also in a companion Class Appeal in the matter of *Lancaster, et al vs. Del Webb, et al*, Appellate Case No. 2012-210927. Del Webb/Pulte's conduct in filing Notices of Appeal of orders which it knows do not constitute final adjudications and therefore are not appealable, and its continual pursuit of these improper Appeals will reveal to this Court a pattern of behavior which must be dealt with in accordance with the requirements of Rule 269.

## THE SUN CITY STUCCO AND TRIM CLASS CASES

As this Court is fully aware, there exist two Class cases involving the Del Webb/Pulte Sun City development. The instant *Grazia* case involving 4,300 homes with

allegations of defectively designed and installed stucco exteriors, and the *Lancaster* case, involving fewer homes with allegations of defective trim manufactured by Georgia Pacific Corporation and sold by Del Webb. Lower Courts have certified classes in both cases, and Del Webb has filed Appeals of these orders. Additionally, there are approximately 140 cases on the Beaufort County docket filed by individual homeowners against Del Webb/Pulte, Del Webb filed an Appeal in one of them (*Carlson, et al v. South Carolina State Plastering, LLC, et al*, Case No. 2008-CP-07-3386) following the Lower Court's Order that Pulte had waived any right to arbitration contained in its sales contract by waiting to seek enforcement of arbitration and instead utilizing the Court system.

#### **DEL WEBB/PULTE'S APPELLATE ACTIVITIES IN THE STUCCO CASES**

As noted above, Del Webb/Pulte has appealed virtually every Order issued by the Lower Court, whether or not appealable. In the instant Appeal, Pulte filed an Appeal of a Class Certification and case management order. When Pulte filed its Appeal, it had actual notice that the Lower Court's Order was not appealable, but filed the Appeal in spite of that knowledge. By this Petition Pulte now seeks to perpetuate that conduct. Its Appeal was filed on June 7, 2012. Prior to that date, it had received the Order from this Court in *Lancaster, et al v. Georgia-Pacific Corporation, et al*, Case No.: 2007-CP-07-3166, in which this Court reiterated that Class Certification Orders are not immediately appealable. As further evidence of this knowledge of non-appealability, Pulte also filed a document entitled, "Motion to Determine Appealability" - presumably attempting to

excuse its conduct in filing this patently improper Appeal, having just been told in a companion case that such an Appeal was subject to dismissal.

Respondents filed their Motion to Dismiss this Appeal, both sides fully briefed the issues raised by Appellant, and this Court issued its Order Dismissing this Appeal having considered those arguments. Now once again, Del Webb/Pulte attempts to keep the stucco class in the Appellate Courts and out of the Lower Court, where Class Notices will issue, discovery will be conducted, and a trial can take place. In its Petition for Rehearing, Pulte raises nothing new, nothing not already considered by this Court, and advances no reasoning entitling it to a rehearing. What it appears to be seeking is to require this Court to issue specific rulings on each of its complaints regarding the Class procedure as embodied in the case management section of the Order presumably for use either in the Lower Court or for further Appellate attempts. This procedure has never been the practice of this Court.

Concurrently, in Appeal No. 2012-212364 in the *Grazia* case, Pulte filed another Appeal from the Lower Court's dissolving an injunction prohibiting Class Counsel from discussing the Class case with class members. A review of this Appeal will demonstrate it lacks merit, and represents, at best, a minor, collateral issue, having little or no bearing on the ultimate decision to be made at the trial of the Class case.

In Appeal No. 2012-202907 in the *Carlson* case, this Appellant asserted a right to arbitrate rather than litigate, pursuant to language in its sales contract. It has appealed the Lower Court's finding of waiver, and again, an examination of that Appeal will demonstrate a highly questionable position.

**DEL WEBB/PULTE'S APPELLATE ACTIVITIES**  
**IN THE LANCASTER TRIM CASE**

Following its pattern of seeking delay at all costs, in the *Lancaster* case, Pulte has appealed essentially every Order of the Lower Court, from Class Certification orders, to case management Orders - none of which are appealable, as this Court has found. Now it has, as here, petitioned for Reconsideration of the Dismissal of that Appeal. In *Lancaster*, Judge Roger Young certified the Class, then issued case management orders. Significantly, below, this Appellant asked the Lower Court to conduct discovery of each Class Member and asked for a stay which, if granted would have prolonged almost indefinitely, any ultimate Class trial. The Lower Court declined. Thereafter, Del Webb appealed from six Orders. After the Appeal of the six interlocutory Orders, Del Webb then requested a conference call to ask the Lower Court to confirm Del Webb's position that all of its six Orders issued were stayed because of these Appeals. The Lower Court declined to so rule, stating, "I find that a legitimate question exists as to whether any of the interlocutory orders appealed by Del Webb and Georgia-Pacific is immediately appealable, and I am concerned that they are not. If the appeals are improperly taken, they should have no rightful impact upon the continued progress of this now four-plus-year old case." (See attached Exhibit "A").

Del Webb's response to this Order? Appeal it, after asking the Lower Court to reconsider it. This Court dismissed the latter two Appeals as moot on June 1, 2012.

Del Webb's true motive - delay - can be seen in its activities in the Lower Court prior to its Appeal of the eight Orders of the Lower Court, especially, its Appeal of the preliminary case management and scheduling order. It did not like the Court's Scheduling Order, as such Order puts the case on track for a trial on the merits, which

Pulte hopes to indefinitely postpone. Indeed reference to the Proposed Discovery Scheduling Order it submitted to the Lower Court in the *Lancaster* case presents an accurate picture of its strategy (attached as Exhibit "B"). Therein, Pulte proposes a ten (10) year Discovery schedule and a trial which will take place in 2024, setting trial 16 years after initiation of the claims. Presumably, by that time, most of the claimants in this retirement community -and even counsel - will no longer be able to prosecute these claims.

**DELAY SIGNIFICANTLY HARMS THE GRAZIA CLASS**

The Lower Court's Order, the subject of this Appeal, sets up a procedure wherein the Defendants have the right to Notice of Defects, and an opportunity to settle these claims pursuant to the Right to Cure Construction Dwelling Defect Act. For six years, Pulte has vigorously asserted the importance of that Act. The Order at issue envisions a procedure wherein after a Class is formed after Notice and opt-outs, Del Webb/Pulte can inspect, and make offers. The homeowners will be aware of their rights by then, having been represented by Class Counsel and oversight provided by the Court.

With this Appeal, and the delay it causes at the trial level, Del Webb/Pulte has felt free to ignore and contravene the procedure the Lower Court has ordered. Instead, it has embarked upon a course of conduct designed to eliminate as many Class members as possible by unilaterally soliciting "opt-out agreements" in advance of Class Notice publication where homeowners are not represented by counsel and do not know their rights under the Class Order. They cannot know of their rights, as the stay caused by these frivolous appellate proceedings has prevented the notice forms from being

approved and issued. Having learned of these activities, Respondents filed a Rule to Show Cause on Jan 23, 2012, (attached as Exhibit "C," caselaw exhibits D and E omitted) and this Appeal has effectively stayed a hearing on this Motion.

The document which Del Webb/Pulte requires an unrepresented homeowner to sign, in exchange for patch repairs to their residence (attached as Exhibit "D") is entitled: "Sun City Hilton Head Homeowner Request for Stucco Repairs and Agreement Not to Participate in Class Actions." This document is designed as a release and is designed to reduce or eliminate the Class. Upon information and belief, this partial repair/Class Exclusion outside of the judicial framework, and in total derogation of the Lower Court's Class Order is ongoing, and has become a large operation, the true scale and effect of which will not be revealed until the Lower Court conducts a hearing on this Rule to Show Cause and issues a Class Notice.

### CONCLUSION

If, by means of continued Appeals, a defendant can avoid discovery and trial while divesting the Lower Court of jurisdiction, it maintains a huge litigation advantage. If, during this time of delay, it is able to implement a plan to reduce or eliminate the size of the potential Class claims it is facing, it not only has an advantage, it has also scored a large partial victory, never having to face justice in a courtroom.

Very respectfully, Respondents ask this Court to examine the overall situation here and decide, as Rule 269, SCRAP, indeed requires, what is the proper role of an Appellate Court. Is it to correct errors of law in matters requiring judicial oversight, or is it to serve - by means of delay - as an adjunct to litigation strategy?

One of the key phrases in Rule 269 is the following: "and discouragement of like conduct in the future may require." Without the inquiry by this Court that the Rule requires, it is probable that the strategy outlined above will continue, and every case management order - or indeed, any other pre-trial order - will end up before this Court within 30 days of its issuance. The drafters of Rule 269 understood the pernicious effects of delay in litigation. This is especially true here, where the population of the Class is made up of aging retirees, who, quite, understandably, are hoping for a speedy resolution to the problems with their homes. This Court should accordingly grant the Respondent's Rule 269, SCRAP Motion.

Respectfully Submitted,



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*Attorneys for the Respondents*

Dated: Sept. 25, 2012

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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Case No. 2007-CP-07-1396  
Case Tracking No.: 2012-212364

---

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

v.

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

and

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

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 ..... Appellants.

---

**PROOF OF SERVICE**

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**RECEIVED**  
OCT 11 2012  
SC COURT OF APPEALS

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*Attorneys for the Respondents*

I, Michael S. Seekings, Esq., do hereby certify that on September 25, 2012, I served opposing counsel with a copy of Respondents' Return to Del Webb/Pulte's Petition for Rehearing and Memorandum in Support of Rule 269 SCRAP Motion via regular first class United States mail, postage prepaid, addressed as follows:

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*Attorneys for Appellant South Carolina  
State Plastering, LLC*

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Robert L. Widener, Esq.  
McNair Law Firm  
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*Attorneys for Appellant Del Webb Communities, Inc.,  
and Pulte Homes, Inc.*

David S. Cobb, Esq.  
Turner Padgett Graham & Laney, P.A.  
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P.O. Box 22129  
Charleston, SC 29413  
*Attorney for Third-Party Defendant Kephart  
Architects, Inc.*

  
Michael S. Seekings, Esq.

September 25, 2012  
Charleston, South Carolina

**EXHIBIT**  
**J**

# 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,

Of whom Del Webb Communities, Inc. and Pulte Homes,  
Inc. are Appellants.

Appellate Case No. 2012-212840

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## ORDER

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After careful consideration, the motion to hold appellate timelines in abeyance made by appellants Del Webb Communities, Inc. and Pulte Homes, Inc. is denied. Del Webb Communities, Inc. and Pulte Homes, Inc. shall file and serve their initial brief and designation of matter within ten days of this order.

  
FOR THE COURT

Columbia, South Carolina

12-28-12

cc:

Everett Augustus Kendall, II

Christy Elizabeth Mahon

Robert L. Widener

A. Victor Rawl, Jr.

W. Jefferson Leath, Jr.

Michael S. Seekings

Phillip Ward Segui, Jr.

John T. Chakeris

EXHIBIT  
K

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, 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 ..... Appellants.

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MOTION FOR EXTENSION

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This Court issued its order denying Appellants Del Webb Communities, Inc. and Pulte Homes, Inc.'s motion to hold timelines in abeyance on December 28, 2012, and directed Del Webb Communities, Inc. and Pulte Homes, Inc. to serve and file their initial appellant's brief on January 7, 2013. Appellants Del Webb Communities, Inc. and Pulte Homes, Inc. received this order on December 31, 2013, but undersigned counsel did not return to the office until January 3,

2013, leaving insufficient time to prepare the brief. Accordingly, Appellants Del Webb Communities, Inc. and Pulte Homes, Inc. respectfully requests a one-week extension until January 14, 2013 to serve and file their initial brief of appellant.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert L. Widener", is written over a horizontal line.

Robert L. Widener  
A. Victor Rawl, Jr.  
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Post Office Box 11390  
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ATTORNEYS FOR APPELLANTS,  
Del Webb Communities, Inc., and  
Pulte Homes, Inc

Columbia, SC  
January 7, 2013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, 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,

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 ..... Appellants.

---

CERTIFICATE OF SERVICE

---

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Appellants' *Motion for Extension* by depositing a copy in the United States Mail, postage prepaid, on January 7, 2013, addressed to all attorneys of record, as follows:

Everett A. Kendall, II, Esq.  
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\_\_\_\_\_  
Ann Shuler

EXHIBIT  
L

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, 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 ..... Appellants.

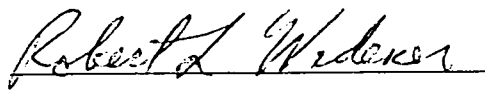
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MOTION FOR EXTENSION

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Appellants Del Webb Communities, Inc. and Pulte Homes, Inc.'s Initial Brief and Designation of Matter are currently due January 14, 2013. Due to illness of Appellants' counsel, Appellants respectfully request a two (2) day extension until January 16, 2013 to serve and file their initial brief of appellant.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Robert L. Widener". The signature is written in black ink and is positioned above a horizontal line.

Robert L. Widener  
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ATTORNEYS FOR APPELLANTS,  
Del Webb Communities, Inc., and  
Pulte Homes, Inc

Columbia, SC  
January 14, 2013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
In the Court of Common Pleas  
J. Michael Baxley, Circuit Court Judge

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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,

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 ..... Appellants.

---

CERTIFICATE OF SERVICE

---

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Appellants' *Motion for Extension* by depositing a copy in the United States Mail, postage prepaid, on January 14, 2013, addressed to all attorneys of record, as follows:

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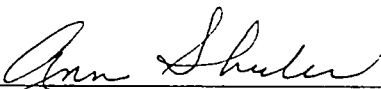
  
\_\_\_\_\_  
Ann Shuler

EXHIBIT  
M

MCNAIR  
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January 16, 2013

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Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
Post Office Box 11629  
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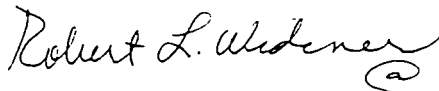
Re: Grazia v. South Carolina State Plastering  
Appellate Case No. 2012-212840

Dear Madam Clerk:

Pursuant to Rule 208(6), SCACR, Appellants Del Webb Communities, Inc. and Pulte Homes, Inc. join the briefs of Appellant South Carolina State Plastering.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener  
SC Bar No. 6089

RLW/as  
Enclosure

cc: W. Jefferson Leath, Jr., Esq.  
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