THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Craig D. Brown, Circuit Court Judge

Case No. 2017-CP-10-05246
Appellate Case No. 2019-001360

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SC Court of Appeals

WHEELOCK STREET REAL ESTATE FUND, LP AND WHEELOCK STREET CAPITAL, LLC,

Appellants,

v.

GARY KEISLER, INDIVIDUALLY AND AS CLASS REPRESENTATIVE, JOHN DOES (1-50) AND JANE DOES (1-50).

Respondents.

MEMORANDUM AS TO APPEALABILITY

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Appellants submit this memorandum pursuant to the Clerk's letter dated August 20, 2019, requesting briefing regarding the appealability of the orders challenged on appeal. The order on appeal operates to deprive Appellants of their substantial right to a jury trial and their due process rights to defend themselves in court and on the merits against claims they properly and timely answered. Accordingly, this appeal from an order in which the trial court determined that it lacked authority to withdraw Orders of Referral to the Special Referee is proper and timely.

INTRODUCTION

Respondents initiated this construction-defect action in 2017 and served Appellants with the original Complaint in January 2018. (Compl., attached as **Exhibit A**.) Shortly after serving the original Complaint, and also in January 2018, Respondents filed an Amended Summons and Complaint but initially failed to serve them effectively on Appellants. (Amend. Compl., attached as **Exhibit B**.) Acknowledging the errors in service efforts, counsel for Respondents ultimately served Appellants with the Amended Summons and Amended Complaint on May 21, 2018. (Aff. of Cheryl Shoun, ¶ 7, attached as **Exhibit C**.) On June 20, 2018, Appellants timely answered the Amended Complaint, which did not incorporate by reference the original Complaint. (Answers to Amend. Compl., attached as **Exhibit D**); Amend. Compl.)

After Appellants had been properly served with the Amended Complaint and the accompanying summons indicating the responsive deadline was June 21, 2018, Respondents secured entries of default against Appellants—in connection with the original Complaint—before that responsive deadline. Respondents had filed for entries of default while negotiating service and responsive deadlines with Appellants' counsel. Notwithstanding the discussions with counsel and representations in the filings that they were being directed to counsel for the Appellants, Respondents provided no notice of the default motions to counsel for Appellants. On June 7

former Circuit Court Judge Kristi Lea Harrington entered the requested defaults and referred further matters to the Special Referee requested by Respondents. (June 7, 2018 Entries of Default and Orders of Referral, attached as **Exhibit E**.)

The motions and orders entering default state that the default exists on the initial complaint. In the hearing below when faced with the fact that the defaults were entered on a pleading that Respondents had rendered void by its amended pleading, Respondents represented to the Court for the first time that the defaults are based on the Amended Complaint. (Respondents' Supp. Mem. in Opp. to Appellants' Motion for Expedited Hearing, attached as **Exhibit F**.) These representations are false and easily proven so by reference to Respondents' motions for entry of defaults, which are supported by green cards establishing delivery of the initial Complaint.

Appellants filed Motions to Vacate and Set Aside the Entries of Default and Motions to Vacate the Orders of Referral ("Motions to Vacate") on February 13, 2019. (Motions to Vacate, attached as **Exhibit G**.) After discovering evidence bringing into question the impartiality of the Special Referee, Appellants filed a Motion for Recusal on April 26, 2019. (Motion for Recusal, attached as **Exhibit H**.) Respondents refused to have these motions heard by the trial court, and Appellants filed a Demand for Jury Trial and Motion for Expedited Hearing (Priority Matter) ("Motion for Expedited Hearing") on June 4, 2019, asking that the trial court and not the Special Referee hear the motions. (Motion for Expedited Hearing, attached as **Exhibit I**.) The parties submitted memoranda prior to the hearing. (June 10, 2019 Mem. in Support of Motion for Expedited Hearing; June 11, 2019 Mem. in Opp. to Motion for Expedited Hearing, attached as **Exhibits J** and **K**.)

Judge Craig D. Brown heard the Motion for Expedited Hearing on June 12, 2019, and asked the parties to submit supplemental briefing on whether the trial court had authority to withdraw

the Orders of Referral. (Hearing Tran. 21:13-18, attached as **Exhibit L.**) Appellants submitted their supplemental briefing on June 17, 2019 and a reply on June 27, 2019. (Appellants' Supp. Briefs, attached as **Exhibit M.**) Respondents submitted their supplemental brief on June 21, 2019. (Respondents' Supp. Brief, attached as **Exhibit N.**) Judge Brown determined the Circuit Court lacked authority to withdraw the Orders of Referral and issued an Order that the matters should proceed before the Special Referee. (July 1, 2019 Order, attached as **Exhibit O.**)

Appellants filed and served a timely Notice of Appeal on July 26, 2019, and appeal the trial court's ruling that it lacked authority to withdraw the Orders of Referral. (Notice of Appeal, attached as **Exhibit P.**)

RELEVANT FACTS

Respondents procured and have maintained entries of default and orders of referral through a pattern of misconduct that amounts to extrinsic fraud. Despite discussions with counsel for Appellants and indicating to the Court that the default filings had been directed to counsel for Appellants, Respondents secured *ex parte* entries of default and orders of referral to a special referee of their choosing. Respondents hid from the Court in the *ex parte* process that the defaults were being entered on a voided pleading and against three entities who are not even named as defendants in the lawsuit. When faced with these issues in the Circuit Court, Respondents first told the Court they have no authority to correct these issues, as the Special Referee has sole and exclusive jurisdiction. When pressed to address the primary substantive issue, Respondents then represented that, contrary to the plain language of the papers filed and resulting orders entering default and notwithstanding the timely answers to the service of the Amended Summons and Amended Complaint, that the defaults were not based on a void pleading. Instead, everyone was

mistaken—they were based on the Amended Complaint. All of the associated motions, orders, and documents submitted in support plainly show they were not based on the Amended Complaint.

Notwithstanding the patent injustice and incredible inefficiency of forcing the parties into a procedure depriving them of their due process rights, from which they could then appeal the final judgment, the trial court accepted Respondents' argument that their hands were tied. If this were true, Appellants' jury demand and timely answer to the operative Complaint are meaningless. Furthermore, Appellants will be forced to sit on the sidelines as the other parties to this litigation conduct discovery and litigate the claims despite the undisputed fact that Appellants did timely answer the Amended Complaint and the subsequent amended complaints. Finally, Respondents may seek to leverage this fraud against other defendants who are not party to these default proceedings by using any default judgment, for example, through its claim for amalgamation. That claim is only found in the Amended and Second Amended Complaints which Appellants timely answered.

1. Relevant Parties and Allegations.

Respondents are owners of townhomes located in Mount Pleasant, South Carolina. (Compl. ¶ 1.) Respondents' Complaint and subsequent Amended Complaints allege that certain defendants negligently constructed Respondents' property and other defendants are responsible for the defects under conclusory theories of alter ego liability. (*See, e.g., id.* ¶¶ 9, 71.) Appellants are part of a group of 12 affiliated defendants in this case ("the Wheelock defendants"). (*See* Second Amend. Compl. at 1-2, attached as **Exhibit Q**.)

Respondents' original Complaint was filed on October 12, 2017, and named Wheelock Street Capital, LLC and Wheelock Street Real Estate Land Fund, LP as defendants. (Compl.) The original Complaint included claims for negligence/gross negligence/professional negligence,

negligent misrepresentation, breach of implied warranty, breach of implied warranty of fitness for particular purpose, breach of implied warranties as to the project's development and construction, individual liability as to the developer defendants, unfair trade practices, breach of fiduciary duty by initial board members of the One Hamlin Place Townhome Association, Inc., breach of fiduciary duty, breach of contract, violation of the residential property condition disclosure act, strict liability, and alter ego liability and piercing the corporate veil. (*Id.*) Respondents alleged that defendants—including Appellants—"created and controlled numerous and various of the Defendant entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of units, and other activities solely relating to" the property that is the subject of this litigation. (*Id.* p. 12.)

On January 16, 2018, Respondents filed an Amended Complaint, which added approximately 90 more allegations and numerous defendants. (*See* Amend. Compl.) The Amended Complaint did not incorporate the original Complaint by reference. In the Amended Complaint Respondents alleged that the Wheelock defendants (which had no involvement in the construction of the subject townhomes) and the Wieland defendants (which constructed and developed the townhomes) conspired to defraud creditors and "were operated in such a manner where distinctions between the entities are blurred and should be amalgamated for purposes of judgment." (Amend. Compl. ¶ 43.) In addition to its original claims, the Amended Complaint included claims for breach of implied warranty of fitness of habitability, breach of fiduciary duty as to the developer/owner defendant, and amalgamation. (*Id.* at ¶¶ 187, 214, 249.) Respondents dropped their claims for breach of fiduciary duty by initial board members of the One Hamlin Place Townhome Association, Inc. and breach of fiduciary duty.

On January 30, 2019 Respondents filed their Second Amended Complaint, adding new parties and additional claims against Appellants. (Second Amend. Compl.) The Second Amended Complaint does not incorporate by reference either of the prior Complaints. Respondents modified their amalgamation claim against Appellants by stating that defendants should be "viewed as a single business enterprise" and added claims for civil conspiracy and fraudulent conveyance. (*Id.* at ¶¶ 253-72.) Appellants answered the Second Amended Complaint and are participating in this litigation, defending against the claims raised therein. (*See* Answers to Second Amend. Compl., attached as **Exhibit R.**)

In each of their Complaints Respondents intentionally omitted that the Wheelock defendants purchased certain assets of the Wieland defendants (including the subject townhomes) in a hotly-negotiated, arms-length transaction years *after* the townhomes were built. Instead, Respondents—despite acknowledging that they *do not know* the details of that transaction—stated that "Defendants functioned as an integrated whole, transferring assets from the Wieland operating entities to [Wheelock defendants] at unfairly low prices" in order to "leav[e] behind judgment-proof corporate shells to be 'responsible' for Wieland's defective construction." (*See, e.g.*, Amend. Compl. at ¶¶ 118, 137, 147.) As set forth below, the entries of default and Orders of Referral should never have been entered, and the trial court committed errors of law in failing to set them aside. Allowing Respondents to continue pursuing the defaults will award their misconduct, allow them to wholly sidestep litigating the merits of the case, and may affect defendants who are not involved in the default proceedings.

2. Service Efforts, Discussions, Entries of Default and Referral.

Respondents initially failed to serve the Amended Complaint with an Amended Summons. (*See* Aff. of Cheryl Shoun ¶¶ 6-7.) At this point, counsel for Appellants could not determine which

defendants, if any, had been properly served. As a result, on February 16, 2018, before any answer deadline, counsel for Appellants, Cheryl Shoun, reached out to Respondents' counsel, John Hayes and Keith McCarty, to try to understand some of the service issues and to discuss an extension for filing answers on behalf of all Wheelock defendants. She wrote:

> I think you are aware that Marvin [Infinger] and I will be representing the "Wheelock" entities in this case. We understand that on January 18, 2018, you forwarded the Amended Complaint to the agent of service for WS JWHLLC. Subsequently, on January 22, 2018, the Amended Summons was forwarded to the agent for service. The Amended Summons was also sent to the agent for service for various Wheelock entities, but it was not accompanied by the Amended Complaint, nor did they receive the original Summons or Complaint.
>
> **Would you please clarify service – specifically, what was sent to the agent of service for each Wheelock entity and on what date. In fact, in so doing, it may be helpful for everyone involved to clarify which Defendants have been served, what has been served on each, and the dates of service.**

(Shoun Aff., Exh. A (Feb. 16, 2018 email).) Ms. Shoun spoke to Mr. McCarty shortly after that, and he explained to her that **another** amended complaint would be forthcoming. In her follow-up email, Ms. Shoun asked for a 60-day extension to answer the Amended Complaint in exchange for accepting service on behalf of all 12 Wheelock defendants.

> As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. **I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming. In that regard, we discussed our willingness to accept service of those amended pleadings on behalf of the entities we represent in exchange for an agreement that all of the entities will have an additional 60 days from the date of service in order to respond.**

(Shoun Aff., Exh. A (March 5, 2018 email).) Initially, Mr. Hayes agreed to this 60-day extension. He wrote on March 6, 2018: "**Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week.**" (*Id.*) The next day, however, Mr. Hayes reneged, writing: "Actually, before we agree to anything let's have a chat." (*Id.*) In the following communications, Ms. Shoun explained that she wanted to get copies of the green cards so that she

could clarify service issues for her client. (Shoun Aff., Exh. A (April 26, 2018 email).) Respondents' counsel did not respond to that request. Nor did Mr. Hayes or Mr. McCarty ever say anything to Ms. Shoun about filing for defaults against any of the Appellants. (*Id.* at ¶ 9-10.)

On May 7, 2018, consistent with Ms. Shoun's understanding that Respondents intended to serve another Amended Complaint, Respondents filed a motion to amend their Amended Complaint. (*See* Mot. to Amend Amended Compl., attached as **Exhibit S.**) Four days later—without any notice to Ms. Shoun or her co-counsel Marvin Infinger—Respondents filed motions for entry of default against Appellants. (Shoun Aff. ¶¶ 9-10.) On May 21, 2018, Respondents' counsel properly served Appellants for the first time with an Amended Summons and Amended Complaint. (*Id.* ¶ 7.) The Amended Summons gave Appellants 30 days to answer. (*See* Amend. Summons, attached as **Exhibit T.**) The deadline to answer the operative complaint was now June 21, 2018. Appellants timely answered. (Answers to Amend. Compl.)

As soon as Ms. Shoun learned that Respondents' counsel had filed Motions for Entry of Default, she sent a letter to Mr. Hayes and Mr. McCarty explaining why she understood service to be improper and why the defaults should be removed. (Shoun Aff., Exh. B.) Because Respondents had served an Amended Summons and Amended Complaint on Appellants, and Appellants had timely answered, their counsel did not believe the defaults on the original Complaints were legally operative (and they are not, as discussed in section I(A), infra). (*Id.* ¶ 13.; Aff. of Marvin Infinger, ("Infinger Aff.") ¶ 5, attached as **Exhibit U.**)

Each of the Appellants sought relief in this action and the related *One Hamlin* action under Rules 55 and 60, SCRCP. The specific facts and various grounds for relief are set forth in the respective Motions to Vacate and supporting memoranda and are incorporated herein. (Motions to Vacate.)

The defaults in this case are not proper, were procured through fraud on the court and, in any event, are a nullity. Appellants are parties and have participated in discovery in the case. Yet Respondents, however, continue to seek a default hearing with the Special Referee. Appellants brought the issues before the court through a Motion for Expedited Hearing. At the hearing on Appellants' motion, Judge Brown stated "I don't think I have an authority to reach back down [and reverse the Orders of Referral] unless you have some law for me that says I have authority to reach down and pull it back up." (Hearing Tran. 20:14-17, attached as **Exhibit V.**) Judge Brown directed Appellants to file a supplemental brief on that issue, which Appellants did. Appellants' supplemental brief included numerous independent authorities providing the Court power to reverse or vacate an order of referral. (Appellants' Supp. Brief, 4-7.) Judge Brown refused to "pull it back up" and incorrectly found that the trial court lacks authority to vacate an order of referral that was procured by fraud. (July 1, 2019, Order.)

Given the unique circumstances of this case, the failure of the trial court to address the Motions to Vacate and reconsider the prior Orders related thereto affects the mode of trial and deprives Appellants of substantial rights, including the right to a jury trial and the right to have the Court, not a Special Referee, hear the claims Appellants timely answered.

ARGUMENTS

I. The July 1, 2019 Order is immediately appealable.

The critical distinction between this case and a routine default proceeding is that Appellants are actual and proper parties to the litigation proceeding in the circuit court. The defaults are void vestiges of improper filings. The order on appeal refuses to allow Appellants to continue defending the claims on the merits in the circuit court. Instead, the order on appeal validates a fraud on the court. The reason for doing so? The trial judge's mistaken belief that "his hands are tied" because

of the erroneous orders of referral entered by a former circuit judge on pleadings that were null and void. The decision below is improper, unjust, and deprives Appellants of substantial rights. It is immediately appealable.

A. Appellants are Active Parties to the Action Proceeding in Circuit Court.

Appellants timely answered the Amended Complaint (and a later-amended Complaint) as required by the accompanying summons, and are parties to the case who have demanded a trial by jury. Appellants are entitled to a trial by jury, and an alleged default on a superseded and null pleading cannot operate to strip Appellants of that right.

A superseded initial complaint cannot serve as the basis for an entry of default once an amended complaint has been filed. The original complaint has been rendered a nullity, as is any default or other order related thereto. *See Brock v. Doe*, No. CIV.A. 3:10-2821-JFA, 2012 WL 786314, at *2 (D.S.C. Feb. 27, 2012), *report and recommendation adopted*, No. CA 3:10-2821-JFA-JRM, 2012 WL 786276 (D.S.C. Mar. 9, 2012) ("After these motions [for entry of default] were filed, Plaintiff amended his complaint. [Defendant] timely filed an answer to the amended complaint with a certificate of service. The principles for setting aside an entry of default also support a finding that entry of default should not be made."); *see also Brewer v. Grossbaum*, No. 2:12-CV-1555 WBS DAD, 2014 WL 119233, at *1 (E.D. Cal. Jan. 9, 2014), *report and recommendation adopted*, No. 2:12-CV-1555 WBS DAD, 2014 WL 556039 (E.D. Cal. Feb. 12, 2014) ("In light of plaintiff's filing of an amended complaint, however, the court will deny as moot plaintiff's requests for entry of default ... since plaintiff's amended complaint supersedes the original complaint."); *Hooker v. Goldstein & Assocs.*, LLC, No. 12-12232, 2013 WL 6163638, at *6 (E.D. Mich. Nov. 20, 2013) ("While [movant] obtained a default on the original complaint, '[t]he filing of an amended complaint supersedes an original complaint, renders the original

complaint of no legal effect, and moots the clerk's entry of default as to the original complaint.'"); *Greater St. Louis Constr. Laborers Welfare Fund v. A.G. Mack Contracting Co.*, No. 4:08–cv1947, 2009 WL 2916841, at * 1 (E.D. Mo. Sept.4, 2009) (holding that the entry of default relating to the original complaint was rendered moot when the plaintiff filed an amended complaint); *U.S. S.E.C. v. Boey*, No. 07-CV-39-SM, 2013 WL 1775444, at *1 (D.N.H. Apr. 25, 2013) ("The amended complaint superseded the original complaint. The original complaint is, therefore, a nullity. The clerk's default, based on [Defendant's] failure to answer or otherwise respond to the original complaint, which was entered months before the amended complaint was filed, is likewise a nullity."); *Allstate Ins. Co. v. Yadgarov*, No. 11-CV-6187 PKC VMS, 2014 WL 860019, at *8 (E.D.N.Y. Mar. 5, 2014) ("[O]nce the amended complaint becomes the operative complaint, a motion for default judgment made on a prior pleading should be denied. Similarly, several courts have found that once the original complaint is superseded, a clerk's entry of default on that pleading is mooted."); *TD Banknorth, N.A. v. Hawkins*, 2010 ME 104, ¶¶ 19-20, 5 A.3d 1042, 1047 ("[W]hen a complaint is amended, the original complaint is considered to be wholly replaced by the amended version."); *Winston v. City of Laurel*, No. 2:12CV61-KS-MTP, 2012 WL 5381346, at *2 (S.D. Miss. Oct. 31, 2012) ("[A]n amended complaint supersedes [an] original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading... As a result, the original Complaint is no longer operative and the Defendant's default with respect to that pleading is now moot.") (internal citations and quotations omitted).

Moreover, Appellants have participated in this litigation since answering the Amended Complaint and have defended against the claims and allegations contained in the operative Second Amended Complaint. Appellants have appeared at every deposition taken by the parties and

examined each deponent, engaged in extensive written discovery, and even consented to motions filed by counsel for Respondents as late as March 19, 2019. (March 19, 2019 Motion for Consent Scheduling Order, attached as **Exhibit W**.)

Appellants share the same entitlement to a jury trial as the other answering defendants. The July 1, 2019 Order, in which the trial court refused to hear this case and directed it to the Special Referee, deprived Appellants of that right and is therefore immediately appealable. This case should proceed in the trial court, and Appellants are entitled to appeal this Order directing otherwise.

B. The Order affects a substantial right of Appellants and deprives them of a mode of trial to which they are entitled.

Section 14-3-330 of the South Carolina Code governs the appealability of orders and, pursuant to that statute, an order involving the merits or an order which affects a substantial right is immediately appealable. A party has a substantial right to proceed with a mode of trial to which it is entitled as a matter of law. *See Brown v. Greenwood Sch. Dist. 50 Bd. of Trustees*, 344 S.C. 522, 524, 544 S.E.2d 642, 643 (Ct. App. 2001) (stating that an order which operates to deny a party a jury trial is immediately appealable if "it deprives him of a mode of trial to which he is entitled as a matter of right."); *see also Salmonsen v. CGD, Inc.*, 377 S.C. 442, 452, 661 S.E.2d 81, 87 (2008); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000). The mode of trial, whether by the circuit court, by a referee or master, or by a jury, is a matter material to obtaining a judgment. An order requiring a party to submit to some other mode of trial than that to which he is entitled causes immediate and irreparable harm. *Ferguson v. Harrison*, 34 S.C. 169, 172, 13 S.E. 332, 333 (1891); *Preferred Savings Bank, Inc. v. Elkholy*, 303 S.C. 95, 399 S.E.2d 19 (Ct. App. 1990); *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, 292 S.C. 575, 357 S.E.2d 725 (Ct. App. 1987).

An order directing the case to a special referee inherently denies a jury trial and that affects a party's substantial rights. *See Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (Ct. App. 2004) ("Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights, and are immediately appealable."); *Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 417, 426 S.E.2d 828, 833 (Ct. App. 1993) ("[A]n order of reference which deprives a party of a mode of trial to which he is entitled as a matter of right is immediately appealable."); *De Pass v. Piedmont Interstate Fair Ass'n*, 217 S. C. 38, 59 S. E. 2d 495 (1950); *Edwards v. Timmons*, 297 S.C. 314, 377 S.E.2d 97 (1988).

C. The Order is separately appealable because it involves the trial court's error of law concerning jurisdiction to hear the matter.

Finally, the subject Order is immediately appealable because this Court has broad discretion to hear appeals related to a trial court's exercise of its jurisdiction. *See Lake v. Reeder Const. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App. 1998) ("Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court."); *Bunkum v. Manor Properties*, 321 S.C. 95, 99-100, 467 S.E.2d 758, 761 (Ct. App. 1996) ("[I]ssues relating to subject matter jurisdiction may be raised at any time ... and should be taken notice of by" this Court). This Court addresses jurisdictional issues because the trial court properly exercising its jurisdiction is "necessary to protect the legal rights of [parties] pending litigation." *Id.* Notably, subject matter jurisdiction "may not be waived, even by the consent of the parties." *State v. Richburg*, 304 S.C. 162, 165, 403 S.E.2d 315, 317 (1991). The trial court therefore had a duty to recognize the subject Orders of Referral as void. The court below committed an error of law in failing to exercise its authority to correct the patent injustice and instead directing the parties to proceed before the Special Referee. This matter is properly before the Court to resolve this jurisdictional issue.

CONCLUSION

The trial court's July 1, 2019 order is immediately appealable and this Court has jurisdiction to consider and rule upon each of the orders appealed.

Respectfully submitted,

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August 30, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO: 2017-CP-10-5246
Individually and as Class Representative, Gary Keisler, John Does (1-50) and Jane Does (1-50),)	**VERIFIED COMPLAINT (Jury Trial Demanded)**
Plaintiffs,)	
vs.)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builder Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc., Wheelock Street Real Estate Land Fund, LP, Wheelock Street Investment Management, LLC, RP Falcon Properties, LLC, Residential Partners, LLC, Middlesex Holdings, LLC, WS JWH, LLC, JWC Phoenix, LLC, Bridgemill Land, LLC, Annisquam Development, LLC, JW Land Investment, LLC, JWC Guilford, LLC, OOTB, LLC, Wieland Realty Associates, Inc., John Wieland, individually, Sue Wieland, Lindsey Parker, Robert Parker, Jack Wieland, Jeorge Medina, Jeorge Medina a/k/a JMC Construction, Inc., John Does (1-50), and Jane Does (1-50),)	
Defendants.)	

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff, Gary Keisler, as Class Representative and the above-named Plaintiffs (hereinafter collectively referred to as "Plaintiffs"), individually and as a class of similarly

situated owners of townhome units in a residential townhome community named One Hamlin Place Townhomes complaining of the above-mentioned Defendants, allege and state as follows:

1. Plaintiff, Gary Keisler, is a citizen and resident of Charleston County, South Carolina, who at all times relevant hereto lives in a residential community known as One Hamlin Place Townhomes, located in Mt. Pleasant, South Carolina, Plaintiff Gary Keisler further alleges and states that he is bringing this action pursuant to Rule 23, SCRCP, as representing a class composed of each and every unit owner in the One Hamlin Place Townhome Association, Inc., and that:

a) The class is so numerous that joinder of all members is impracticable;

b) There are questions of law and fact common to the class;

c) The claims of the Plaintiff, Gary Keisler, are typical of the claims of the class;

d) The Plaintiff, Gary Keisler, will fairly and adequately protect the interest of the class; and

e) The amount in controversy exceeds One Hundred Dollars ($100.00) for each member of the class.

2. The individual Plaintiffs are citizens and residents of Charleston County, South Carolina, who at all times relevant hereto live in a residential community known as One Hamlin Place Townhomes, located in Mt. Pleasant, South Carolina.

3. One Hamlin Place Townhomes (hereinafter collectively referred to "the property" or "One Hamlin") is a section of the residential community, Hamlin Plantation, located in Mount Pleasant, South Carolina and, upon information and belief, was owned, developed, marketed and constructed by the Defendants.

4. Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., Builder Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc., Wheelock Street Real Estate Land Fund, LP, and Annisquam Development, LLC are, upon information and belief, corporations organized and existing under the laws of the State of South Carolina and are authorized to conduct business in this state.

5. Defendants Wheelock Street Investment Management, LLC, RP Falcon Properties, LLC, Residential Partners, LLC, Middlesex Holdings, LLC, WS JWH, LLC, JWC Phoenix, LLC, Bridgemill Land, LLC, JW Land Investment, LLC, JWC Guilford, LLC, OOTB, LLC, Wieland Realty Associates, Inc., John Wieland, Sue Wieland, Lindsey Parker, Jack Wieland, Robert Parker are, upon information and belief, foreign corporations that transact business in the State of South Carolina.

6. Upon assuming the roles as stated above, the Defendants assumed the duties thereof to develop, construct, and market the property and sell parcels thereof to the general public.

7. Furthermore, in assuming the roles stated above, the Defendants undertook to make certain that this Community was developed and constituted in a workmanlike fashion according to industry standards meeting all applicable codes, guidelines, restrictions, of any and all state, county, and municipal authorities.

8. That pursuant to this marketing scheme, the Defendants extensively advertised to the general public and represented to the general public that *inter alia*, the property and homes built would be of the highest quality, with substantial amenities.

9. This Court has jurisdiction over the parties and subject matter hereto.

10. The construction of One Hamlin was performed by one or more of the Defendants. The Defendants represented they were competent, knowledgeable and experienced in performing such construction work as to properly build One Hamlin according to the normal standards of good and workmanlike practice in the construction field.

11. Construction defects in the One Hamlin have recently been discovered. A recent inspection of the subject Townhomes resulted in the discovery of major problems and deficiencies including but not limited to the following:

(a) Lack of proper flashing;

(b) Lack of proper roofing installation;

(c) Water damage along porches;

(d) Water intrusion damage resulting from defects;

(e) Improper flashing installation; and

(f) Improper paving and drainage

12. Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc. (hereinafter referred to as "Wieland SC") is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, was authorized to and did conduct business in the State of South Carolina, County of Charleston for the purpose of planning, developing, marketing, owning, maintaining, leasing, selling, and constructing the townhomes in a manner for sale to the public.

13. Defendant John Wieland Homes of Charleston, Inc., upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this state, and have a principal place of business in Charleston County Charleston for the purpose of planning, developing, marketing, owning, maintaining, leasing, sale, and constructing the townhomes in a manner for sale to the public.

14. Defendant John Wieland Homes, Inc., upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this state, and have a principal place of business in Charleston County Charleston for the purpose of planning, developing, marketing, owning, maintaining, leasing, sale, and constructing the townhomes in a manner for sale to the public.

15. Defendant Builder Support Services of the Carolinas, Inc., upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this state.

16. Defendant Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc. is a joint venture formed in November 2012 with the Wieland Defendants where John Wieland Homes and Neighborhoods, Inc. sold its assets and intellectual property to Wheelock Street Capital.

17. Defendant Wheelock Street Real Estate Land Fund, LP is a limited partnership which transacts business in the State of South Carolina.

18. Defendant RP Falcon Properties, LLC, formerly JW Homes, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware which transacts business in South Carolina

19. Defendant Residential Partners, LLC is a limited liability company which transacts business in the State of South Carolina.

20. Defendant Middlesex Holdings, LLC is a foreign corporation organized and existing under the laws of the State of Georgia which transacts business in South Carolina.

21. Defendant WS JWH, LLC is a single-purpose entity that transacts business in South Carolina.

22. Defendant JWC Phoenix, LLC is a foreign corporation organized and existing under the laws of the State of Delaware which transacts business in South Carolina.

23. Defendant Bridgemill Land, LLC is a foreign corporation organized and existing under the laws of the State of Georgia which transacts business in South Carolina.

24. Defendant Annisquam Development, LLC is a limited liability company organized and existing in South Carolina.

25. Defendant JW Land Investment, LLC is a foreign corporation which transacts business in South Carolina.

26. Defendant JWC Guilford, LLC is a foreign corporation organized and existing under the laws of the State of Georgia which transactions business in South Carolina.

27. Defendant OOTB, LLC is a foreign corporation organized and existing under the laws of the State of Georgia which transactions business in South Carolina.

28. Defendant Wieland Realty Associates, Inc. is a foreign corporation organized and existing under the laws of the State of Georgia which transactions business in South Carolina.

29. Defendant John Wieland is an individual with his primary place of domicile in the State of Georgia.

30. Defendant Sue Wieland is the wife of Defendant John Wieland. Upon information and belief, Sue Wieland's place of domicile is in the State of Georgia.

31. Defendants Lindsey Parker and Jack Wieland are the daughter and son of John and Sue Wieland, and Defendant Robert Parker is the son-in-law of John and Sue Wieland. Upon information and belief, Jack Wieland's place of domicile is in the State of Georgia; Robert and Lindsey Parker's place of domicile is in Massachusetts.

32. Defendant Jeorge Medina, Jeorge Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc., is upon information and belief, is a corporation organized pursuant to the laws of the State of South Carolina.

33. Upon information and belief, John Does 1-50 and Jane Does 1-50 are individuals or entities organized pursuant to the laws of the State of South Carolina or other states. At all times relevant herein, John Does 1-50 and Jane Does 1-50 were engaged in the business of selling, constructing homes, renovating, supplying products materials and/or services to that end in Charleston, South Carolina.

34. Upon information and belief, the above-identified Wieland Defendants were, in various capacities, individually and collectively engaged in the planning and developing of the Project, and contracted with various entities for the design and construction of the Project.

35. Upon information and belief, one or more of the Wieland Defendants were merged into one or more of the John Wieland Homes and Neighborhoods of South Carolina, Inc. and John Wieland Homes and Neighborhoods, Inc. with the intent to carry on the business of the Wieland Defendants in connection with the Project.

36. Wheelock Street Capital, LLC (hereinafter referred to as Wheelock) d/b/a John Wieland Homes and Neighborhoods, Inc., is a joint venture with the Wieland Defendants formed in November 2012.

37. Upon information and belief, the ownership of the Project was maintained uninterrupted by the Wieland Defendants during and following the aforementioned merger activities, resulting in ownership and/or control of the Project by the resulting merged entity (the resulting merged entity, including all of the affiliated, subsidiary, or other merged component entities, shall hereinafter be referred to collectively as the "Developer Defendants" and/or "Wieland").

38. The Developer Defendants are all Variable Interest Entities of (as defined by the Financial Accounting Standards Board, among other institutions and authorities) subsidiaries of, parents of, partners of, associates of, agents of, affiliated with, joint venturers, servants, instrumentalities and/or alter ego entities of each other and are responsible to the Plaintiffs herein for the condition of the Project and the damages set forth herein below.

39. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities, during the development of the Project and immediately after sale of the townhomes to members of the public, sought and established a special relationship with the purchasers of the townhomes, and the Developer Defendants, at various times during and after the construction of the townhomes, breached their fiduciary duties to the purchasers in that the Developer Defendants owed dual and conflicting loyalties to themselves, to the Contractor Defendants as set forth below, to the

purchasers of the townhomes, to the Association established in the Master Deed for the construction of the Project, and to the Plaintiffs.

40. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities had irreconcilable conflicts of interest by virtue of the dual and conflicting loyalties they owed to themselves and to the purchasers and/or tenants of the Project along with the Association established in the Master Deed for the townhomes and the Plaintiffs, all of whose interests were diverse and adverse, one to the other and, as such, the Developer Defendants did not act in good faith or in a manner they could reasonably believe to be in or not opposed to the best interests of the purchasers and/or tenants of the Project along with the Association established in the Master Deed for the townhomes and the Plaintiffs.

41. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities, all participated in self-dealing by promoting their own interests through sacrificing the interests of the purchasers of the Project.

42. In connection with the Project, the Developer Defendants all became and/or acted as subsidiaries, parents, partners, associates, agents, affiliate, co-joint venturers, servants, instrumentalities and/or alter ego entities of each other and are responsible to the Plaintiffs herein for the condition of the Project and the damages set forth herein.

43. The Developer Defendants conducted business in connection with the Project by and through the use and control of subservient entities, and all of these entities in fact manifested no separate interest of their own, and demonstrated an amalgamation of corporate

interests, entities, and activities so as to blur the legal distinction between any members of that group of corporations, shareholders, officers, agents, partners, employees, and assets.

44. All Defendants were instrumental in carrying out duties and actions relating to the construction of the Project, and each of these defendants had independent duties under South Carolina law to perform their duties in a good and workmanlike manner and in accordance with applicable building codes and accepted building practices.

JURISDICTION

45. Personal jurisdiction is vested and exists in the Court of Common Pleas, County of Charleston, State of South Carolina, and venue is proper in the County of Charleston, State of South Carolina, by virtue of, among other things, the fact that the property which is the subject matter of the Complaint is located in Mt. Pleasant, South Carolina, and the great majority of the activities relating to the Project and the claims herein occurred in this jurisdiction.

BACKGROUND

46. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

47. Plaintiffs are informed and believe that the Developer Defendants engaged contractors to construct the Project including 105 properties, and related facilities and amenities, collectively known as One Hamlin Place Townhomes, which were thereafter substantially completed, and contained various buildings. The Developer Defendants, by and through various instrumentalities and alter-egos and other Defendants were the original developers of the Project and/or are liable for the actions of the original Developer of the project.

48. The Developer Defendants created and controlled numerous and various entities including, but not limited to, the John Wieland Homes and Neighborhoods of South Carolina, Inc., Builder Support Services of the Carolinas, and Wieland Defendants set forth hereinabove, for the sole purpose of the construction, development, purchase of property, sale of property, leasing of townhomes, and other activities solely relating to development and leasing of the townhomes that were known as One Hamlin Place Townhomes. The Developer Defendants created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of the Developer Defendants to achieve their financial goals and to perpetrate the activities more particularly described herein. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the Developer Defendants and the sham entities, shareholders, officers, agents, partners, employees, assets, and each of them.

49. By way of example, the Wieland Defendants included entities which were created to perform single purpose functions in order to effectuate the sole will of the Developer Defendants in purchasing, developing, leasing, and/or selling the homes. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the Developer Defendants and the Individual Developer Defendants actively and directly participated in the development, purchase, sale, management, leasing, and/or operations of the Project, and in fact put the same into the stream of commerce.

50. The sham entities established by the Developer Defendants were and are characterized by one or more of the following: (I) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates. Upon information and belief, each shared the same mailing address, their business was conducted on the letter head of the Developer Defendants, the Developer Defendants directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the Developer Defendants directly contracted for the sham entities in the name of the Developer Defendants.

51. The Developer Defendants directed and oversaw those listed as Defendants herein and contractors including the Contractor Defendants herein who performed insufficient, shoddy, negligent work which failed to comply with applicable building codes and industry standards, all of which has contributed to and resulted in the premature deterioration and/or failure of the structures and building systems in the Project.

52. The Developer Defendants created and controlled numerous and various of the Defendant entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of units, and other activities solely relating to the Project which is the subject of this action.

53. There would exist a broad element of injustice and fundamental unfairness of the acts of the Developer Defendants, and each of them individually, were not regarded as the acts of one another.

54. The Defendants began the process of constructing the townhomes by engaging and directing the actions of the various contractors and/or subcontractors named as Defendants herein, and participated in the negligent, deficient, and shoddy workmanship which ignored and/or covered up design and construction defects then in existence and, thereafter, placed the units into the stream of commerce for sale, which they did sell to the general public and, in particular, to the current owners who are members of the Association.

55. The Developer Defendants, by and through their instrumentalities and alter-ego entities, controlled and operated the Association and its Board of Directors prior to turning over control of the One Hamlin Association. During this period, the Developer Defendants attempted to carry out construction prior to, during and after the time they offered and sold said townhome units. This work was attempted to be performed by contractors engaged by the Developer Defendants for the purpose of expediting the sales process and was calculated for the purpose of, or through careless, reckless, negligent and grossly negligent conduct by the Developer Defendants, resulting in the concealing, fabricating, patching, hiding, and/or cloaking of the deficiencies and damage known, both actually and constructively, to the Developer Defendants and/or their affiliates, subservient entities, agents, and assigns.

56. At the time the units were offered for sale and placed into the stream of commerce by the Developer Defendants, the units contained numerous defects and/or property damage which has been recently and is currently being discovered by Plaintiffs, all as a

direct and proximate result of an investigation initiated by Plaintiffs, as a direct and proximate result of defects and deficiencies heretofore hidden and concealed through the acts and omissions of the Developer Defendants.

57. The Developer Defendants and the Contractor Defendants, and each and every other above-captioned Defendant knew or should have known of the existence of the said building defects and deficiencies and property damage, which were latent and unknown to the Plaintiffs.

58. These latent building defects have, unbeknownst to Plaintiffs, regularly resulted in water intrusion into the buildings and property damage and continue to do so through the date of this filing.

59. The latent building defects and property damage have regularly resulted in the deterioration and failure of the structures and building systems, along with the attendant resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

60. The Plaintiffs suffered damages when the Developer Defendants put these units into the stream of commerce and continue to be damaged through the date of this filing.

61. The Developer Defendants failed to make a sufficient inquiry into the conditions of the Project in order to establish adequate financial reserves for maintenance and repair of the Project, and instead provided inaccurate and misleading information to third-parties in the research and establishment of the reserve figures, and thereby provided inaccurate and misleading reserve requirements and related information to the general public, prospective purchasers, and to the Plaintiffs, both before and after tendering control of the Association and

the common elements to the homeowners, all resulting in damages to the Plaintiffs and in violation of South Carolina law, the Master Deed, and the By-laws.

62. The Developer Defendants controlled and managed the Association and its Board of Directors through the use of its subservient entities prior to the tender of the control over the Association to the unit owners; and the Developer Defendants negligently failed to provide sufficient and reasonable information and resources for the proper management and maintenance of the Project; and in fact negligently provided insufficient, inaccurate, and misleading information and prevented the use of financial and other resources required for the proper management and maintenance of the Project, all of which resulted in continued and exacerbated damages to the Project and suffered by the Plaintiffs.

63. The Developer Defendants were engaged in a joint venture, partnership, or other legal or de facto relationship with each other.

64. The Developer Defendants caused, directed, participated in, or acted in willful, reckless, heedless, negligent and grossly negligent disregard of their collective and respective acts and omissions in the planning, development, design, construction, management and sale of the units in the Project, all as more fully described herein.

65. The Developer Defendants represented to the public over the internet and through various publications and other media that they, by and through their various affiliates, entities, venturers, and agents referenced herein, were qualified, experienced, and would in fact be directing, managing, and otherwise facilitating the construction and selling of the units, and these representations were relied upon by the Plaintiffs.

66. Prior to and until transferring control of the One Hamlin Association to the unit owners and a newly elected Board of Directors comprised of unit owners, the Developer Defendants, through their subservient and affiliated entities, employees, and agents, had a duty to serve as Board members and to conduct the business of the One Hamlin Association, had authority and control over, and in fact controlled and directed the One Hamlin Association Board of Directors and dictated all of the Board's activities.

67. In conjunction therewith, the Developer Defendants in their capacity as Board members and otherwise, in a negligent manner, carelessly, willfully, wantonly, and with reckless disregard for the rights of the Plaintiffs, participated in, acquiesced in and caused the wrongful acts and omissions described herein.

68. These collective and respective wrongful acts and omissions of the Developer Defendants and such other Defendants as set forth in the causes of action below, represent unfair trade practices and have resulted in substantial deterioration and/or failure of structures and building systems, building deficiencies, actual, incidental, special and consequential damages and loss of use. Remedying the above wrongful acts will result in actual, incidental, consequential, and special damages including loss of use to the Plaintiffs and its members, and entitle Plaintiffs and its members to punitive damages and attorney's fees. Further, these wrongful acts and omissions have directly and proximately caused substantial diminution in value, both pre- and post-repair.

69. The acts and omissions of the Defendants were contrary to the duties they owed, individually and collectively, to the Plaintiffs and actually caused damages to the Plaintiffs including, but not limited to, damages which did not result from the acts and

omissions of other defendants and including, but not limited to, damages other than damages which resulted in physical injury or damage to tangible real and personal property in connection with this Project.

AS A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Negligence, Professional Negligence, and Gross Negligence)

70. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

71. Defendants, and each of them, owed a duty to Plaintiffs to act in a manner compliant with the reasonable standard of care, good faith, and fair dealing recognized under South Carolina law, and Defendants violated this duty to the Plaintiffs and were negligent, professionally negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars:

a) in failing to properly design, construct, develop and repair the townhomes;

b) in failing to comply with the applicable Building Codes of the County of Charleston, the City of Mt. Pleasant and the State of South Carolina;

c) in failing to comply with the applicable Fire and Safety Codes of the County and of Charleston, the City of Mt. Pleasant and the State of South Carolina;

d) in failing to properly design and construct the structural elements and the foundation and other elements of the Project to permit the existence of an adequate and sufficient program for the treatment, extermination, eradication, colony control, and/or termite control of any kind on the Project in accordance with industry standards, due care, and applicable law prior to the sale of the units;

e) e) in failing to establish and maintain a sufficient program for the treatment, extermination, eradication, colony control, and/or termite control of any kind on the Project in accordance with industry standards, due care, and applicable law prior to the sale of the units;

f) in failing to properly supervise the project developer entities and individuals, project architects and engineers, as well as contractors, subcontractors, suppliers and/or agents or employees of any of them in connection with the planning, development, design and construction of the townhomes offered for sale to the public;

g) in manufacturing, fabricating, preparing for the incorporation into a residential building, reviewing, approving, procuring, and incorporating into the construction of this project such items which were defective, deficient, inferior, inadequate, unsafe, dangerous, inappropriate for the use intended, noncompliant with approved design or design intent, non-compliant with applicable codes and standards in the industry, and otherwise improper for use in the project including, but not limited to, HVAC systems, mechanical systems, plumbing systems, drainage systems, and sewer line systems without appropriate clean-out piping and/or other issues; electrical systems and equipment, interior and exterior drywall and other substrate and sheathing material, windows, insulation, roofing, waterproofing systems, and other building materials and supplies, finishes, and other items relating to the construction and ultimate use of this residential project;

h) in designing, constructing, marketing, selling, units and/or property with defective windows;

i) in designing, constructing, marketing, selling, units and/or properly with inadequate flashing;

j) in designing, constructing, marketing, selling, units and/or property with inadequate roofs;

k) in designing, constructing, marketing, selling, units and/or property with inadequate water barriers;

l) in designing, constructing, marketing, selling, units and/or property with without weather proof building envelopes and exteriors;

m) in designing, constructing, marketing, selling, units and/or property which were defective, deficient, inadequate, unsafe, dangerous, or otherwise non-compliant with codes and standards;

n) in placing defective and inferior construction into the stream of commerce;

o) in placing defective and inferior manufactured systems, equipment, building materials and other products into the stream of commerce.

p) in failing to permit and facilitate a proper evaluation of the condition of the Project prior to and during the process of offering units and other property for the use and sale to the general public and, further, to obstruct and/or hinder efforts to conduct a proper evaluation of the Project by intended purchasers or users;

q) in misrepresenting the condition of the units, common elements, garages and other property to prospective and actual purchasers and other users, and in making representations in negligent and/or intentional disregard of whether these representations were false or inaccurate;

r) in failing to undertake sufficient actions to develop a plan for repairs and otherwise failing to make adequate repairs to conditions at the project which were unsafe, dangerous, or otherwise not in compliance with applicable building codes or other authorities or standards of care;

s) in negligently and/or intentionally covering up deficiencies prior to construction of the units and other property for sale or use by the general public;

t) in failing to determine accurate information required, failing to disclose the absence of such information, as well as negligently and/or intentionally providing misleading and inaccurate information regarding the proper level of financial capitalization and reserve funding required for the operations, maintenance, and repairs required by the One Hamlin Association for the Project and individual unit owners;

u) in tendering common elements and other property to Plaintiffs in a deficient condition;

v) in failing to act as reasonable persons would in circumstances then and there prevailing and in such other failures as will be shown during discovery and at trial.

72. Said failures above-described, as well as the Defendants' gross negligence, willfulness, and reckless disregard for the rights of Plaintiffs and others, have actually and proximately caused damages to Plaintiffs, and the Defendants are liable to the Plaintiffs in an amount of actual, incidental, consequential, special, and punitive damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the

limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SECOND CAUSE OF ACTION
(Against the Developer Defendants and Contractor Defendants)
(Negligent Misrepresentation)

73. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

74. These reports and representations were actually published and presented for information to the general public by these Defendants, and these representations were actually received by, and relied upon by, the prospective and actual purchasers of the townhomes at the Project.

75. At the time of the sale of the homes and the turnover of control of the One Hamlin Place Townhome Association from the Developer Defendants to the unit owners, Plaintiffs were not aware of the falsity of the representations or the lack of investigation and lack of candor by these Defendants in connection with the reports.

76. Plaintiffs subsequently determined that the representations made by these Defendants were false and that these Defendants failed to exercise due care, not only in failing to discover defects in the project, but also in failing to communicate information about the true condition of the Project. As a result of its justifiable reliance on the representations, reports, and other documents presented by these Defendants, Plaintiffs and its members have assumed control over the Project and/or purchased units, and have thereby suffered pecuniary losses in an amount to be determined by the trier of fact.

77. As a direct and proximate result of its justifiable reliance on numerous false representations made by these Defendants in connection with the Project, Plaintiffs have suffered, and these Defendants are liable to the Plaintiffs for, actual, incidental, consequential, and special damages, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A THIRD CAUSE OF ACTION
Breach of Implied Warranty
(Against the Contractor Defendants and the Developer Defendants)

78. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

79. The design, construction, development and sale of the units by these Defendants contained as a matter of law implied warranties of good faith and fair dealing, fitness for use merchantability, habitability, and workmanship with respect to construction, which warranties were not effectively disclaimed under South Carolina law.

80. The Developer Defendants, whether named or unnamed on the Deeds of Transfer, through their acts and/or omissions, have breached the aforesaid implied warranties, which directly, actually, and proximately caused and resulted in damage which the Plaintiffs have suffered and continues to suffer in an amount to be determined by the trier of fact.

81. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any

other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTH CAUSE OF ACTION
Breach of Implied Warranty of Fitness of Habitability
(Against the Developer Defendants and the Contractor Defendants)

82. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

83. That the Defendants impliedly warranted as a matter of law that the subject Residences which they built were habitable and fit for their intended uses.

84. That this implied warranty was breached by the Defendants and the work was performed in a manner below ordinary workmanship and the subject Residences were neither habitable nor fit for their intended use causing damage to Plaintiffs.

AS A FIFTH CAUSE OF ACTION
Breach of Implied Warranty of Fitness for Particular Purpose
(Against the Developer Defendants and the Contractor Defendants)

85. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

86. The Defendants had the duty to develop, market and construct the subject Residences according to industry standards and in a good and workmanlike manner, and an implied warranty of fitness attached to the sales of these homes.

87. At the time of the sale of the subject Residences to the Plaintiffs, the Defendants had reason to know if any or all parts of the construction of the subject residences were not completed according to industry standards and in a good workmanship manner.

88. The Defendants, at the time of the sale of the subject Residences to the Plaintiffs, had reason to know that the Plaintiffs were relying on the skill and/or judgment of the Defendants to properly construct the homes and adjacent facilities according to industry standards and in a good and workmanlike manner. Plaintiffs, in fact, relied on the Defendants' skill and judgment.

89. The Defendants did not properly construct the subject homes and facilities according to industry standards and in a good and workmanlike manner, causing major defects to One Hamlin Place Townhomes.

90. As a result of the Defendants' breach of its implied warranties, Plaintiffs have suffered physical damages.

AS A SIXTH CAUSE OF ACTION
Breach of Implied Warranties as to the Project's Development and Construction
(Against the Developer Defendants and Contractor Defendants)

91. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

92. These Defendants engaged in conduct during the period of development and construction of the Project which gave rise to duties and implied warranties to the public including, but not limited to, tenants, purchasers and other users of the Project, in that by their conduct these Defendants placed the Project, which constitutes defective, deleterious, and dangerous property, into the stream of commerce.

93. The placement of the Project into the stream of commerce by these Defendants, contained as a matter of law implied warranties of fitness, merchantability, workmanship and habitability, which warranties were not effectively disclaimed pursuant to South Carolina law.

94. As a direct and proximate result of the breaches of the above-described implied warranties by these Defendants, their affiliates, associates, sham entities, and/or joint venturers, whether named or unnamed on any documents transferring interest in the Project, the Plaintiffs has suffered and will continue to suffer damages, injuries and other losses.

95. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SEVENTH CAUSE OF ACTION
(Individual Liability as to the Developer Defendants)

96. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

97. As a direct and proximate cause and result of the acts and omissions of these Defendants as aforesaid, Plaintiffs have been damaged, and these Defendants are liable to the Plaintiffs for actual, incidental, consequential, and special damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A EIGHTH CAUSE OF ACTION
Violation of the S.C. Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.*
(Against the Developer Defendants and the Contractor Defendants)

98. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

99. These Defendants' construction and the subsequent offering and sale of the units, along with the issuance of the property condition reports and other representations to tenants, purchasers, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

100. The Defendants, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

a) in failing to properly evaluate the plans and specifications for the Project prior to construction;

b) in failing to conduct a reasonable inquiry into the conditions existing at the Project and marketing the units, common elements, and other property at the Project to the public for sale and use;

c) in failing to repair the latent defects about which these Defendants were or should have been aware;

d) in failing to carry out the fiduciary duties owed to prospective and actual purchasers and other members of the public in their special relationships of trust and confidence by virtue of their role in the process of offering these units, common elements, and other property for sale and use by the general public, as design professionals, licensed professionals, and sellers according to South Carolina law, and as Board Members and Directors of the One Hamlin Association;

e) in attempting to disclaim implied warranties of merchantability and habitability in documents contrary to South Carolina law;

f) in failing to provide any additional consideration for these purported efforts to waive implied warranties of merchantability and habitability;

g) in failing to properly investigate the true conditions of the Project and putting them into the stream of commerce;

h) in making false representations as to the condition of the Project and/or representations as to the condition of the Project in reckless disregard as to the truth of the representations;

i) in failing to analyze relevant data and conditions to determine adequate capital reserves for maintenance and operation of the Project by future owners and users;

j) in failing to provide adequate capital reserves and projections for adequate reserves for maintenance and operation of the Project prior to selling units and other property and prior to turning control of the One Hamlin Association over to the unit owners;

101. The conduct of the Defendants as described above was knowing and willful, and Defendants knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.

102. Plaintiffs are persons within the meaning of S.C. Code Section 39-5-140(a) and Plaintiffs have suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of these Defendants, in an amount to be determined by the trier of fact.

103. The aforesaid acts of Defendants impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at each and every sale of the units of this Project and, as such, are acts which can, have and will affect the public at large by repetition.

104. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing townhomes by the Defendants and/or rely upon the actions and representations of these Defendants thereby placing members of the public in danger of physical and other injuries.

105. Plaintiffs are entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A NINTH CAUSE OF ACTION
Breach of Fiduciary Duty by Initial Board Members of the One Hamlin Place Townhome Association, Inc.
(As to the Developer Defendants)

106. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

107. These Defendants, at all times during which they were Directors of the One Hamlin Place Association Board and/or the Board of the One Hamlin Association's predecessor entity, were charged with the duty of administration, care and maintenance of the regime property and its common elements according to the terms of the Master Deed and with safeguarding any interests and rights of the members, both present and future, of the regime as unit owners or they undertook such duties.

108. These Defendants breached these obligations by their acts and omissions such that they have committed breaches of fiduciary duties, negligence, gross negligence, recklessness, willfulness, wantonness, bad faith, mismanagement, self-dealing and waste with respect to their duty of administration, care and maintenance of the regime property and their duty to protect the interests and rights of the individual members of the One Hamlin

Association, along with their duty to protect and preserve the regime property. These wrongful acts and omissions have caused and will cause the Plaintiffs to incur and continue to incur substantial monetary damages.

109. These Defendants owed a duty to Plaintiffs to exercise that degree of skill necessary to insure that the regime property was properly maintained and to keep the owners informed of serious defects found or discovered and to protect the owners' property interest in conformity with customary and ordinary standards.

110. These Defendants held themselves out to the public as qualified and experienced in the administration and management of multifamily residential properties and, in particular, the Developer Defendants held themselves out as qualified and experienced in the building of townhomes, and these representations of experience and qualifications were imputed to the Developer Defendants by virtue of their legal relationship and appearance to the public as an indistinguishable single entity by and through the operation of the various individuals and affiliated entities.

111. These Defendants' negligent, reckless and willful conduct includes, but is not limited to:

a) failing to properly inform the tenants, prospective purchasers, and unit owners of the conditions known or which should have been known at the time each owner purchased a unit;

b) failing to properly oversee the regime in order to ensure that all defects discovered by the Defendants or which should have been discovered by the Defendants, were reported so that repairs could proceed in accordance with the customary and ordinary standards of construction at the expense of the Defendants;

c) failing to report the defective conditions of the Project to any owners or the Plaintiffs at the time of the turnover to the One Hamlin Association;

d) failing to inform the Board and the individual unit owners of the true nature of the defective conditions of the townhome property at the time of turnover;

e) placing their loyalties to themselves and/or their affiliated entities above the loyalties they owed to Plaintiffs and unit owners;

f) failing to raise sufficient capital through assessments or otherwise from the Defendants prior to turnover so that adequate funds would be available to mitigate the substantial damages which were and are resulting from the aforementioned significant design and construction defects and deficiencies; and

g) participating in self-dealing, sacrificing the One Hamlin Association's and the unit owners' interests for their own interests and the interests of themselves and/or their affiliated entities;

h) failing to reasonably plan or anticipate the adequate reserve for insurance premiums required to be paid by the One Hamlin Association, and resigning from the Board of Directors of the Association and ceding control over the Association to the unit owners.

112. As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent and reckless acts or omissions of these Defendants, Plaintiffs have and will continue to be required to spend substantial sums of money in connection with the extraordinary repairs and reconstruction of the Project and the associated loss of use and other damages.

113. The Defendants' breaches of duty, acts, errors, and omissions as set forth above caused, among other damages: physical injury to tangible property; a resulting loss of use of that property; and Plaintiffs resulting money damages due to budget deficits and special assessments; all of which were directly and proximately caused by and resulting from the Defendants' negligence, willfulness, wantonness, and recklessness directly related to the

mismanagement of the Project by the Defendants prior to turning over control of the Project to the One Hamlin Place Townhome Association Board.

114. Each of the wrongful acts of the Defendants as described above that occurred in connection with the mismanagement of the Project constituted gross negligence and were more than momentary thoughtlessness, inadvertence or error in judgment on the part of the Defendants with regard to representations consisting of either affirmative statements or silence when there was a duty to speak; instead, these wrongful acts or omissions constitute a complete lack of care and conscious indifference to the rights, welfare or property of the Plaintiffs, tenants, prospective purchasers, and unit owners, and were intended to cause financial harm to the Plaintiffs and its members.

115. The Defendants as described above had a fiduciary relationship and owed fiduciary obligations and duties to Plaintiffs.

116. The Defendants as described above at all relevant times were or should have been aware of, among other things, the extensive and severe construction defects and deficient conditions at the Project. The Defendants' failure to properly investigate the extent of the defects and problems; their failure to properly investigate the extent of these defects and problems; their failure to properly mitigate the damaging effects of these problems and defects; and their failure to properly safeguard the rights and interests of Plaintiffs, all constitute breaches of their fiduciary obligations to Plaintiffs.

117. Upon information and belief, Defendants purposely withheld their knowledge of the above-described defects, despite receiving notification thereof, and problems from Plaintiffs or consciously failed to investigate the defects knowing that the Defendants would

find defects to the extreme detriment of Plaintiffs and against the Plaintiffs' pecuniary interest. In failing to notify Plaintiffs, these Defendants knowingly caused Plaintiffs to become responsible for and liable for the above-described needed extraordinary repairs and reconstruction expenses such that these Defendants breached their fiduciary duties owed to Plaintiffs including, but not limited to, the duty to perform, the duty of care and skill, the duty of good conduct, the duty to give information, the duty to keep and render accounts, and the duty to act only as authorized.

118. As a direct and proximate result of their breaches of their fiduciary duties to the Plaintiffs, these Defendants are liable to the Plaintiffs for the actual, direct, consequential, incidental, special, and punitive damages as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS AN TENTH CAUSE OF ACTION
Breach of Fiduciary Duty
(As to the Developer Defendants)

119. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

120. These were required to use good judgment and act in the utmost good faith to complete the formation of and operate the One Hamlin Association until it was turned over to the unit owners' control.

121. Prior to ceding control over the One Hamlin Association to the unit owners, these Defendants had the unilateral ability to determine the assessments against individual

owners and were required to fund shortfalls between the assessments necessary to perform the duties and obligations of the Master Deed and By-laws and the assessments actually collected from individual unit owners.

122. These Defendants failed to establish and provide adequate capital reserves and projections for the sufficient maintenance and repair of the Project prior to turning the One Hamlin Association over to the unit owners, in that the limited repairs and maintenance done were substandard and inadequate and were intended to and, in fact did, conceal instead of correct the latent defects that existed in the Project and of which these Defendants were or should have been aware.

123. These Defendants sought and obtained a special relationship of trust and confidence with the Plaintiffs and, as such, these Defendants owed a fiduciary duty to the Plaintiffs to ensure that the Project was safe, habitable, and in good repair at the time the Project was turned over to the One Hamlin Association, and/or these Defendants were required to provide funds sufficient to bring the Project to a safe, habitable and code-compliant condition and in good repair as required by South Carolina law.

124. These Defendants owed a duty to the Plaintiffs to turn over the Project including, but not limited to, its common areas in a safe, habitable, code-compliant condition and in good repair.

125. These Defendants negligently, carelessly, recklessly, willfully and wantonly failed to turn over common areas, units, and other property that was safe, habitable, in code-compliant condition and in good repair, and failed to establish guidelines and plans to ensure

that the property interests of the Plaintiffs would be preserved and protected in conformity with the customary and normal standards in the townhome management industry.

126. These Defendants further failed to establish and provide sufficient capital replacement reserves at the time of the turn over to effectuate the necessary repairs and to bring the substandard conditions up to a state of code compliance and good repair.

127. As a direct and proximate result of the negligent, reckless, willful, wanton and grossly negligent conduct of these Defendants, Plaintiffs have and will continue to be required to expend substantial sums of money in order to investigate, design, repair and implement the necessary repairs and alterations to bring the Project to a condition which is consistent with the representations made by the Developer Defendants in property condition disclosures made during the construction and sale process for units at the Project, and Plaintiffs will suffer other and further injuries, damages, and losses as a direct and proximate result of the acts and omissions of these Defendants.

128. As a direct and proximate result of their breaches of their fiduciary duties to the Plaintiffs, these Defendants are liable to the Plaintiffs for the actual, direct, consequential, incidental, special, and punitive damages to the Plaintiffs as aforesaid, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A ELEVENTH CAUSE OF ACTION
Breach of Contract
(Against the Developer Defendants)

129. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

130. These Defendants entered into oral and/or written contractual arrangements with Plaintiffs relating to the representation in a purchase and sale transaction, as well as the purchase of units and other property within the Project, and the right to beneficial use of common elements and amenities to be established, coordinated, and managed by these Defendants, and these Defendants received consideration which was adequate and accepted pursuant to the terms of the Defendants' offer of ownership, goods, and/or services which were accepted by the Plaintiffs.

131. Based upon the terms of their contractual agreements, along with the duties which flowed from these Defendants by virtue of the Master Deed and By-laws, real estate agency or other agreements for representation by these Defendants, and the purchase agreements for individual townhome units and other property interests at the Project, these Defendants owed a contractual obligation to Plaintiffs which required that these Defendants ensure that the Project was safe, habitable, code-compliant, and in a condition consistent with these Defendants' representations prior to turning over control of the Project to the unit owners or, in the alternative, these Defendants had a duty to establish and fund sufficient capital reserves which could be used by the Plaintiffs to repair any of these deficient and defective conditions at the Project.

132. In breach of these contractual obligations and in breach of the Master Deed, By-laws, and real estate agency and other agreements, these Defendants failed to make a full investigation of conditions at the Project, and failed to disclose the existence of the known defects at the Project, which constitutes a breach of contract and violation of the terms of the Master Deed and By-laws by these Defendants as described above.

133. In addition to and accompanying this breach of these contractual and other obligations, these Defendants made material representations which were false as more fully described in this Complaint which the Plaintiffs relied upon to the Plaintiffs detriment.

134. As a direct and proximate result thereof, Plaintiffs have and will continue to suffer, and the actual, incidental, special, and consequential damages and other injuries including, but not limited to, the damages and injuries associated with the acts and omissions which constituted the breach of contract by these Defendants as aforesaid, all in an amount to be determined by the trier of fact.

135. These Defendants are therefore liable to the Plaintiffs for the actual, incidental, special, and consequential damages and other injuries as aforesaid in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A TWELFTH CAUSE OF ACTION
Violation of the Residential Property Condition Disclosure Act
(Against the Developer Defendants)

136. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

137. These Defendants were engaged in a joint venture, partnership, or some other form of business venture or association including, but not limited to, the formation of a Limited Liability Company, in connection with the development and construction of the One Hamlin Place Townhomes.

138. The Developer Defendants did so place the townhome units into the stream of commerce for sale to the general public and to the members of the One Hamlin Association in particular.

139. At all times relevant to this cause of action the Developer Defendants were "owners" as that term is used within S.C. Code Ann. § 27-50-10 *et seq.*, referred to as the "South Carolina Residential Property Condition Disclosure Act" (referred to in the remainder of this cause of action as the "Act").

140. The Developer Defendants failed to furnish to the purchasers of the townhome units a written disclosure statement in conformity and compliance with S.C. Code Ann. § 27-50-40.

141. These Defendants failed to inform the sellers of the units of their obligations under the Act and had reasonable cause to suspect that the information, if any, supplied by the sellers to the individual purchasers was inherently false, incomplete, and misleading.

142. Upon information and belief, notwithstanding the above-described failures of these Defendants, and each of them, knowingly violated and/or failed to perform the duties described in§ 27-50-40.

143. The nature of the defects that were undisclosed in violation of§ 27-50-40, prevented and/or limited any inspection performed by the Plaintiffs to uncover or discover the said defects.

144. As a direct and proximate result of these Defendants' violations of their respective and collective duty to furnish written disclosure to the purchasers as required by§ 27-50-10, *et seq.,* the Plaintiffs have suffered, and these Defendants are liable to the Plaintiffs for, actual, incidental, consequential, and special damages, along with costs, interest, and attorney's fees pursuant to the remedies set forth in the Act, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A THIRTEENTH CAUSE OF ACTION
Strict Liability
(Against the Developer Defendants)

145. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

146. Each and every townhome unit sold by these Defendants was a product within the meaning of S.C. Code Section 15-73-10, *et seq.*

147. These Defendants are and were engaged in the business of selling the aforesaid townhome units which are within the meaning of S.C. Code Section 15-73-10, *et seq.*

148. The aforesaid townhome units/products were expected to, and in fact did, reach the Plaintiffs herein as Users or Consumers without substantial change in condition in which it was sold within the meaning of Section B of S.C. Code 15-73-10, *et seq.*

149. The townhome units/products which were sold by these Defendants were at the time of sale in a defective condition, unreasonably dangerous to Plaintiffs as a User or Consumer or to the Plaintiffs property and, as such, these Defendants are strictly liable to Plaintiffs as Users or Consumers herein for the physical harm and damage proximately caused thereby.

150. As a direct and proximate result thereof, Plaintiffs as Users or Consumers have suffered, and these Defendants are liable to the Plaintiffs for, actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTEENTH CAUSE OF ACTION
Alter Ego Liability and Piercing the Corporate Veil
(Against Developer Defendants)

151. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

152. The Developer Defendants, by and through various instrumentalities and alter-egos and other Defendants were the original developers of the Project, and the Developer Defendants combined and joined together through various instrumentalities and alter egos to facilitate to process of building the townhome units in or about 2006-2007.

153. The Developer Defendants created and controlled numerous and various entities including, but not limited to, the Wieland Defendants, Builder Support Services, Inc. and Wheelock, set forth hereinabove, for the sole purpose of the construction, development,

purchase of property, sale of property, leasing of townhomes, and other activities solely relating to development and sale of the townhomes that are known as the One Hamlin Place Townhomes. The Developer Defendants created and controlled numerous and various entities including, but not limited to, Wieland, for the sole purpose of the building and sale of the townhomes at the Project. These Defendants created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of these Defendants to achieve their financial goals and to perpetrate the activities more particularly described herein. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between these Defendants and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

154. These Defendants created entities which were created to perform single purpose functions in order to effectuate the sole will of these Defendants in purchasing, developing, leasing, and/or selling the units. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, these Defendants actively and directly participated in the development, purchase, sale, management, leasing, and/or operations of the Project, and in fact put the same into the stream of commerce.

155. These Defendants created and controlled numerous and various of the Defendant entities for the sole purpose of the planning, development, design, construction,

management, purchase, sale of units, and other activities solely relating to the Project which is the subject of this action.

156. The sham entities established by these Defendants were and are characterized by one or more of the following: (I) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) Insolvency; (5) lack(ed) proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates. Upon information and belief, each shared the same mailing address, their business was conducted on the letter head of these Defendants, these Defendants directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or these Defendants directly contracted for the sham entities in the name of these Defendants.

157. These Defendants directed and oversaw the Contractor Defendants herein who performed insufficient, shoddy, negligent work which failed to comply with applicable building codes and industry standards, all of which has contributed to and resulted in the premature deterioration and/or failure of the structures and building systems in the Project.

158. There would exist a broad element of injustice and fundamental unfairness if the acts of these Defendants, and each of them individually, were not regarded as the acts of one another.

159. At the time the units were offered for sale and placed into the stream of commerce by these Defendants, the units contained numerous defects and/or property damage which has been recently and is currently being discovered by Plaintiffs, all as a direct

and proximate result of an investigation initiated by Plaintiffs, as a direct and proximate result of defects and deficiencies heretofore hidden and concealed through the acts and omissions of these Defendants.

160. The Developer Defendants and the Contractor Defendants, and each and every other above-captioned Defendant knew or should have known of the existence of the said building defects and deficiencies and property damage, which were latent and unknown to the Plaintiffs.

161. These latent building defects have, unbeknownst to Plaintiffs, regularly resulted in water intrusion into the buildings and property damage and continue to do so through the date of this filing.

162. The latent building defects and property damage have regularly resulted in the deterioration and failure of the structures and building systems, along with the attendant resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

163. The Plaintiffs suffered damages and injuries when these Defendants put these units into the stream of commerce and continue to be damaged and injured through the date of this filing.

164. As a direct and proximate result thereof, these Defendants are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

a) Enter judgment in favor of the Plaintiffs and against all Defendants, jointly and severally, in an amount to be determined for actual, incidental, consequential, special, and punitive damages;

b) Find that the Defendants have engaged in unfair trade practices and knowingly did so thereby entitling Plaintiffs to treble damages;

c) Award attorneys' fees and costs to the Plaintiffs; and

d) Award such other and further relief as the Court may deem just and proper.

[Signature Page to Follow]

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

October 11, 2017
Charleston, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO: 2017-CP-10-5246
)
Gary Keisler, Individually and as Class)
Representative, John Does (1-50) and)
Jane Does (1-50),)
) **AMENDED VERIFIED**
) **COMPLAINT**
Plaintiffs,) **(Jury Trial Demanded)**
)
vs.)
)
John Wieland Homes and)
Neighborhoods of the Carolinas, Inc. as)
successor by statutory merger to John)
Wieland Homes and Neighborhoods of)
South Carolina, Inc.; John Wieland)
Homes of Charleston, Inc.; John)
Wieland Homes, Inc. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support)
Services of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a)
John Wieland Homes and)
Neighborhoods, Inc.; Wheelock Street)
Real Estate Fund, LP; Wheelock Street)
Investment Management, LLC; RP)
Falcon Properties, LLC; Residential)
Partners, LLC; Middlesex Holdings,)
LLC; WS JWH, LLC; JWC Phoenix,)
LLC; Bridgemill Land, LLC;)
Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty)
Associates, Inc. a/k/a Wieland Realty)
Associates, Inc.; John Wieland,)
individually; Sue Wieland; Lindsey)
Parker; Robert Parker; Jack Wieland;)
Jorge Medina; Jorge Medina a/k/a JMC)
Construction, Inc. a/k/a JMC)
Construction, LLC; John Does (20-50);)
and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource –)
Southeast Group, LLC; Muhler LLC)
a/k/a The Muhler Company, Inc.; YKK)

FILED
2018 JAN 16 PM 4:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

The Plaintiff, Gary Keisler, as Class Representative and the above-named Plaintiffs (hereinafter collectively referred to as "Plaintiffs"), individually and as a class of similarly situated owners of townhome units in a residential townhome community named One Hamlin Place Townhomes complaining of the above-mentioned Defendants, allege and state as follows:

1. Plaintiff, Gary Keisler, is a citizen and resident of Charleston County, South Carolina, who at all times relevant hereto lives in a residential community known as One Hamlin Place Townhomes, located in Mount Pleasant, South Carolina, Plaintiff Gary Keisler further alleges and states that he is bringing this action pursuant to Rule 23, SCRCP, as representing a class composed of each and every unit owner in the One Hamlin Place Townhome Association, Inc.; and that:

a) The class is so numerous that joinder of all members is impracticable;

b) There are questions of law and fact common to the class;

c) The claims of the Plaintiff, Gary Keisler, are typical of the claims of the class;

d) The Plaintiff, Gary Keisler, will fairly and adequately protect the interest of the class; and

e) The amount in controversy exceeds One Hundred Dollars ($100.00) for each member of the class.

2. The individual Plaintiffs are citizens and residents of Charleston County, South Carolina, who at all times relevant hereto live in a residential community known as One Hamlin Place Townhomes, located in Mount Pleasant, South Carolina.

3. Plaintiffs who are the original purchasers of their respective townhome units in One Hamlin Place Townhomes, and shall hereinafter be referred to collectively as "Original Purchasers".

4. One Hamlin Place Townhomes (hereinafter collectively referred to "the property" or "One Hamlin") is a section of the residential community, Hamlin Plantation, located in Mount Pleasant, South Carolina and, upon information and belief, was owned, developed, marketed and constructed by the Defendants.

5. Defendants John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina, Inc.; AC Construction, Inc.; Annisquam Development, LLC; Jorge Medina and JMC Construction, Inc.; Muhler, LLC a/k/a The Muhler Company, Inc.; A-Marc, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Neighborhood Management Associates, Inc.; Tru-Don Contracting, Inc.; Fine Builders, LLC; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc.; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc. are, upon information and belief, corporations organized and existing under the laws of the State of South Carolina and are authorized to conduct business in this state. Scott Parker; Paul M. Vasquez; Valencia Medina; Jose Alfredo Sandoval;

Chad Larsen d/b/a Chad Larson Co.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Gonzalo Guerrero; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; William C. Mulhern d/b/a Bill's Painting; Chad Hood; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez d/b/a GR Painting; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Latitude Construction Services, LLC; and Richard Ditullio a/k/a RDT Contracting, LLC are, upon information and belief, contractors licensed in the State of South Carolina.

6. Defendants Bridgemill Land, LLC; Builder Support Services of the Carolinas, Inc.; Builders FirstSource – Southeast, LLC; John Wieland Homes and Neighborhoods of the Carolinas, Inc.; John Wieland Homes and Neighborhoods of Charleston, Inc.; JW Homes, LLC; JW Land Investment, LLC; JWC Guilford, LLC; JWC Phoenix, LLC; JWH RPIV, LLC; Middlesex Holdings, LLC; OOTB, LLC; Residential Partners, LLC; RP Falcon Properties, LLC; RP Falcon Realty, LLC; RP Falcon Land, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management, LLC; Wheelock Street Real Estate Fund, LP; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; Wieland Realty, LLC; WS JWH, LLC; WSREF NRT, LLC; and YKK (U.S.A.), Inc.; East Coast Drywall Systems, Inc.; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Kinco Ltd. a/k/a Kinco, Inc.; The Contractor Yard, Inc. upon information and belief, are foreign corporations that transact business in the State of South Carolina. John Wieland, Sue Wieland, Lindsey Parker, Jack Wieland, and Robert Parker are, upon information and belief, residents of foreign states and transact business in South Carolina.

7. Upon assuming the roles as stated below, the Defendants assumed the duties thereof to develop, construct, and market the property and sell parcels thereof to the general public.

8. Furthermore, in assuming the roles stated below, the Defendants undertook to make certain that this Community was developed and constituted in a workmanlike fashion according to industry standards meeting all applicable codes, guidelines, restrictions, of any and all state, county, and municipal authorities.

9. That pursuant to this marketing scheme, the Defendants extensively advertised to the general public and represented to the general public that *inter alia*, the property and homes built would be of the highest quality, with substantial amenities.

10. This Court has jurisdiction over the parties and subject matter hereto.

11. The construction of One Hamlin was performed by one or more of the Defendants. The Defendants represented they were competent, knowledgeable and experienced in performing such construction work as to properly build One Hamlin according to the normal standards of good and workmanlike practice in the construction field.

12. Construction defects in the One Hamlin community have recently been discovered. A recent inspection of the subject Townhomes resulted in the discovery of major problems and deficiencies including but not limited to the following:

(a) Lack of proper flashing;

(b) Lack of proper roofing installation;

(c) Water damage along porches;

(d) Water and moisture intrusion damage resulting from defects including but not limited to the photographs attached as Exhibits 1-16;

(e) Improper flashing installation

(f) Numerous other construction defects that have caused consequential damages to the buildings and require repair.

13. Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc. (hereinafter referred to as "Wieland SC") was a foreign corporation organized and existing under the laws of the State of Georgia and, at all times relevant hereto, was authorized to and did conduct business in the State of South Carolina, County of Charleston for the purpose of planning, developing, marketing, owning, maintaining, leasing, selling, and constructing the townhomes in a manner for sale to the public. It is currently known as Builder Support Services of the Carolinas, Inc.

14. Defendant John Wieland Homes of Charleston, Inc., upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia and was authorized to conduct business in this state for the purpose of planning, developing, marketing, owning, maintaining, leasing, sale, and constructing the townhomes in a manner for sale to the public. It is currently known as Builder Support Services of the Carolinas, Inc.

15. Defendant John Wieland Homes, Inc., n/k/a John Wieland Homes and Neighborhoods of South Carolina, Inc., upon information and belief, was a corporation organized and existing under the laws of the State of South Carolina and was authorized to conduct business in this state, and had a principal place of business in Charleston County Charleston for the purpose of planning, developing, marketing, owning, maintaining, leasing, sale, and constructing the townhomes in a manner for sale to the public.

16. Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston,

Inc., and John Wieland Homes, Inc. (hereinafter referred to as the "Old Wieland Entities") developed, marketed and sold homes in South Carolina and upon information and belief sold all major assets to entities listed below in an attempt to conceal, delay, and frustrate their creditors' attempts to satisfy the Old Wieland Entities' liabilities.

17. Defendant Builder Support Services of the Carolinas, Inc., upon information and belief, is a foreign corporation organized and existing under the laws of the State of Georgia and is authorized to conduct business in this state. It was formerly known as John Wieland Homes and Neighborhoods, Inc.

18. Defendant Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc. is a foreign corporation organized and existing under the laws of the State of Delaware which describes its business as that of real estate investments and is authorized to conduct business in this state. It is a joint venture formed in November 2012 with the Wieland Defendants where John Wieland Homes and Neighborhoods, Inc. sold to Wheelock Street Capital.

19. Defendant Wheelock Street Real Estate Fund, LP is a limited partnership between Wheelock Street Capital, LLC and other entities organized and existing under the laws of the State of Delaware which transacts business in the State of South Carolina.

20. Defendant Wheelock Street Investment Management, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

21. Defendant RP Falcon Properties, LLC, formerly known as JW Homes, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in South Carolina.

22. Defendant Residential Partners, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

23. Defendant Middlesex Holdings, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in South Carolina.

24. Defendant WS JWH, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in South Carolina.

25. Defendant JWC Phoenix, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in South Carolina.

26. Defendant Bridgemill Land, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacts business in South Carolina.

27. Defendant Annisquam Development, LLC, upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina.

28. Defendant JW Land Investment, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Delaware, which transacted business in South Carolina. It is currently known as RP Falcon Land, LLC.

29. Defendant JWC Guilford, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacted business in South Carolina.

30. Defendant OOTB, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacted business in South Carolina.

31. Defendant Wieland Realty Associates, Inc., also known as JW Realty Associates, Inc., upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacted business in South Carolina.

32. Defendant Wheelock Street Real Estate Fund II, LP, previously identified as Jane Doe 30, is a limited partnership organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

33. Defendant Wheelock Street Real Estate Fund V, LP, previously identified as Jane Doe 31, is a limited partnership organized and existing under the laws of the State of Delaware which transacts business in the State of South Carolina.

34. Defendant WSREF NRT, LLC, previously identified as Jane Doe 32, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

35. Defendant JW Homes, LLC, previously identified as Jane Doe 33, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Delaware, which transacted business in the State of South Carolina. It is currently known as RP Falcon Properties, LLC.

36. Defendant JWH RPIV, LLC previously identified as Jane Doe 34, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

37. Defendant RP Falcon Land, LLC f/k/a JW Land Investment, LLC, previously identified as Jane Doe 35, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

38. Defendant Wieland Realty, LLC a/k/a RP Falcon Realty, LLC, previously identified as Jane Doe 36, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

39. Defendant RP Falcon Realty, LLC f/k/a Wieland Realty, LLC previously identified as Jane Doe 37, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

40. Defendant Residential Partners II, LLC previously identified as Jane Doe 38, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

41. Defendant Residential Partners III, LLC previously identified as Jane Doe 39, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

42. Defendant Residential Partners IV, LLC previously identified as Jane Doe 40, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

43. Defendants Builder's Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC, Wheelock Street Real Estate Fund I, II, and V, LP, Wheelock Street Investment Management, LLC, RP Falcon Properties, LLC, Residential Partners I, II, III, and IV, LLC,

Middlesex Holdings, LLC, WS JWH, LLC, JWC Phoenix, LLC, Bridgemill Land, LLC, Annisquam Development, LLC, JW Land Investment, LLC, JWC Guilford, LLC, OOTB, LLC, Wieland Realty Associates, Inc., WSREF NRT, LLC, JWH RPIV, LLC, RP Falcon Land, LLC, and Wieland Realty, LLC a/k/a Falcon Realty, LLC (hereinafter referred to as "Wieland Group"), upon information and belief were all organized in such a manner where there is or are:

(a) a substantial relationship between the transferors and transferees of assets;

(b) a retaining of benefits of the transfers for the Old Wieland entities;

(c) secrecy and concealment of terms and negotiations;

(d) circumstances leading to the conclusion that the intent was to delay and hinder creditors from obtaining satisfaction of liabilities;

(e) evidence that the Wieland Group are mere successors in interest and a continuation of the Old Wieland Entities; and

(f) evidence that the entities were operated in such a manner where distinctions between the entities are blurred and should be amalgamated for purposes of judgment.

44. Defendant John Wieland, upon information and belief, is an individual with his primary place of domicile in the State of Georgia. Wieland was the founder, owner, controller, and public face of the above Wieland Entities.

45. Defendant Sue Wieland is the wife of Defendant John Wieland. Upon information and belief, Sue Wieland's place of domicile is in the State of Georgia.

46. Defendants Lindsey Parker and Jack Wieland are the daughter and son of John and Sue Wieland, and Defendant Robert Parker is the son-in-law of John and Sue Wieland. Upon information and belief, Jack Wieland's place of domicile is in the State of Georgia; Robert and Lindsey Parker's place of domicile is in Massachusetts.

47. Defendants John Wieland, Sue Wieland, Jack Wieland, Robert and Lindsey Parker (hereinafter referred to as "Wieland Family") all owned and controlled the Old Wieland Entities. Also, upon information and belief, the Wieland Family own and control the Wieland Group.

48. The Wieland Entities and Wieland Family held, owned, controlled, and/or held additional real estate inventory in additional single purpose entities (SPE) (hereinafter referred to as "Wieland SPE affiliates").

49. The Wieland SPE affiliates were publicly owned and controlled in the names of Sue Wieland and/or Robert Parker.

50. The use of Wieland SPE affiliates and Wieland Group was for the purpose of hindering the creditors of the Old Wieland Entities.

51. Wieland and Robert Parker spearheaded the Wieland Family's negotiation and consummation of the asset sale to Defendant Residential Partners which, upon information and belief, is owned and controlled by the Wieland Family.

52. Defendant Jorge Medina, individually and d/b/a JMC Construction, LLC a/k/a JMC Construction, Inc. (hereinafter referred to as "JMC"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, upon information and belief, JMC performed siding, cornice, trim and roofing labor.

53. Upon information and belief, John Does 20-50 and Jane Does 41-50 are individuals or entities organized pursuant to the laws of the State of South Carolina or other states. At all times relevant herein, John Does 20-50 and Jane Does 41-50 were engaged in the business of selling, constructing homes, renovating, supplying products materials and/or services to that end in Charleston, South Carolina.

54. Defendant AC Construction, Inc. previously identified as Jane Doe 1, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, AC Construction, Inc. performed roofing and framing work at the subject property, in Charleston County, South Carolina.

55. Defendant Scott Parker (hereinafter referred to as "Parker") previously identified as John Doe 1, upon information and belief, is a General Contractor licensed in the State of South Carolina. Also, upon information and belief, Parker worked as a neighborhood manager for John Wieland Homes and Neighborhoods.

56. Defendant Builders FirstSource – Southeast Group, LLC previously identified as Jane Doe 2, upon information and belief, is a limited liability company organized and existing under the laws of the State of Delaware, which transacts business in South Carolina and supplied framing and roofing materials.

57. Defendant Muhler LLC a/k/a The Muhler Company, Inc. previously identified as Jane Doe 3, upon information and belief, is a domestic corporation organized and existing under the laws of the State of South Carolina and produced, supplied, and installed windows at One Hamlin Place.

58. YKK (U.S.A.), Inc. previously identified as Jane Doe 4 is a foreign corporation organized and existing under the laws of the State of New York, which transacts business in South Carolina and produced, supplied, and installed windows at One Hamlin Place.

59. Defendant Paul M. Vasquez (hereinafter referred to as "Vasquez") previously identified as John Doe 2, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Vasquez supplied, sold, and installed windows and

doors, together with all associated and related waterproofings and flashings, and other work at the subject property.

60. Defendant Neighborhood Management Associates, Inc. previously identified as Jane Doe 5, upon information and belief, is a corporation organized and existing under the laws of the State of Georgia. Also, upon information and belief, Neighborhood Management Associates served as the property management company for One Hamlin Place.

61. Defendants Billie and Antonio Arias d/b/a Antonio Arias Framing Construction (hereinafter referred to as "Arias") previously identified as John Doe 3, upon information and belief, are contractors licensed in the state of South Carolina. Also, upon information and belief, Arias performed framing and related labor at One Hamlin Place.

62. Defendant Tru-Don Contracting, Inc. (hereinafter referred to as "Tru-Don") previously identified as Jane Doe 6, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, upon information and belief, Tru-Don performed roofing and related framing work at One Hamlin Place.

63. Defendant Fine Builders, LLC previously identified as Jane Doe 7 (hereinafter referred to as "Fine"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina. Also, upon information and belief, Fine performed framing and related labor on townhomes at One Hamlin Place.

64. Defendant Jose Alfredo Sandoval (hereinafter referred to as "Sandoval") previously identified as John Doe 4, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Sandoval performed framing and related labor on townhomes at One Hamlin Place.

65. Defendant Chad Larsen d/b/a Chad Larsen Co. (hereinafter referred to as "Larsen") previously identified as John Doe 5, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Larson performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

66. Defendant Ivan Jose Paiz d/b/a Jose Construction (hereinafter referred to as "Jose") previously identified as John Doe 6, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Jose performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

67. Defendant William B. Angel (hereinafter referred to as "Angel") previously identified as John Doe 7, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Angel performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

68. Defendant East Coast Wall Systems, Inc. (hereinafter referred to as "East Coast") previously identified as Jane Doe 8, upon information and belief, is a corporation organized and existing under the laws of the State of North Carolina. Also, under information and belief, East Coast performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

69. Defendant Tracyinne Construction a/k/a T&C Construction, LLC (hereinafter referred to as "T&C") previously identified as Jane Doe 9, upon information and belief is a limited liability company organized and existing under the laws of the State of South Carolina. Also, under information and belief, T&C performed framing labor on townhomes at One Hamlin Place.

70. Defendants Frankcisco and Andrea Dacosta individually and d/b/a AAA Coastline, Inc. (hereinafter referred to as "AAA") previously identified as John Doe 8 and Jane Does 10-11, respectively, upon information and belief, are licensed contractors and operating and existing as a

corporation under the laws of the State of South Carolina. Also, upon information and belief, AAA performed framing and related labor on townhomes at One Hamlin Place.

71. Defendant Jack R. Clark individually d/b/a Jack Clark Construction LLC (hereinafter referred to as "Clark") previously identified as John Doe 9, upon information and belief is a licensed South Carolina contractor operating and existing as a limited liability company under the laws of the State of South Carolina. Also, upon information and belief, Clark performed framing and related labor on townhomes at One Hamlin Place.

72. Defendant Alex Welch (hereinafter referred to as "Welch") previously identified as John Doe 10, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Welch performed framing and related labor on townhomes at One Hamlin Place.

73. Defendant Tracy McCuiston d/b/a Mastercraft Interior and Exterior (hereinafter referred to as "Mastercraft") previously identified as John Doe 11, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Mastercraft performed framing and related labor on townhomes at One Hamlin Place.

74. Defendant Universal Forest Products (hereinafter referred to as "Universal") previously identified as Jane Doe 12, upon information and belief, is a corporation organized and existing under the laws of the State of Minnesota. Also, upon information and belief, Universal performed framing and related labor on townhomes at One Hamlin Place.

75. Defendant Gonzalo Guerrero (hereinafter referred to as "Guerrero") previously identified as John Doe 12, upon information and belief, is a contractor licensed in the State of South Carolina. Also, under information and belief, Guerrero performed framing, sheetrock,

fireproofing, siding, trim, and related flashing and caulking labor on townhomes at One Hamlin Place.

76. Defendant A-Marc, Inc. (hereinafter referred to as "A-Marc") previously identified as Jane Doe 13, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, upon information and belief, A-Marc performed framing, sheetrock, fireproofing, and all related labor on townhomes at One Hamlin Place.

77. Defendant Emmanuel Kehagis d/b/a Creative Construction (hereinafter referred to as "Creative") previously identified as John Doe 13, upon information and belief is a contractor licensed in the State of South Carolina. Also, upon information and belief, Creative performed framing and related labor on townhomes at One Hamlin Place.

78. Defendant Anthony Kirksey (hereinafter referred to as "Kirksey") previously identified as John Doe 14, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Kirksey performed framing and related labor on townhomes at One Hamlin Place.

79. Defendant Polly S. Clark d/b/a Glenn Clark Construction (hereinafter referred to as "Clark") previously identified as Jane Doe 14, upon information and belief is a contractor licensed in the State of South Carolina. Also, upon information and belief, Clark performed framing and related labor on townhomes at One Hamlin Place.

80. Defendant Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC (hereinafter referred to as "Mora") previously identified as Jane Doe 15, upon information and belief is a contractor licensed in the State of South Carolina operating and existing as a South

Carolina corporation. Also, upon information and belief, Mora performed roofing, masonry, and related flashing and caulking labor on townhomes at One Hamlin Place.

81. Defendant Daniel L. Rogers d/b/a Dan Rogers Roofing, LLC (hereinafter referred to as "Rogers") previously identified as Jane Doe 16, upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina. Also, upon information and belief, Rogers performed roofing and related flashing and caulking labor on townhomes at One Hamlin Place.

82. Defendant William C. Mulhern d/b/a Bill's Painting (hereinafter referred to as "Mulhern") previously identified as Jane Doe 17, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Mulhern performed sheetrock, fireproofing, painting, sealant installation, and related labor on townhomes at One Hamlin Place.

83. Defendant Mark A. McFarland individually and d/b/a In the Wind, Inc. (hereinafter referred to as "In the Wind") previously identified as John Doe 15 and Jane Doe 18, respectively, upon information and belief, is a contractor licensed in the State of South Carolina and operating and existing as a South Carolina corporation. Also, upon information and belief, In the Wind performed window and door installation and related flashing and caulking labor on townhomes at One Hamlin Place.

84. Defendant Harbor Master, Inc. previously identified as Jane Doe 19, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, under information and belief, Harbor Master, Inc. performed window and door installation and related flashing and caulking labor on townhomes at One Hamlin Place.

85. Defendant Chad Hood (hereinafter referred to as "Hood") previously identified as John Doe 16, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Hood performed window and door installation and related flashing and caulking labor on townhomes at One Hamlin Place.

86. Defendant Kinco Ltd. a/k/a Kinco Inc. (hereinafter referred to as "Kinco") previously identified as Jane Doe 20, upon information and belief, is a Florida corporation organized and existing under the laws of the State of Florida. Also, under information and belief, Kinco manufactured, supplied, retailed, and installed windows and doors together with related flashing and caulking on townhomes at One Hamlin Place.

87. Defendant Atrium Companies, Inc. d/b/a Atrium Windows and Doors a/k/a HR Windows previously identified as Jane Doe 21 (hereinafter referred to as "Atrium"), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware. Also, under information and belief, Atrium manufactured, supplied, retailed, and installed windows and doors together with related flashing and caulking on townhomes at One Hamlin Place.

88. Defendant The Contractor Yard, Inc. (hereinafter referred to as "Contractor Yard") previously identified as Jane Doe 22, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, under information and belief, Contractor Yard manufactured, supplied, retailed, and installed windows and doors together with related flashing and caulking on townhomes at One Hamlin Place.

89. Defendant New Construction Drywall Hanger, LLC (hereinafter referred to as "Drywall Hanger") previously identified as Jane Doe 23, upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina. Also, under

information and belief, Drywall Hanger performed framing, drywall, sheetrock, fireproofing, and related labor.

90. Defendant Doug Pilcher (hereinafter referred to as "Pilcher") previously identified as John Doe 17, upon information and belief, is a contractor licensed in the State of South Carolina. Upon information and belief, Pilcher worked as a builder for John Wieland Homes and Neighborhoods at One Hamlin Place.

91. Defendant Michael Cassidy (hereinafter referred to as "Cassidy") previously identified as John Doe 18, upon information and belief, is a contractor licensed in the State of South Carolina. Upon information and belief, Cassidy worked as a quality manager for John Wieland Homes and Neighborhoods at One Hamlin Place.

92. Defendant DBC Construction Services, LLC (hereinafter referred to as "DBC") previously identified as Jane Doe 24, upon information and belief is a South Carolina limited liability company organized and existing under the law of the State of South Carolina. Also, upon information and belief, DBC performed roofing and all related waterproofing and flashing work on townhomes at One Hamlin Place.

93. Defendant Gerardo Rosette Sanchez, doing business as GR Painting (hereinafter referred to as "GR") previously identified as Jane Doe 25, upon information and belief is a contractor licensed to do business in South Carolina. Also, upon information and belief, GR performed exterior painting services and all related waterproofing, caulking, and flashing work on townhomes at One Hamlin Plantation.

94. Defendant Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC previously identified as Jane Doe 26 (hereinafter referred to as J. Mora), upon information and belief is a South Carolina limited liability company organized and existing under the law of the State of South

Carolina. Also, upon information and belief, J. Mora performed brick masonry and foundation work along with all related waterproofing, caulking, and flashing on townhomes at One Hamlin Place.

95. Defendant Juan Luis Sanchez a/k/a Sanchez Brothers Painting previously identified as Jane Doe 27, upon information and belief, is a contractor licensed to do business in South Carolina.

96. Defendant Latitude Construction Services, LLC (hereinafter referred to as "Latitude") previously identified as Jane Doe 28, upon information and belief is a South Carolina limited liability company organized and existing under the law of the State of South Carolina. Also, upon information and belief, Latitude performed porch and balcony waterproofing along with all related flashing and caulking on townhomes at One Hamlin Place.

97. Defendant Richard Ditullio a/k/a RDT Contracting, LLC (hereinafter referred to as "RDT") previously identified as Jane Doe 29, upon information and belief is a contractor licensed to do business in South Carolina and operates as a South Carolina limited liability company organized and existing under the laws of the State of South Carolina. Also, under information and belief, RDT performed roofing and all related waterproofing, flashing, and caulking labor.

98. Defendant Valencia Medina, individually previously identified as John Doe 19, upon information and belief, is an agent of JMC Construction, LLC a/k/a JMC Construction, Inc. Also, upon information and belief, Valencia Medina by and through JMC performed framing, siding, cornice, trim and roofing labor.

99. Upon information and belief, the Wieland Defendants were, in various capacities, individually and collectively engaged in the planning and developing of the Project, and contracted with various entities for the design and construction of the Project.

100. Upon information and belief, one or more of the Wieland Defendants were merged into one or more of the John Wieland Homes and Neighborhoods of South Carolina, Inc. and John Wieland Homes and Neighborhoods, Inc. with the intent to carry on the business of the Wieland Defendants in connection with the Project.

101. Wheelock Street Capital, LLC (hereinafter referred to as Wheelock) d/b/a John Wieland Homes and Neighborhoods, Inc., is a joint venture with the Wieland Defendants formed in November 2012.

102. Upon information and belief, the ownership of the Project was maintained uninterrupted by the Wieland Defendants during and following the aforementioned merger activities, resulting in ownership and/or control of the Project by the resulting merged entity (the resulting merged entity, including all of the affiliated, subsidiary, or other merged component entities, shall hereinafter be referred to collectively as the "Developer Defendants" and/or "Wieland Defendants").

103. The original developers, John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., and Builder Support Services of the Carolinas, Inc., and JW Homes, LLC shall hereinafter be referred to collectively as the "Original Developer Defendants".

104. The Developer Defendants are all Variable Interest Entities of (as defined by the Financial Accounting Standards Board, among other institutions and authorities) subsidiaries of, parents of, partners of, associates of, agents of, affiliated with, joint venturers, servants, instrumentalities and/or alter ego entities of each other and are responsible to the Plaintiffs herein for the condition of the Project and the damages set forth herein below.

105. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities, during the development of the Project and immediately after sale of the townhomes to members of the public, sought and established a special relationship with the purchasers of the townhomes, and the Developer Defendants, at various times during and after the construction of the townhomes, breached their fiduciary duties to the purchasers in that the Developer Defendants owed dual and conflicting loyalties to themselves, to the Contractor Defendants as set forth below, to the purchasers of the townhomes, to the Association established in the Master Deed for the construction of the Project, and to the Plaintiffs.

106. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities had irreconcilable conflicts of interest by virtue of the dual and conflicting loyalties they owed to themselves and to the purchasers and/or tenants of the Project along with the Association established in the Master Deed for the townhomes and the Plaintiffs, all of whose interests were diverse and adverse, one to the other and, as such, the Developer Defendants did not act in good faith or in a manner they could reasonably believe to be in or not opposed to the best interests of the purchasers and/or tenants of the Project along with the Association established in the Master Deed for the townhomes and the Plaintiffs.

107. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities, all participated in self-dealing by promoting their own interests through sacrificing the interests of the purchasers of the Project.

108. In connection with the Project, the Developer Defendants all became and/or acted as subsidiaries, parents, partners, associates, agents, affiliate, co-joint venturers, servants,

instrumentalities and/or alter ego entities of each other and are responsible to the Plaintiffs herein for the condition of the Project and the damages set forth herein.

109. The Developer Defendants conducted business in connection with the Project by and through the use and control of subservient entities, and all of these entities in fact manifested no separate interest of their own, and demonstrated an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between any members of that group of corporations, shareholders, officers, agents, partners, employees, and assets.

110. The Defendants listed above, including Paul Vasquez; Muhler; YKK; Neighborhood Management Associates, Inc.; Antonio Arias Framing; Jorge Medina and Valencia Media d/b/a JMC Construction; Tru-Don Contracting, Inc; Fine Builders, LLC; Jose Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Paiz d/b/a Jose Construction; William Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuistan d/b/a Master Craft Interior and Exterior; Universal Forest Products Eastern Division Inc. a/k/a UFP Eastern Division Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly Clark d/b/a Glenn Clark Construction; Benjamin Mora; Daniel L. Rogers d/b/a Dan Rogers Roofing LLC; William C. Mulhern d/b/a Bill's Painting; Harbor Master, Inc.; Chad Hood; Kinco Ltd. d/b/a Kinco, Inc.; Atrium Companies Inc. d/b/a Atrium Windows and Doors a/k/a HR Windows; Contractor Yard, Inc.; New Construction Drywall Hanger, LLC; DBC Construction Services, LLC; Gerardo Rosette Sanchez d/b/a GR Painting; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Latitude Construction Services, LLC; and Richard Ditullio a/k/a RDT Contracting, LLC (hereinafter referred to collectively as the "Contractor Defendants") provided labor, materials, goods, and

services in connection with the construction of the One Hamlin Place Project as contractors, subcontractors, consultants, or independent contractors, or which manufactured, fabricated, and/or otherwise provided construction and building materials, equipment and goods for use in connection with the construction of the Project; and these entities provided labor, materials, goods, and services associated with the original construction of the Project, and the work of each of these defendants was deficient and defective and resulted in damages to the Plaintiffs as set forth below.

111. All Defendants were instrumental in carrying out duties and actions relating to the construction of the Project, and each of these defendants had independent duties under South Carolina law to perform their duties in a good and workmanlike manner and in accordance with applicable building codes and accepted building practices.

JURISDICTION

112. Personal jurisdiction is vested and exists in the Court of Common Pleas, County of Charleston, State of South Carolina, and venue is proper in the County of Charleston, State of South Carolina, by virtue of, among other things, the fact that the property which is the subject matter of the Complaint is located in Mt. Pleasant, South Carolina, and the great majority of the activities relating to the Project and the claims herein occurred in this jurisdiction.

WIELAND TRANSACTIONAL BACKGROUND

113. Defendants negotiated a transfer of substantially all assets owned and/or controlled by the Wieland Entities and the Wieland Family to new entities that were jointly owned by Wheelock and the Wieland Family. Ultimately, Wheelock and the Wieland Family reaped a windfall by selling the assets to a third party.

114. It is clear that the Defendants employed a sophisticated scheme to first "launder" and then sell the assets of the John Wieland Homebuilding Enterprises. While the discrete steps of the scheme are less clear, Plaintiffs will set out the currently known facts.

(The 2009 Transactions)

115. The siphoning of valuable assets began as early as 2009. Defendant Robert Parker orchestrated a December 30, 2009 transaction by which 128+ acres in the Bridgemill subdivision (Lancaster County, South Carolina) were sold by John Wieland Homes and Neighborhoods of the Carolinas, Inc. to OOTB, a company run by William Mitchell, a one-time member of Wieland's board of directors. The Defendants' intention was for OOTB to hold the land and eventually sell it back to the evolving Wieland entities.

116. OOTB reportedly paid Two-Million Dollars ($2,000,000.00) for the Bridgemill land. A year later, in December of 2010, OOTB sold the 128 acres to Annisquam for One-Dollar ($1.00). Annisquam is controlled by John Wieland's immediate family. Next, Annisquam transferred to JW Homes a portion of the 128+ acres it had purchased for One-Dollar ($1.00). The affidavit of consideration for that transfer valued the property at over Seven-Million Five-Hundred and Fifty-Four Thousand Dollars ($7,554,000.00).

117. In a nutshell, the Annisquam/OOTB transaction involved the first *KNOWN* diversion of assets from John Wieland Homes and Neighborhoods of the Carolinas, Inc. to the Wieland Family personally, with the assets ultimately being re-routed into Wheelock.

118. OOTB and Annisquam were created to facilitate the Wieland Family's scheme to remove assets from the reach of creditors.

(The 2012 Transactions)

119. In the fall of 2012, several new corporate entities were created. Residential Partners was formed, or caused to be formed, by Wheelock. JW Homes was formed, or caused to be formed, by Wheelock and/or Residential Partners.

120. JW Land, JWC Phoenix, Middlesex, JWC Guilford were also created in the fall of 2012.

121. Defendants Robert and Lindsey Parker are the sole members and owners of Middlesex.

122. Middlesex is the majority owner of JWC Phoenix.

123. The balance of JWC Phoenix is owned by Defendant Jack Wieland.

124. JWC Phoenix owns a minority interest in Residential Partners.

125. On or about November 15, 2012, the Old Wieland Entities and the Wieland Family transferred the John Wieland Homebuilding Enterprise to an amalgamation of JW Homes, Residential Partners, Wheelock and others. This transfer included the assets, business, intellectual property, goodwill, management, employees, intellectual property rights contracts, real estate inventory, and substantially all of the ongoing business assets of the Old Wieland Entities and affiliates.

126. Wieland and Robert Parker spearheaded the Wieland Family's negotiation and consummation of the 2012 Transactions.

127. The 2012 Transactions resulted in a joint venture, or *de facto* merger. They involved the Defendants successfully convincing Bank of America, a major lender to the Wieland Entities, to accept less than it was owed, essentially a short sale.

128. The 2012 Transactions represented the sale of substantially all of the homebuilding assets and related intellectual property of the Old Wieland Entities to a new joint venture, a partnership between the Wieland Family and Wheelock.

129. This new partnership carried forward the John Wieland Homes brand and deployed significant new capital resources to drive growth of one of the industry's most well-known names. Included in the transactions were approximately 300 homes and over 5,000 lots in high quality neighborhoods across the Southeast.

130. Defendant John Wieland served as the new company's chairman, directing strategy and providing leadership, vision and support for the new joint venture.

131. The Wieland Family retained their equity and profit interests and substantial control by swapping indirect interests in the pre-November 15, 2012 John Wieland Homebuilding Enterprise for indirect interests (and disproportionately large profit interests) in the post-November 15, 2012 John Wieland Homebuilding Enterprise.

132. JW Homes was the operating company for the new partnerships after the 2012 Transactions. There was no visible difference for the public to see between Builders Support and Residential Partners. JW Homes advertised, as the purchaser of the John Wieland Homebuilding Enterprise, that the business had 40 years of existence. JW Homes, part of Wheelock, presented itself as the entity responsible for Waverly. JW Homes, as part of Wheelock, took over the home construction business of the Wieland entity that built Waverly. When Residential Partners/JW Homes bought Builders Supply, nothing about the operation changed.

133. The Defendants functioned as an integrated whole, transferring assets from the Wieland operating entities to newly formed entities at unfairly low prices.

(The Operation of the Enterprise after the 2012 Transactions)

134. After the 2012 Transactions, the John Wieland Homebuilding Enterprise continued unabated, selling approximately 500 residences per year at an average sales price of approximately $450,000.00 per residence, resulting in average annual sales of approximately $22.5 million or better. Upon information and belief, this yielded profits before taxes and interest of approximately $4.0 million per year or more.

135. The operation of the Wieland Homebuilding Enterprise remained virtually unchanged.

136. The new entities, which remained under substantial control by the Wieland Family, advertised and promoted their forty years of homebuilding experience, even though all the new entities were created in the fall of 2012. On its website, JW Homes claims to have been founded in 1970.

137. JW Homes was in fact a continuation of, and a successor to, the entities that operated the John Wieland Homebuilding Enterprise prior to November 15, 2012:

a. JW Homes operated the John Wieland Homebuilding Enterprise under the "John Wieland" tradename;

b. JW Homes continued the John Wieland Homebuilding Enterprise with substantially the same employees;

c. JW Homes continued the John Wieland Homebuilding Enterprise with substantially the same management personnel;

d. JW Homes continued Wieland Homebuilding Enterprise with one or more of the same Board members and/or executive personnel;

e. JW Homes occupied the same corporate office as the Wieland Entities did prior to the 2012 Transactions;

f. JW Homes maintained the same telephone numbers as the Wieland did prior to the 2012 Transactions;

g. JW Homes maintained the same internet and email domain ("jwhomes.com") as the Wieland did prior to the 2012 Transactions;

h. JW Homes continued to market itself utilizing the reputation, awards, experience, and history of Wieland and the Wieland Entities;

i. JW Homes continued to use John Wieland's mantra "enduring core values, known as EPIC: Excellence, Passion, Presentation, Integrity, Completeness".

j. JW Homes continued the John Wieland Homebuilding Enterprise in the same locations in which Wieland previously operated;

k. JW Homes possessed the corporate records of the Old Wieland entities; and

l. Residential Partners and JW Homes expressly assumed most of the warranty obligations of the Wieland Entities.

138. The Wieland Family continued to avail itself of the benefits of the Wieland Homebuilding Enterprise while concealing its continued participation from the public, Plaintiffs included.

139. The Wieland Entities were subsumed by JW Homes, Wheelock, and Residential Partners at the time of the 2012 Transactions.

140. Upon information and belief, The Old Wieland Entities have defended over one hundred (100) lawsuits claiming defective construction in Charleston County and many more elsewhere.

141. Defendants knew of the Wieland Entities' long history of defective construction.

(Effect on One Hamlin Place Owners)

142. Defendants knowingly and willfully stripped the Wieland Entities of assets and left Wieland with no assets available to compensate their prior clients for defectively constructed homes and/or to rectify the defects.

143. The Wieland-Wheelock interests diverted the key assets out of the Wieland operating companies, including their goodwill, leaving behind judgment-proof corporate shells to be "responsible" for Wieland's defective construction.

144. These corporate entity manipulations, calculated to divert value to Wieland's owners while leaving behind judgment-proof entities, occurred at a time when the Defendants were acutely aware that their construction activities in Charleston were grossly deficient.

145. Plaintiffs have been deprived of recourse and repair monies for their defective homes.

146. Plaintiffs have further had to endure substandard and potentially dangerous living conditions, delays in repairs, and loss of the value of their equity in their homes.

147. For most class members, these townhomes constitute their most significant asset, currently and in retirement, and the impairment of this asset and lack of repair funds causes the Plaintiff class financial stress.

148. Plaintiffs are incurring increased expenses for temporary repairs while the permanent resolution is delayed by Defendants' activities.

149. The Association's reserves are being depleted by the foregoing, and Plaintiff class members are facing higher regime fees and/or future assessments as a result.

FACTUAL BACKGROUND

150. Plaintiffs repeat and re-allege each and every allegation of this Complaint as if fully set forth herein verbatim.

151. Plaintiffs are informed and believe that the Developer Defendants engaged contractors to construct the Project including 105 properties, and related facilities and amenities, collectively known as One Hamlin Place Townhomes, which were thereafter substantially

completed, and contained various buildings. The Developer Defendants, by and through various instrumentalities and alter-egos and other Defendants were the original developers of the Project and/or are liable for the actions of the original Developer of the project.

152. The Developer Defendants created and controlled numerous and various entities including, but not limited to, the John Wieland Homes and Neighborhoods of South Carolina, Inc., Builder Support Services of the Carolinas, and Wieland Defendants set forth hereinabove, for the sole purpose of the construction, development, purchase of property, sale of property, leasing of townhomes, and other activities solely relating to development and leasing of the townhomes that were known as One Hamlin Place Townhomes. The Developer Defendants created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities were merely a facade for the operations of the Developer Defendants to achieve their financial goals and to perpetrate the activities more particularly described herein. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the Developer Defendants and the sham entities, shareholders, officers, agents, partners, employees, assets, and each of them.

153. By way of example, the Wieland Defendants included entities which were created to perform single purpose functions in order to effectuate the sole will of the Developer Defendants in purchasing, developing, leasing, and/or selling the homes. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the Developer Defendants and the Individual Developer Defendants

actively and directly participated in the development, purchase, sale, management, leasing, and/or operations of the Project, and in fact put the same into the stream of commerce.

154. The sham entities established by the Developer Defendants were and are characterized by one or more of the following: (1) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) insolvency; (5) lacking proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates. Upon information and belief, each shared the same mailing address, their business was conducted on the letter head of the Developer Defendants, the Developer Defendants directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the Developer Defendants directly contracted for the sham entities in the name of the Developer Defendants.

155. The Developer Defendants directed and oversaw those listed as Defendants herein and contractors including the Contractor Defendants herein who performed insufficient, shoddy, negligent work which failed to comply with applicable building codes and industry standards, all of which has contributed to and resulted in the premature deterioration and/or failure of the structures and building systems in the Project.

156. The Developer Defendants created and controlled numerous and various of the Defendant entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of units, and other activities solely relating to the Project which is the subject of this action.

157. There would exist a broad element of injustice and fundamental unfairness of the acts of the Developer Defendants, and each of them individually, were not regarded as the acts of one another.

158. The Defendants began the process of constructing the townhomes by engaging and directing the actions of the various contractors and/or subcontractors named as Defendants herein, and participated in the negligent, deficient, and shoddy workmanship which ignored and/or covered up design and construction defects then in existence and, thereafter, placed the units into the stream of commerce for sale, which they did sell to the general public and, in particular, to the current owners who are members of the Association.

159. The Developer Defendants, by and through their instrumentalities and alter-ego entities, controlled and operated the Association and its Board of Directors prior to turning over control of the One Hamlin Association. During this period, the Developer Defendants attempted to carry out construction prior to, during and after the time they offered and sold said townhome units. This work was attempted to be performed by contractors engaged by the Developer Defendants for the purpose of expediting the sales process and was calculated for the purpose of, or through careless, reckless, negligent and grossly negligent conduct by the Developer Defendants, resulting in the concealing, fabricating, patching, hiding, and/or cloaking of the deficiencies and damage known, both actually and constructively, to the Developer Defendants and/or their affiliates, subservient entities, agents, and assigns.

160. At the time the units were offered for sale and placed into the stream of commerce by the Developer Defendants, the units contained numerous defects and/or property damage which has been recently and is currently being discovered by Plaintiffs, all as a direct and proximate result of an investigation initiated by Plaintiffs, as a direct and proximate result of defects and

deficiencies heretofore hidden and concealed through the acts and omissions of the Developer Defendants.

161. The Developer Defendants and the Contractor Defendants, and each and every other above-captioned Defendant knew or should have known of the existence of the said building defects and deficiencies and property damage, which were latent and unknown to the Plaintiffs.

162. These latent building defects have, unbeknownst to Plaintiffs, regularly resulted in water intrusion into the buildings and property damage and continue to do so through the date of this filing.

163. The latent building defects and property damage have regularly resulted in the deterioration and failure of the structures and building systems, along with the attendant resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

164. The Plaintiffs suffered damages when the Developer Defendants put these units into the stream of commerce and continue to be damaged through the date of this filing.

165. The Developer Defendants failed to make a sufficient inquiry into the conditions of the Project in order to establish adequate financial reserves for maintenance and repair of the Project, and instead provided inaccurate and misleading information to third-parties in the research and establishment of the reserve figures, and thereby provided inaccurate and misleading reserve requirements and related information to the general public, prospective purchasers, and to the Plaintiffs, both before and after tendering control of the Association and the common elements to the homeowners, all resulting in damages to the Plaintiffs and in violation of South Carolina law, the Master Deed, and the By-laws.

166. The Developer Defendants controlled and managed the Association and its Board of Directors through the use of its subservient entities prior to the tender of the control over the Association to the unit owners; and the Developer Defendants negligently failed to provide sufficient and reasonable information and resources for the proper management and maintenance of the Project; and in fact negligently provided insufficient, inaccurate, and misleading information and prevented the use of financial and other resources required for the proper management and maintenance of the Project, all of which resulted in continued and exacerbated damages to the Project and suffered by the Plaintiffs.

167. The Developer Defendants were engaged in a joint venture, partnership, or other legal or de facto relationship with each other.

168. The Developer Defendants caused, directed, participated in, or acted in willful, reckless, heedless, negligent and grossly negligent disregard of their collective and respective acts and omissions in the planning, development, design, construction, management and sale of the units in the Project, all as more fully described herein.

169. The Developer Defendants represented to the public over the internet and through various publications and other media that they, by and through their various affiliates, entities, venturers, and agents referenced herein, were qualified, experienced, and would in fact be directing, managing, and otherwise facilitating the construction and selling of the units, and these representations were relied upon by the Plaintiffs.

170. Prior to and until transferring control of the One Hamlin Association to the unit owners and a newly elected Board of Directors comprised of unit owners, the Developer Defendants, through their subservient and affiliated entities, employees, and agents, had a duty to serve as Board members and to conduct the business of the One Hamlin Association, had authority

and control over, and in fact controlled and directed the One Hamlin Association Board of Directors and dictated all of the Board's activities.

171. In conjunction therewith, the Developer Defendants in their capacity as Board members and otherwise, in a negligent manner, carelessly, willfully, wantonly, and with reckless disregard for the rights of the Plaintiffs, participated in, acquiesced in and caused the wrongful acts and omissions described herein.

172. These collective and respective wrongful acts and omissions of the Developer Defendants and such other Defendants as set forth in the causes of action below, represent unfair trade practices and have resulted in substantial deterioration and/or failure of structures and building systems, building deficiencies, actual, incidental, special and consequential damages and loss of use. Remedying the above wrongful acts will result in actual, incidental, consequential, and special damages including loss of use to the Plaintiffs and its members, and entitle Plaintiffs and its members to punitive damages and attorney's fees. Further, these wrongful acts and omissions have directly and proximately caused substantial diminution in value, both pre- and post-repair.

173. The acts and omissions of the Defendants were contrary to the duties they owed, individually and collectively, to the Plaintiffs and actually caused damages to the Plaintiffs including, but not limited to, damages which did not result from the acts and omissions of other defendants and including, but not limited to, damages other than damages which resulted in physical injury or damage to tangible real and personal property in connection with this Project.

FOR A FIRST CAUSE OF ACTION
Violation of the S.C. Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.*
(Against All Defendants, Except by Original Purchasers Against Original Developers)

174. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

175. Plaintiffs and the Defendants are "persons" within the meaning of S.C. Code § 39-5-10(a).

176. The Defendants, by developing, marketing and constructing the subject Residences, were engaged in commerce within the meaning of S.C. Code § 39-5-10(b).

177. The Defendants' actions, described hereinabove, constitute unfair and deceptive practices within the meaning of S.C. Code § 39-5-20(a).

178. The Defendants' acts are capable of repetition, and, upon information and belief, have been repeated.

179. The Defendants' conduct affects the public interest of South Carolina.

180. The Defendants knew, or reasonably should have known, that their conduct violated the Unfair Trade Practices Act.

181. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, Plaintiffs have suffered an ascertainable loss of money and property.

182. Plaintiffs are entitled to recover its actual damages, which amount should be trebled, together with interest and attorney's fees.

FOR A SECOND CAUSE OF ACTION
Breach of Implied Warranty
(Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

183. Plaintiffs repeat and re-allege each and every allegation of this Complaint as if fully set forth herein verbatim.

184. The design, construction, development and sale of the units by these Defendants contained as a matter of law implied warranties of good faith and fair dealing, fitness for use merchantability, habitability, and workmanship with respect to construction, which warranties were not effectively disclaimed under South Carolina law.

185. The Developer Defendants, whether named or unnamed on the Deeds of Transfer, through their acts and/or omissions, have breached the aforesaid implied warranties, which directly, actually, and proximately caused and resulted in damage which the Plaintiffs have suffered and continues to suffer in an amount to be determined by the trier of fact.

186. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION
Breach of implied Warranty of Fitness of Habitability
(Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

187. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

188. That the Defendants impliedly warranted as a matter of law that the subject Residences which they built were habitable and fit for their intended uses.

189. That this implied warranty was breached by the Defendants and the work was performed in a manner below ordinary workmanship and the subject Residences were neither habitable nor fit for their intended use causing damage to Plaintiffs.

FOR A FOURTH CAUSE OF ACTION
Breach of Implied Warranty of Fitness for Particular Purpose
(Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

190. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

191. The Defendants had the duty to develop, market and construct the subject Residences according to industry standards and in a good and workmanlike manner, and an implied warranty of fitness attached to the sales of these homes.

192. At the time of the sale of the subject Residences to the Plaintiffs, the Defendants had reason to know if any or all parts of the construction of the subject residences were not completed according to industry standards and in a good workmanship manner.

193. The Defendants, at the time of the sale of the subject Residences to the Plaintiffs, had reason to know that the Plaintiffs were relying on the skill and/or judgment of the Defendants to properly construct the homes and adjacent facilities according to industry standards and in a good and workmanlike manner. Plaintiffs, in fact, relied on the Defendants' skill and judgment.

194. The Defendants did not properly construct the subject homes and facilities according to industry standards and in a good and workmanlike manner, causing major defects to One Hamlin Place Townhomes.

195. As a result of the Defendants' breach of its implied warranties, Plaintiffs have suffered physical damages.

FOR A FIFTH CAUSE OF ACTION
Breach of Implied Warranties as to the Project's Development and Construction (Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

196. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

197. These Defendants engaged in conduct during the period of development and construction of the Project which gave rise to duties and implied warranties to the public including, but not limited to, tenants, purchasers and other users of the Project, in that by their conduct these

Defendants placed the Project, which constitutes defective, deleterious, and dangerous property, into the stream of commerce.

198. The placement of the Project into the stream of commerce by these Defendants, contained as a matter of law implied warranties of fitness, merchantability, workmanship and habitability, which warranties were not effectively disclaimed pursuant to South Carolina law.

199. As a direct and proximate result of the breaches of the above-described implied warranties by these Defendants, their affiliates, associates, sham entities, and/or joint venturers, whether named or unnamed on any documents transferring interest in the Project, the Plaintiffs have suffered and will continue to suffer damages, injuries and other losses.

200. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SIXTH CAUSE OF ACTION
Negligence, Professional Negligence, and Gross Negligence
(Against All Defendants, Except by Original Purchasers Against Original Developers)

201. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

202. Defendants, and each of them, owed a duty to Plaintiffs to act in a manner compliant with the reasonable standard of care, good faith, and fair dealing recognized under South Carolina law, and Defendants violated this duty to the Plaintiffs and were negligent, professionally negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars:

a) in failing to properly design, construct, develop and repair the townhomes;

b) in failing to comply with the applicable Building Codes of the County of Charleston, the City of Mount Pleasant and the State of South Carolina;

c) in failing to comply with the applicable Fire and Safety Codes of the County and of Charleston, the City of Mount Pleasant and the State of South Carolina;

d) in failing to properly design and construct the structural elements and the foundation and other elements of the Project to permit the existence of an adequate and sufficient program for the treatment, extermination, eradication, colony control, and/or termite control of any kind on the Project in accordance with industry standards, due care, and applicable law prior to the sale of the units;

e) e) in failing to establish and maintain a sufficient program for the treatment, extermination, eradication, colony control, and/or termite control of any kind on the Project in accordance with industry standards, due care, and applicable law prior to the sale of the units;

f) in failing to properly supervise the project developer entities and individuals, project architects and engineers, as well as contractors, subcontractors, suppliers and/or agents or employees of any of them in connection with the planning, development, design and construction of the townhomes offered for sale to the public;

g) in manufacturing, fabricating, preparing for the incorporation into a residential building, reviewing, approving, procuring, and incorporating into the construction of this project such items which were defective, deficient, inferior, inadequate, unsafe, dangerous, inappropriate for the use intended, noncompliant with approved design or design intent, non-compliant with applicable codes and standards in the industry, and otherwise improper for use in the project including, but not limited to, HVAC systems, mechanical systems, plumbing systems, drainage systems, and sewer line systems without appropriate clean-out piping and/or other issues; electrical systems and equipment, interior and exterior drywall and other substrate and sheathing material, windows, insulation, roofing, waterproofing systems, and other building materials and supplies, finishes, and other items relating to the construction and ultimate use of this residential project;

h) in designing, constructing, marketing, selling, units and/or property with defective windows;

i) in designing, constructing, marketing, selling, units and/or properly with inadequate flashing;

j) in designing, constructing, marketing, selling, units and/or property with inadequate roofs;

k) in designing, constructing, marketing, selling, units and/or property with inadequate water barriers;

l) in designing, constructing, marketing, selling, units and/or property with without weather proof building envelopes and exteriors;

m) in designing, constructing, marketing, selling, units and/or property which were defective, deficient, inadequate, unsafe, dangerous, or otherwise non-compliant with codes and standards;

n) in placing defective and inferior construction into the stream of commerce;

o) in placing defective and inferior manufactured systems, equipment, building materials and other products into the stream of commerce.

p) in failing to permit and facilitate a proper evaluation of the condition of the Project prior to and during the process of offering units and other property for the use and sale to the general public and, further, to obstruct and/or hinder efforts to conduct a proper evaluation of the Project by intended purchasers or users;

q) in misrepresenting the condition of the units, common elements, garages and other property to prospective and actual purchasers and other users, and in making representations in negligent and/or intentional disregard of whether these representations were false or inaccurate;

r) in failing to undertake sufficient actions to develop a plan for repairs and otherwise failing to make adequate repairs to conditions at the project which were unsafe, dangerous, or otherwise not in compliance with applicable building codes or other authorities or standards of care;

s) in negligently and/or intentionally covering up deficiencies prior to construction of the units and other property for sale or use by the general public;

t) in failing to determine accurate information required, failing to disclose the absence of such information, as well as negligently and/or intentionally providing misleading and inaccurate information regarding the proper level of financial capitalization and reserve funding required for the operations, maintenance, and repairs required by the One Hamlin Association for the Project and individual unit owners;

u) in tendering common elements and other property to Plaintiffs in a deficient condition;

v) in failing to act as reasonable persons would in circumstances then and there prevailing and in such other failures as will be shown during discovery and at trial.

203. Said failures above-described, as well as the Defendants' gross negligence, willfulness, and reckless disregard for the rights of Plaintiffs and others, have actually and proximately caused damages to Plaintiffs, and the Defendants are liable to the Plaintiffs in an amount of actual, incidental, consequential, special, and punitive damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SEVENTH CAUSE OF ACTION
Negligent Misrepresentation
(Against All Defendants, Except by Original Purchasers Against Original Developers)

204. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

205. These reports and representations were actually published and presented for information to the general public by these Defendants, and these representations were actually received by, and relied upon by, the prospective and actual purchasers of the townhomes at the Project.

206. At the time of the sale of the homes and the turnover of control of the One Hamlin Place Townhome Association from the Developer Defendants to the unit owners, Plaintiffs were not aware of the falsity of the representations or the lack of investigation and lack of candor by these Defendants in connection with the reports.

207. Plaintiffs subsequently determined that the representations made by these Defendants were false and that these Defendants failed to exercise due care, not only in failing to

discover defects in the project, but also in failing to communicate information about the true condition of the Project. As a result of its justifiable reliance on the representations, reports, and other documents presented by these Defendants, Plaintiffs and their members have assumed control over the Project and/or purchased units, and have thereby suffered pecuniary losses in an amount to be determined by the trier of fact.

208. As a direct and proximate result of its justifiable reliance on numerous false representations made by these Defendants in connection with the Project, Plaintiffs have suffered, and these Defendants are liable to the Plaintiffs for, actual, incidental, consequential, and special damages, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR AN EIGHTH CAUSE OF ACTION
Breach of Contract
(Against All Defendants, Except by Original Purchasers Against Original Developers)

209. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as fully set forth herein verbatim.

210. That the Defendants entered into a contract with the homeowners and/or predecessors-in-title, whereby the Defendants were to construct the subject homes and facilities to industry standards and in a good workmanlike proper manner.

211. The Defendants did not honor their obligations under the agreement with the Plaintiffs and/or their predecessors-in-title in that they failed to construct subject Residences according to industry standards and in a good, workmanlike proper manner causing major defects to the homes.

212. That the Defendants are in breach of the parties' contracts.

213. That as a result of the Defendants' breach of contract, the Plaintiffs have suffered and will continue to suffer and are entitled to recover monetary damages caused by the defective construction by the Defendants and for loss of use and diminution in value of the subject Residences.

FOR A NINTH CAUSE OF ACTION
Breach of Fiduciary Duty as to the Developer/Owner Defendant
(Against All Defendants, Except by Original Purchasers Against Original Developers)

214. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

215. The Developer/Owner Defendants had a fiduciary duty and duty of loyalty and good faith dealing to transfer One Hamlin Place Townhomes to the control of the Plaintiffs in a state of good repair. Defendants, having transferred elements with the defects and deficiencies set forth above, in the alternative is required to provide the Plaintiffs with the funds necessary to bring the elements up to standard of reasonably good repair and condition.

216. Defendants breached their fiduciary duty and duty of loyalty and good faith dealing by transferring the elements in a substandard and deficient condition without the funds necessary to bring them up to standards of good repair and condition.

217. As a direct and proximate result and consequence of the Defendants' actions, Plaintiffs have suffered damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and expended, and to be required and expended, over the expected life of the buildings and other improvements, loss of use and diminution in value.

FOR A TENTH CAUSE OF ACTION
Alter Ego Liability and Piercing the Corporate Veil
(Against Developer Defendants, Except by Original Purchasers Against Original Developers)

218. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

219. The Developer Defendants, by and through various instrumentalities and alter-egos and each other were the original developers of the Project, and the Defendants combined and joined together through various instrumentalities and alter egos to facilitate to process of building the townhome units in or about 2006-2007.

220. The Defendants created and controlled numerous and various entities including, but not limited to, the Wieland Defendants and Builder Support Services, Inc. set forth hereinabove, for the sole purpose of the construction, development, purchase of property, sale of property, leasing of townhomes, and other activities solely relating to development and sale of the townhomes that are known as the One Hamlin Place Townhomes. The Defendants created and controlled numerous and various entities including, but not limited to, Wieland, for the sole purpose of the building and sale of the townhomes at the Project. These Defendants created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of these Defendants to achieve their financial goals and to perpetrate the activities more particularly described herein. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between these Defendants and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

221. These Defendants created entities which were created to perform single purpose functions in order to effectuate the sole will of these Defendants in purchasing, developing, leasing, and/or selling the units. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, these Defendants actively and directly participated in the development, purchase, sale, management, leasing, and/or operations of the Project, and in fact put the same into the stream of commerce.

222. These Defendants created and controlled numerous and various of the Defendant entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of units, and other activities solely relating to the Project which is the subject of this action.

223. The sham entities established by these Defendants were and are characterized by one or more of the following: (1) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) insolvency; (5) lacking proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates. Upon information and belief, each shared the same mailing address, their business was conducted on the letter head of these Defendants, these Defendants directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or these Defendants directly contracted for the sham entities in the name of these Defendants.

224. These Defendants directed and oversaw the Contractor Defendants herein who performed insufficient, shoddy, negligent work which failed to comply with applicable building

codes and industry standards, all of which has contributed to and resulted in the premature deterioration and/or failure of the structures and building systems in the Project.

225. There would exist a broad element of injustice and fundamental unfairness if the acts of these Defendants, and each of them individually, were not regarded as the acts of one another.

226. At the time the units were offered for sale and placed into the stream of commerce by these Defendants, the units contained numerous defects and/or property damage which has been recently and is currently being discovered by Plaintiffs, all as a direct and proximate result of an investigation initiated by Plaintiffs, as a direct and proximate result of defects and deficiencies heretofore hidden and concealed through the acts and omissions of these Defendants.

227. All Defendants knew or should have known of the existence of the said building defects and deficiencies and property damage, which were latent and unknown to the Plaintiffs.

228. These latent building defects have, unbeknownst to Plaintiffs, regularly resulted in water intrusion into the buildings and property damage and continue to do so through the date of this filing.

229. The latent building defects and property damage have regularly resulted in the deterioration and failure of the structures and building systems, along with the attendant resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

230. The Plaintiffs suffered damages and injuries when these Defendants put these units into the stream of commerce and continue to be damaged and injured through the date of this filing.

231. As a direct and proximate result thereof, these Defendants are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be

determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR AN ELEVENTH CAUSE OF ACTION
Violation of the Residential Property Condition Disclosure Act
(Against Developer Defendants, Except by Original Purchasers Against Original Developers)

232. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

233. These Defendants were engaged in a joint venture, partnership, or some other form of business venture or association including, but not limited to, the formation of a Limited Liability Company, in connection with the development and construction of the One Hamlin Place Townhomes.

234. The Developer Defendants did so place the townhome units into the stream of commerce for sale to the general public and to the members of the One Hamlin Association in particular.

235. At all times relevant to this cause of action the Developer Defendants were "owners" as that term is used within S.C. Code Ann. § 27-50-10 *et seq.,* referred to as the "South Carolina Residential Property Condition Disclosure Act" (referred to in the remainder of this cause of action as the "Act").

236. The Developer Defendants failed to furnish to the purchasers of the townhome units a written disclosure statement in conformity and compliance with S.C. Code Ann. § 27-50-40.

237. These Defendants failed to inform the sellers of the units of their obligations under the Act and had reasonable cause to suspect that the information, if any, supplied by the sellers to the individual purchasers was inherently false, incomplete, and misleading.

238. Upon information and belief, notwithstanding the above-described failures of these Defendants, and each of them, knowingly violated and/or failed to perform the duties described in § 27-50-40.

239. The nature of the defects that were undisclosed in violation of § 27-50-40, prevented and/or limited any inspection performed by the Plaintiffs to uncover or discover the said defects.

240. As a direct and proximate result of these Defendants' violations of their respective and collective duty to furnish written disclosure to the purchasers as required by§ 27-50-10, *et seq.,* the Plaintiffs have suffered, and these Defendants are liable to the Plaintiffs for actual, incidental, consequential, and special damages, along with costs, interest, and attorney's fees pursuant to the remedies set forth in the Act, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A TWELFTH CAUSE OF ACTION
Strict Liability
(Against Developer Defendants, Except by Original Purchasers Against Original Developers)

241. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

242. Each and every townhome unit sold by these Defendants was a product within the meaning of S.C. Code Section 15-73-10, *et seq.*

243. These Defendants are and were engaged in the business of selling the aforesaid townhome units which are within the meaning of S.C. Code Section 15-73-10, *et seq.*

244. The aforesaid townhome units/products were expected to, and in fact did, reach the Plaintiffs herein as Users or Consumers without substantial change in condition in which it was sold within the meaning of Section B of S.C. Code 15-73-10, *et seq.*

245. The townhome units/products which were sold by these Defendants were at the time of sale in a defective condition, unreasonably dangerous to Plaintiffs as Users or Consumers or to the Plaintiffs' property and, as such, these Defendants are strictly liable to Plaintiffs as Users or Consumers herein for the physical harm and damage proximately caused thereby.

246. As a direct and proximate result thereof, Plaintiffs as Users or Consumers have suffered, and these Defendants are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRTEENTH CAUSE OF ACTION
Individual Liability as to the Developer Defendants
(Except by Original Purchasers Against Original Developers)

247. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

248. As a direct and proximate cause and result of the acts and omissions of these Defendants as aforesaid, Plaintiffs have been damaged, and these Defendants are liable to the Plaintiffs for actual, incidental, consequential, and special damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A FOURTEENTH CAUSE OF ACTION

Amalgamation Liability as to John Wieland Homes and Neighborhoods of the Carolinas, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; John Wieland Homes of Charleston, Inc.; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; and Residential Partners IV, LLC

(Except by Original Purchasers Against Original Developers)

249. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

250. These Defendants have operated in such a manner that the distinctions between the entities and their activities have become blurred.

251. There is excessive interrelationship between the entities and their activities; a sharing of management and employees and other public assets; and an absence of delineation between the entities such that the public is unable to tell where one entity's activities stop and the next entity's activities start.

252. Treating these Defendants as separate entities will perpetuate an injustice on Plaintiffs and allow Defendants to unjustly enrich themselves by untoward means.

253. The above listed entities should be amalgamated for purposes of any judgment in this action.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

a) Enter judgment in favor of the Plaintiffs and against all Defendants, jointly and severally, in an amount to be determined for actual, incidental, consequential, special, and punitive damages;

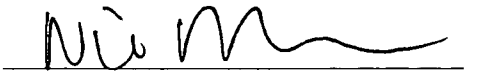
b) Find that the Defendants have engaged in unfair trade practices and knowingly did so thereby entitling Plaintiffs to treble damages;

c) Award attorneys' fees and costs to the Plaintiffs; and

d) Award such other and further relief as the Court may deem just and proper.

[Signature page to follow]

Respectfully Submitted,



John C. Hayes, IV, Esquire
Nina E. Meola, Esquire
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
nmeola@hayeslaw.org

and

I. Keith McCarty, Esquire
McCarty Law Firm, PC
1212 Wappoo Road
Charleston, SC 29407
Phone: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

January 10, 2018
Charleston, South Carolina

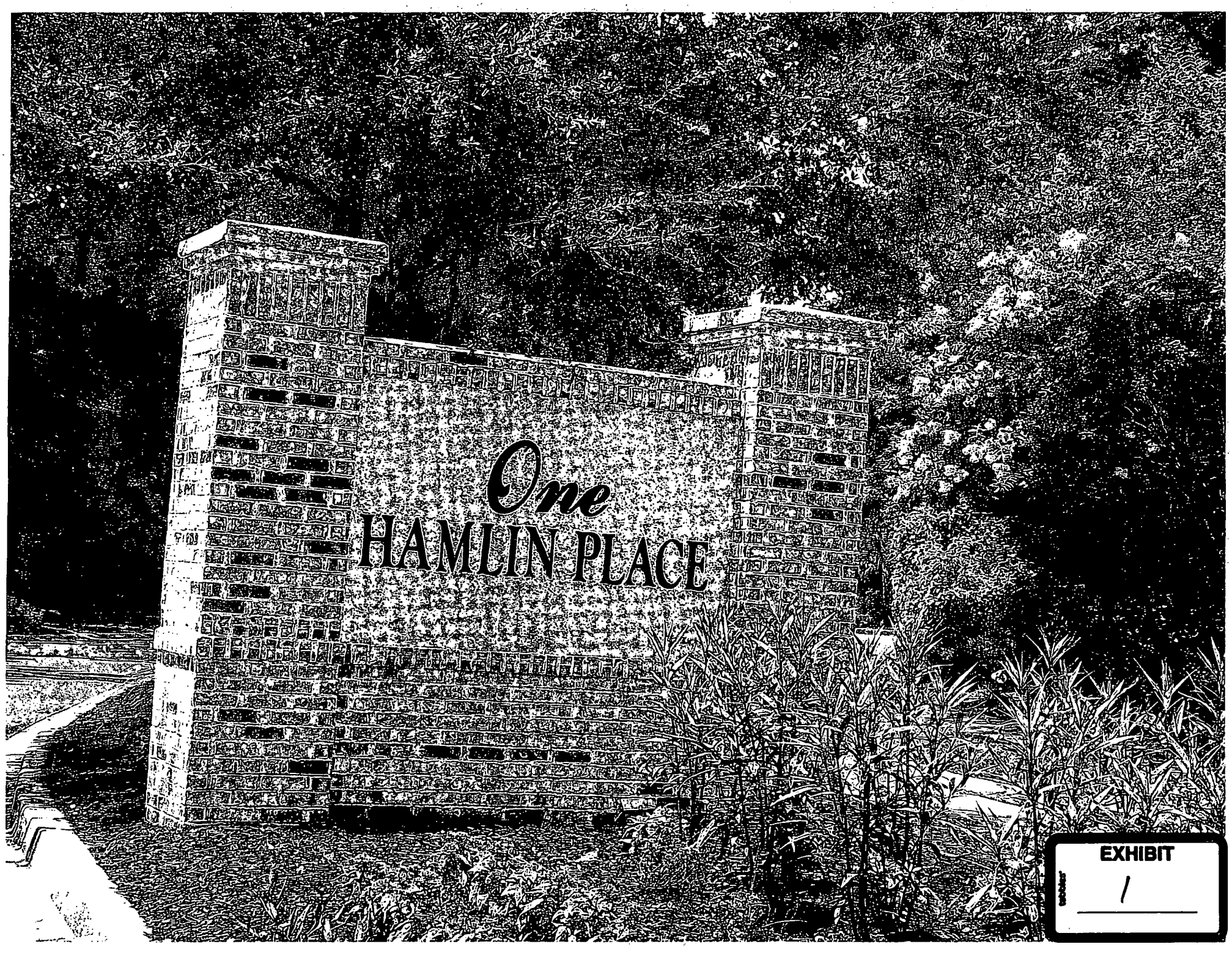
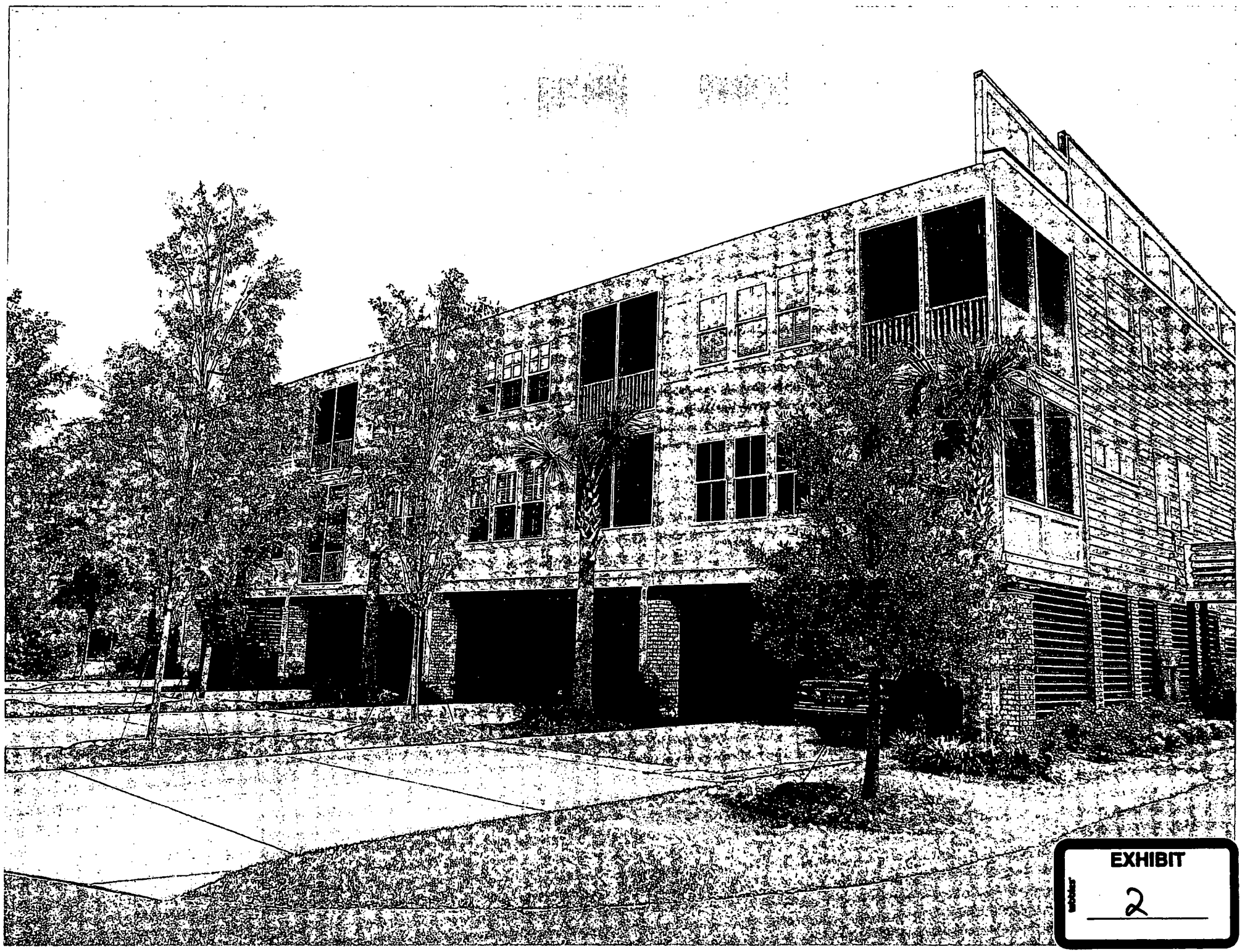


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EXHIBIT

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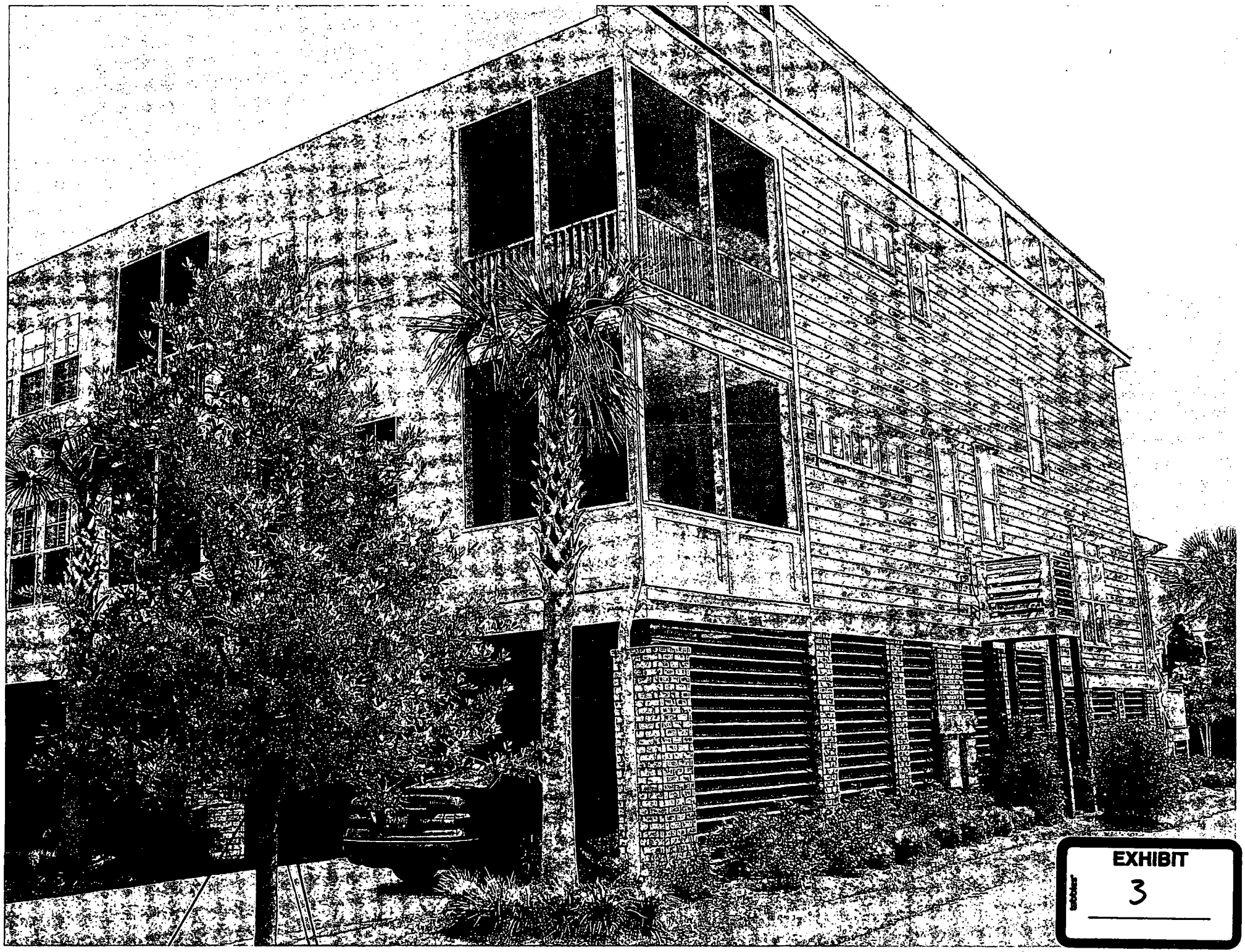
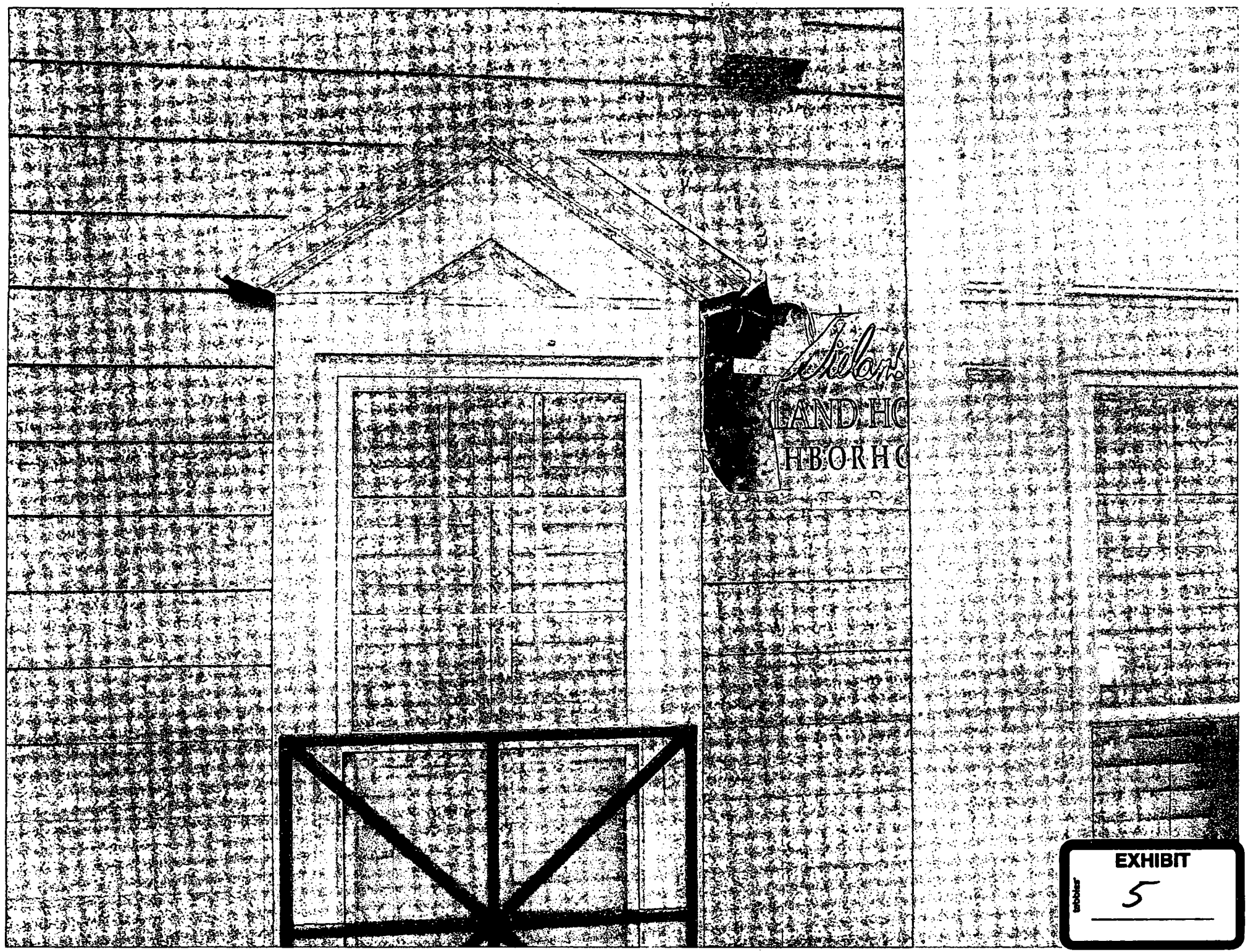


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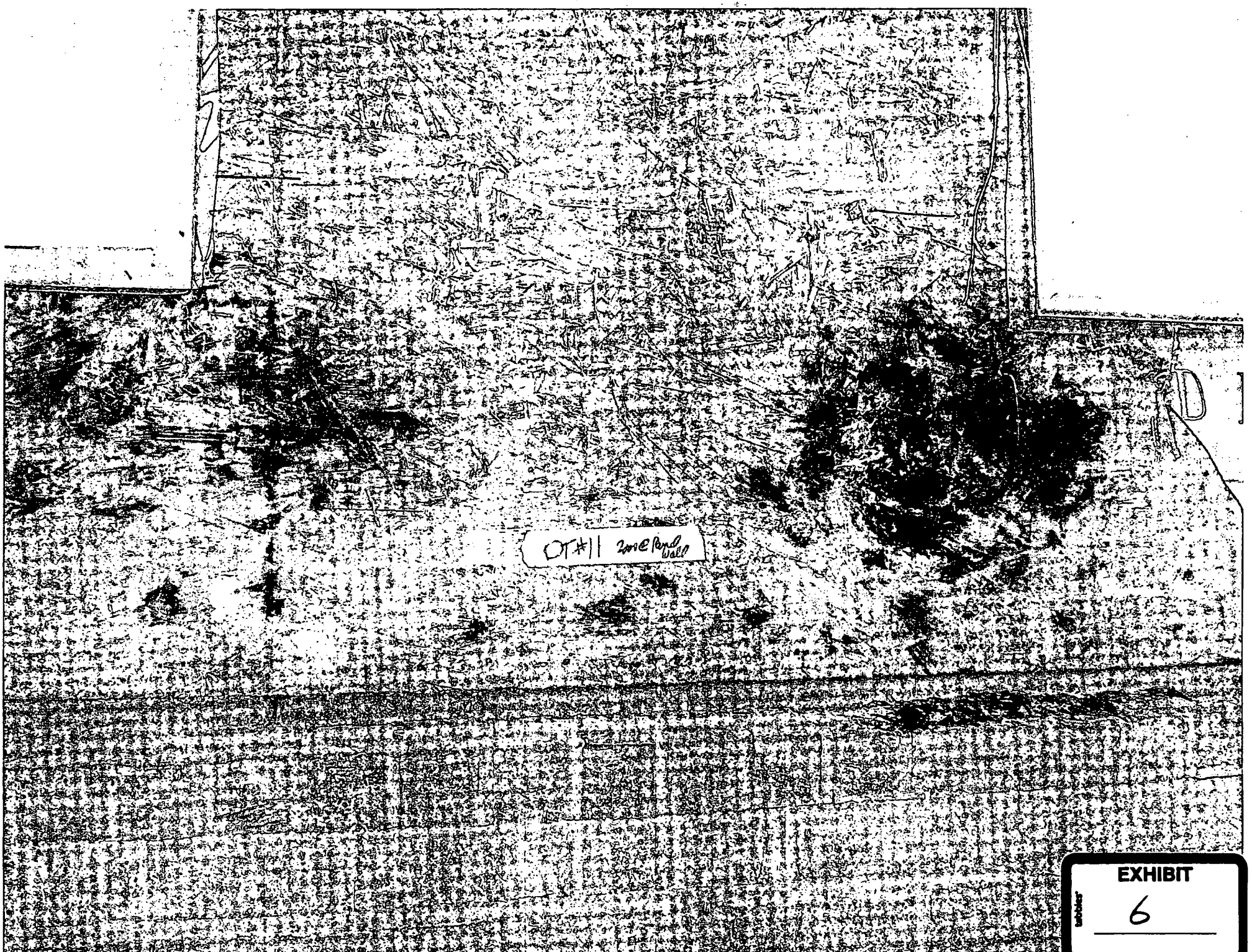
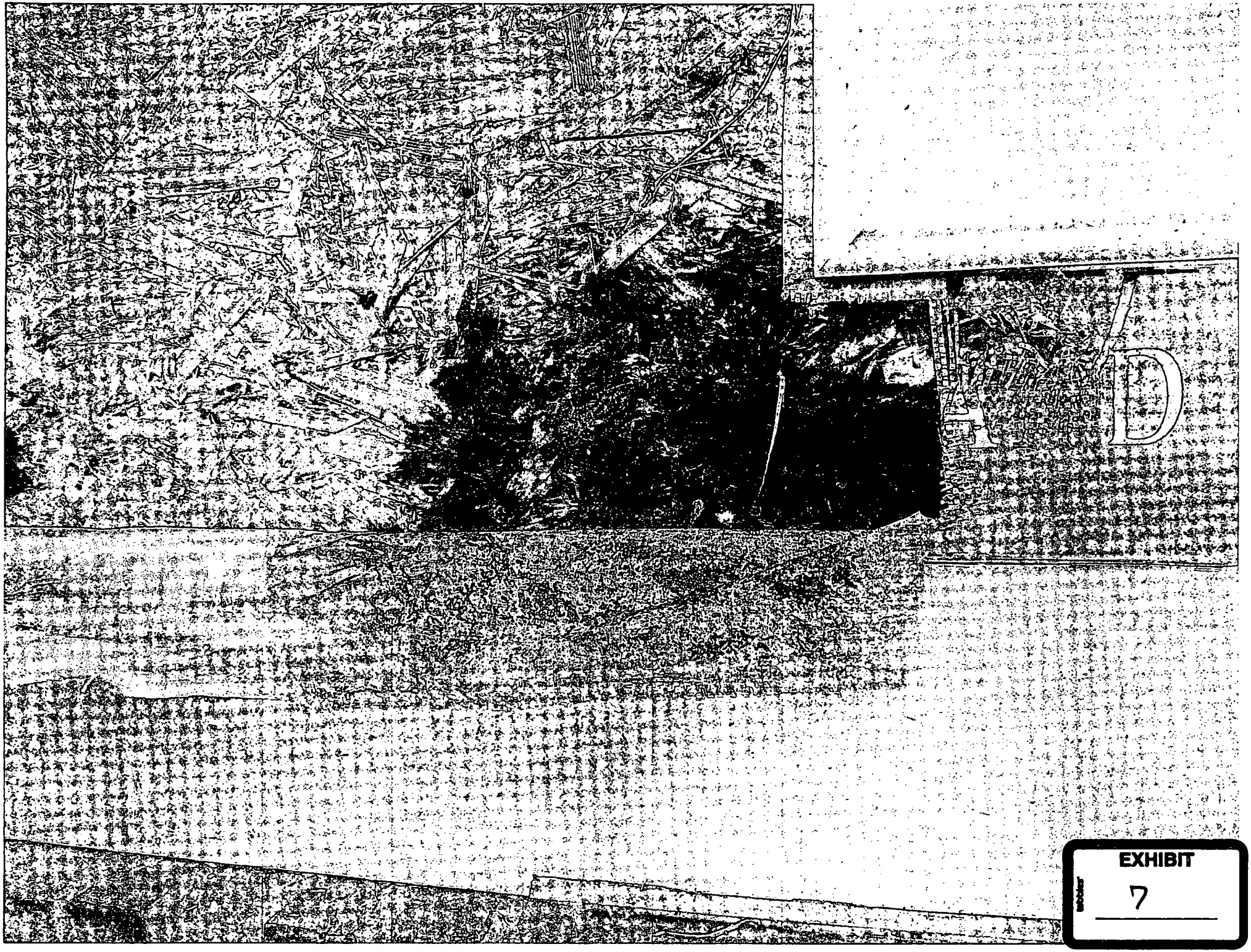
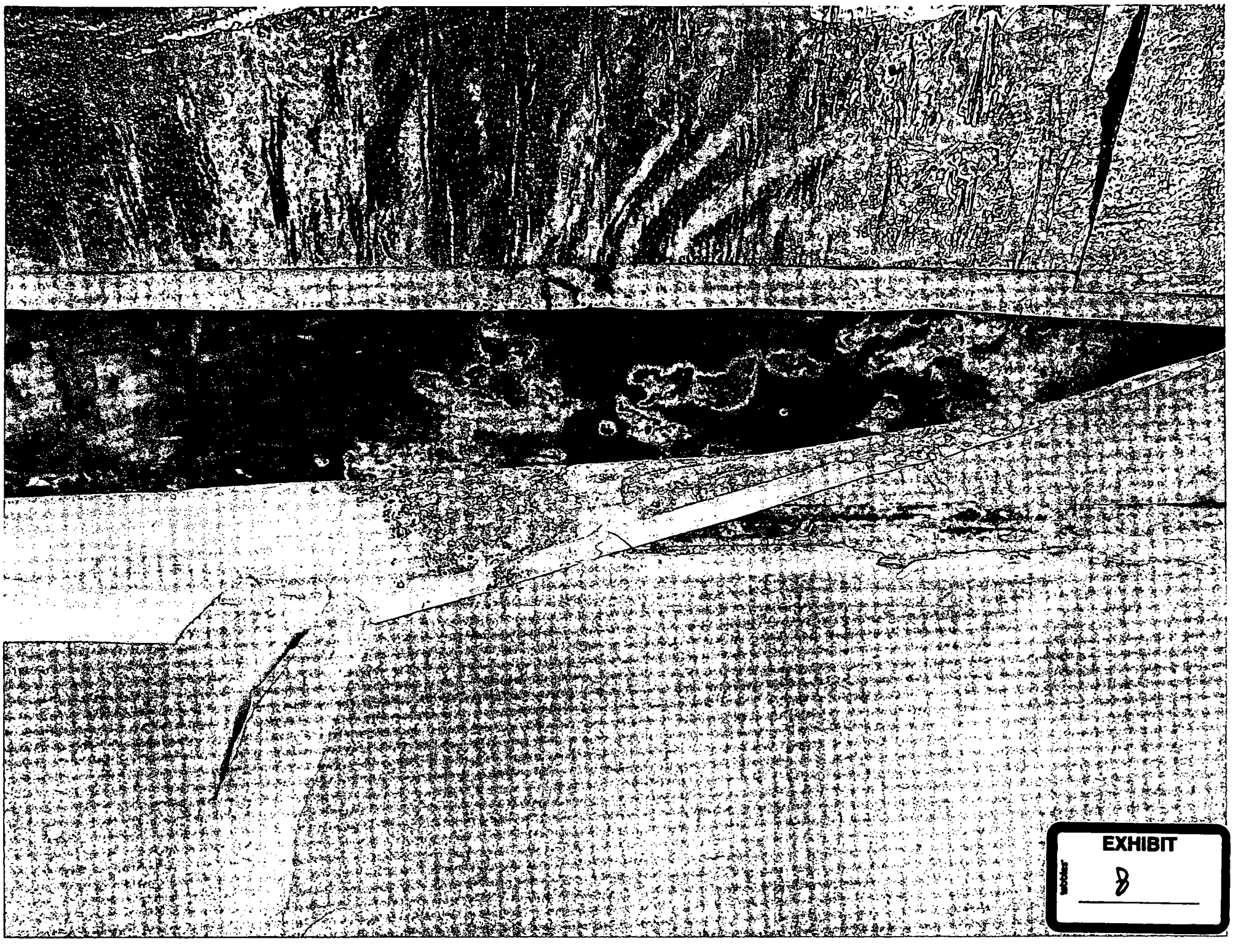


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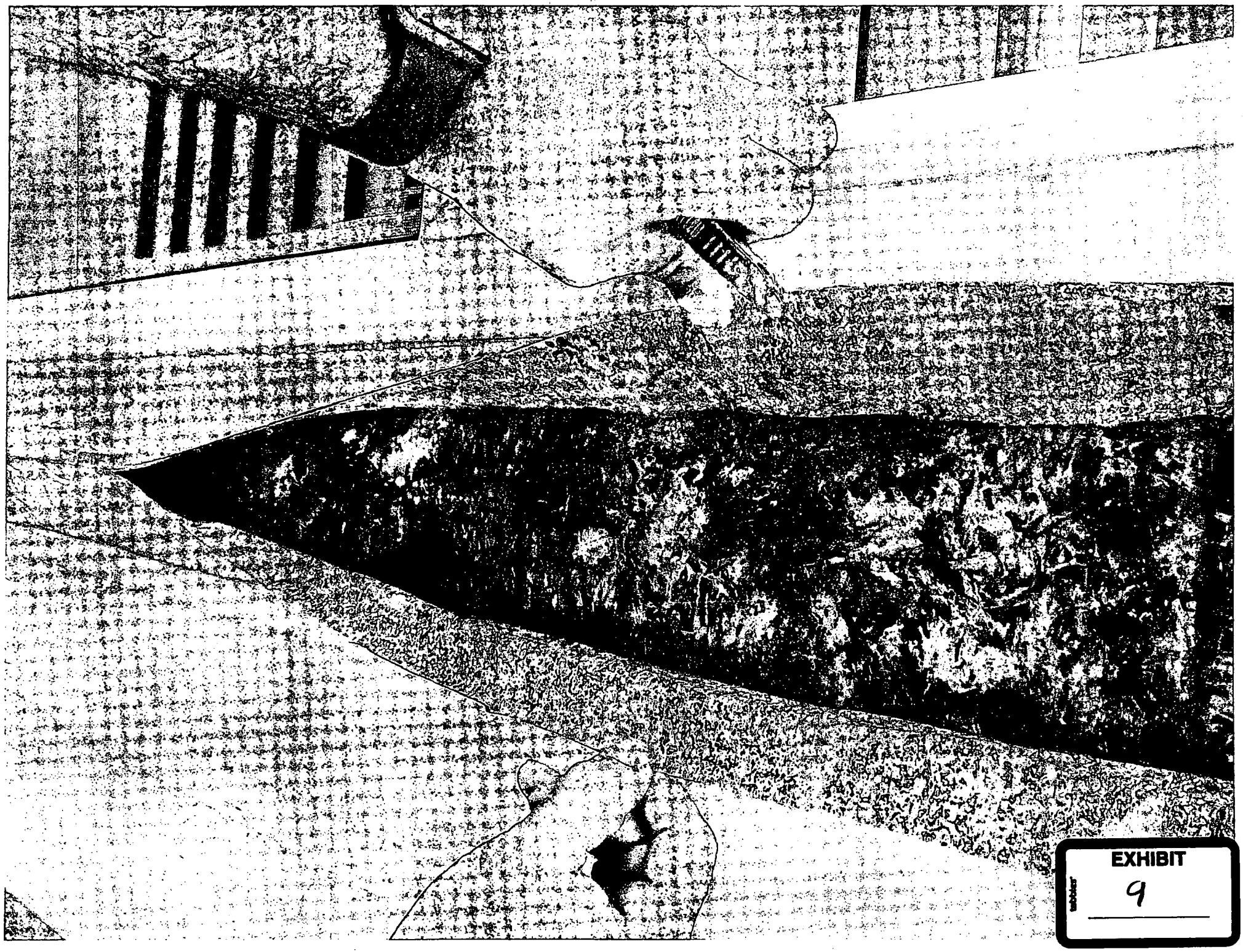
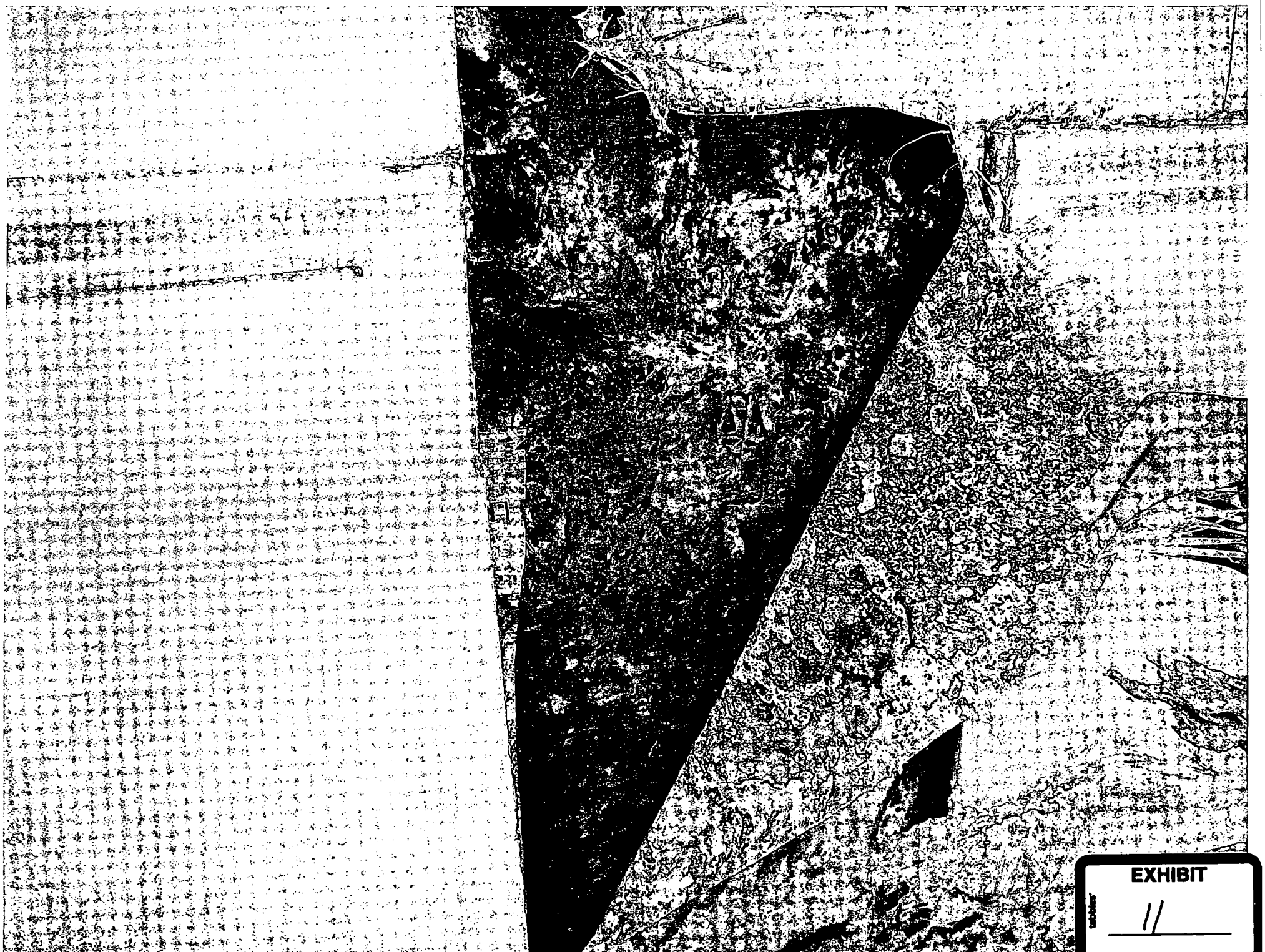


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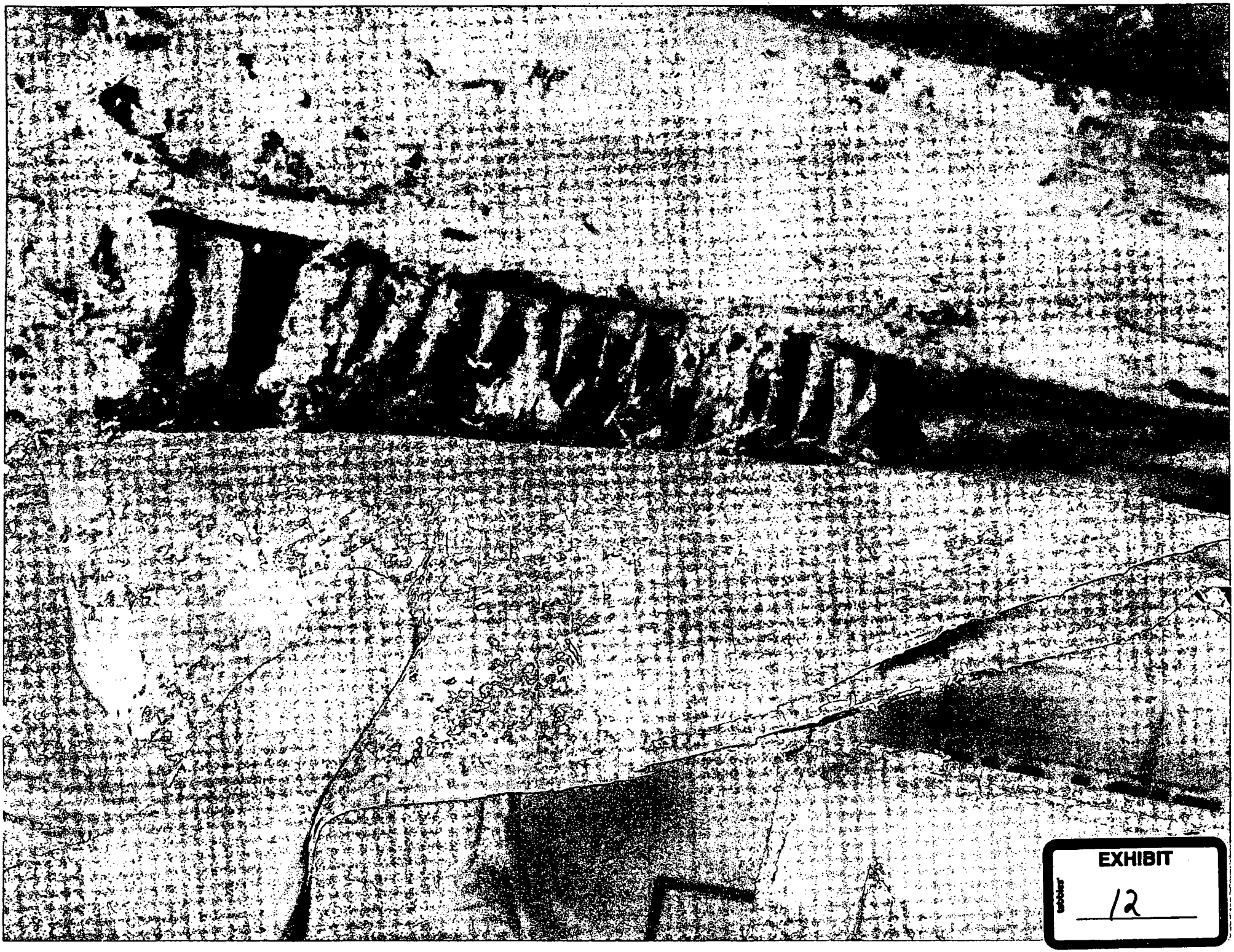
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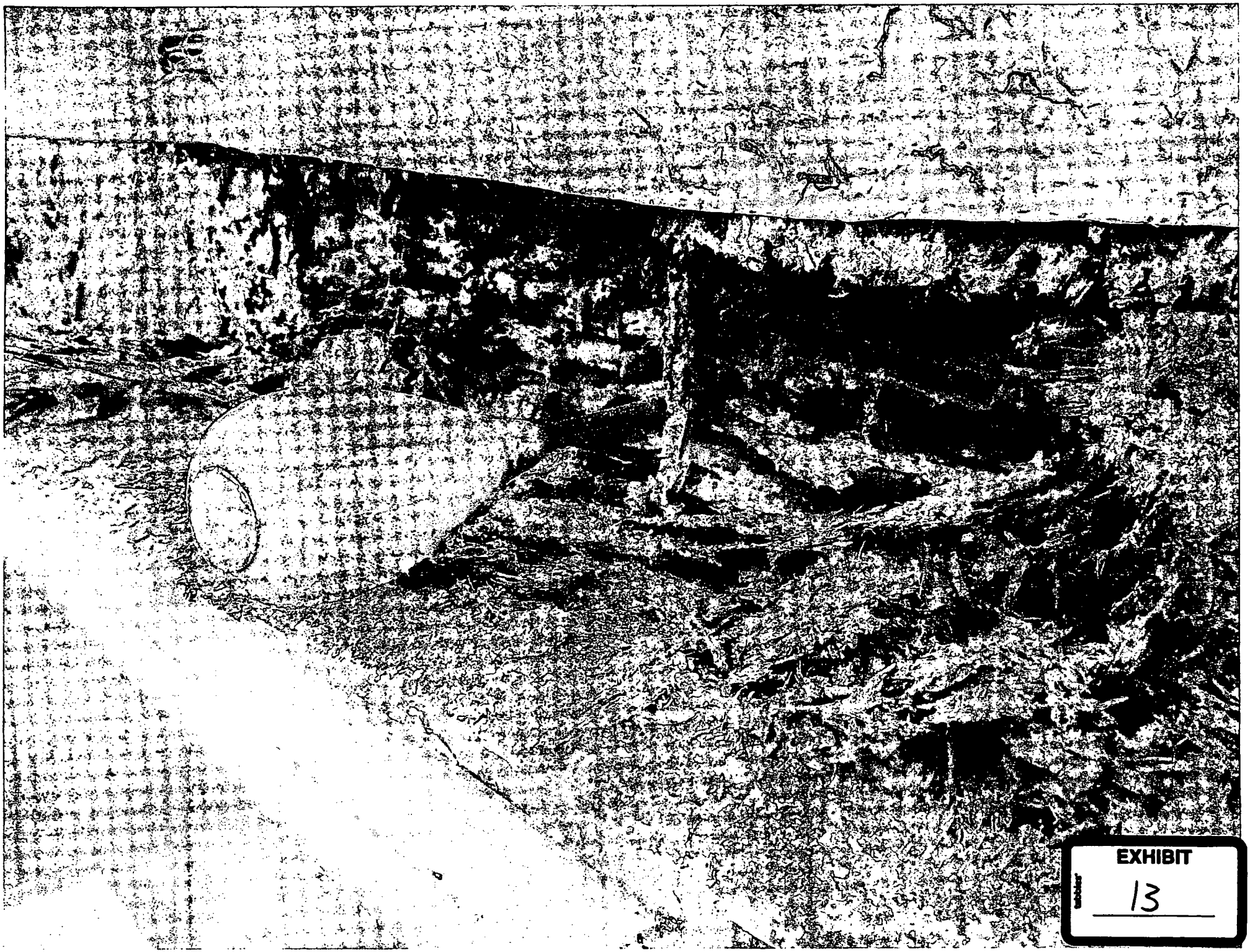


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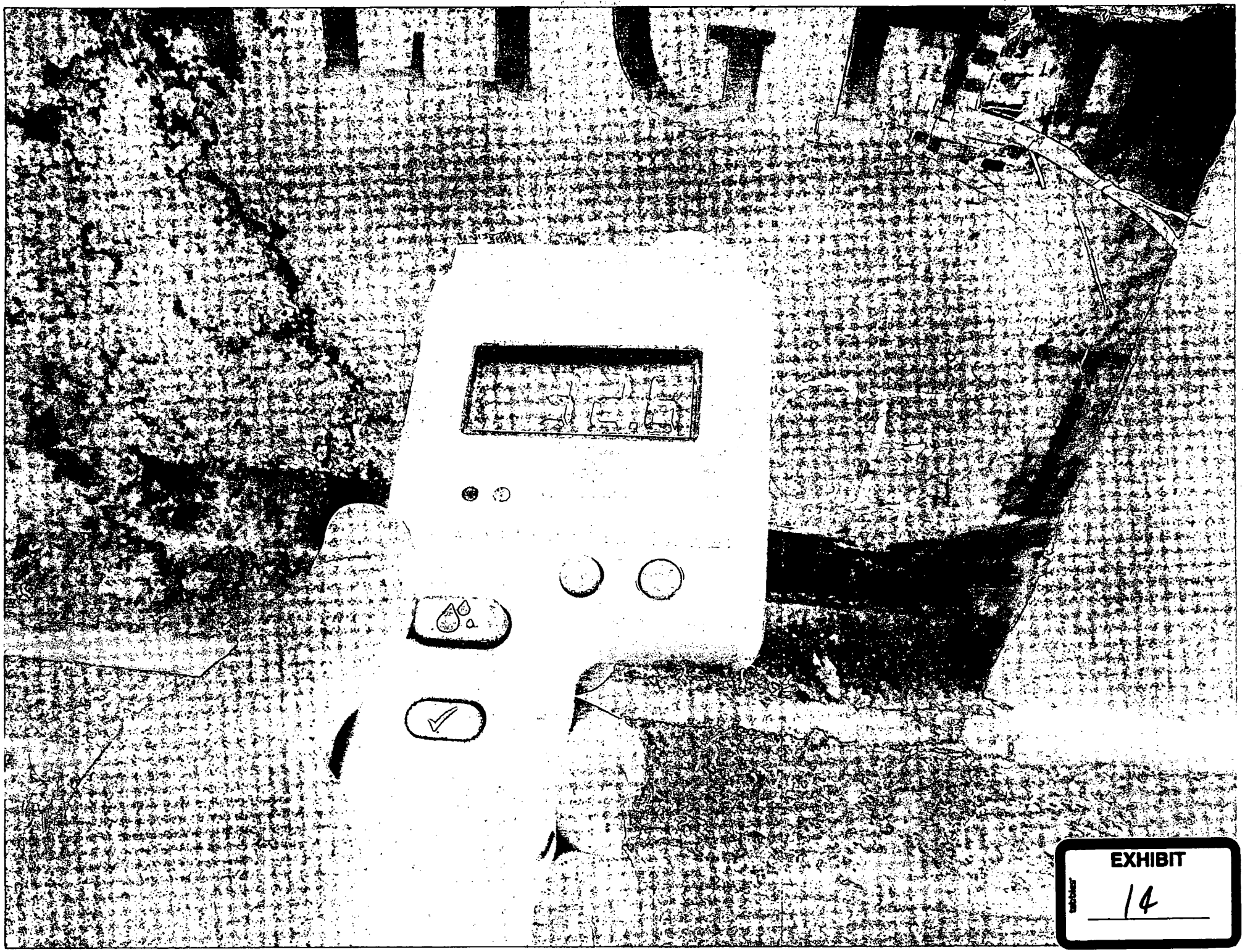


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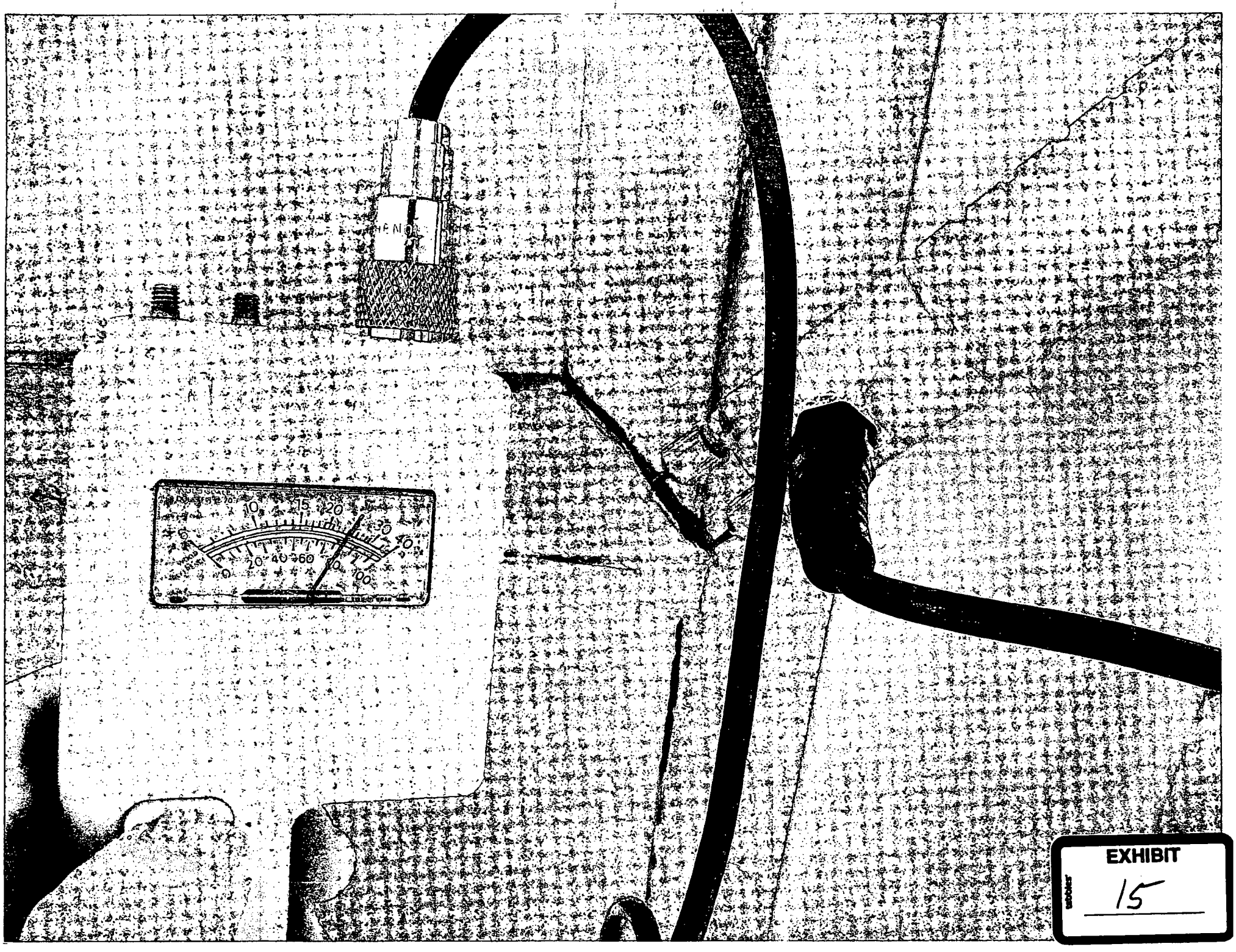

EXHIBIT
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EXHIBIT
16
Welcome
TO FINNWELAND HOMES

HAYES LAW FIRM, LLC

John C. Hayes, IV
180 Meeting Street – Suite 330
Charleston, South Carolina 29401
Tel: (843) 805-7003
Fax: (843) 573-7388
Email: jhayes@hayeslaw.org

January 16, 2018

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: *Gary Keisler, Individually and as Class Representative, et al. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.*
Case No.: 2017-CP-10-5246
HLF File No.: 120.002

Dear Ms. Armstrong:

Enclosed herewith please find the original and one (1) copy of the *Amended Summons and Amended Complaint* with regard to the above-referenced matter. Please file the original and return the clocked-in copy to us.

Thank you for your attention to this matter. Should you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

Jena Lingle
Paralegal to John C. Hayes, IV

/jml
Enclosures

EXHIBIT C

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50,)

Plaintiffs,)

vs;)

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK)

AFFIDAVIT OF CHERYL D. SHOUN, ESQUIRE

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSC, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. AC Construction, Corp. Third-Party Defendant.	)

I, Cheryl D. Shoun, Esq., being first duly sworn, depose and say:

1. I am over the age of eighteen (18), I am competent to make this Affidavit, and I have personal knowledge of the matters set forth herein.

2. Nexsen Pruet was the previous counsel for Defendant, Wheelock Street Capital, LLC ("WSC") in this lawsuit; I along with Marvin Infinger, formerly of this firm, undertook the primary tasks of this representation.

3. Nexsen Pruet also was counsel for many of the Wheelock entities in other state and federal lawsuits, including Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. et al. (Charleston County case

no. 2013-CP-10-3326); Madison at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, LLC et al. (C/A No.: 2:15-cv-04120-DCN); and Waverly at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, et al. (C/A No.: 2:16-cv-02973-DCN) (the "earlier actions").

4. John C. Hayes, IV ("Hayes") and I. Keith McCarty ("McCarty")—Plaintiff's counsel in this lawsuit—were either counsel for plaintiffs, or otherwise aware of, involved or joined for discovery purposes, in the earlier actions. Hayes and McCarty communicated with me in the earlier actions numerous times regarding my clients and were aware I represented them.

5. Plaintiff never served me with its original Summons or Complaint in this action.

6. I am informed and believe Plaintiff served WSREF with an Amended Summons, but no Amended Complaint, on or around January 22, 2018.

7. I am further informed and believe that Plaintiff first served WSC and the other Wheelock-affiliated defendants with both an Amended Summons and Amended Complaint on May 21, 2018. The Amended Summons stated that WSC needed to file an Answer within 30 days.

8. In the months leading up to the June 7, 2018 entry of default, Plaintiff's counsel and I had been engaged in discussions relative to reaching an agreement as to a date of service that would be applicable to all affiliated parties, following which Nexsen Pruet would accept service for WSC. During this time Plaintiff's counsel did not inform me of any potential default or their intention to file for entry of default. A copy of email correspondence from February 16, 2018 to April 26, 2018 is attached hereto as Exhibit A.

9. Without providing notice to me and, upon information and belief, without notice to WSC, Plaintiff filed a Motion for Entry of Default on or around May 11, 2018 prior to the expiration of WSC's 30-day answer deadline on June 21, 2018.

10.

11. The Motion for Entry of Default and supporting affidavits state that they were directed to Marvin Infinger and me, as counsel for WSC, but Plaintiff's counsel never sent me notice or a copy of these materials and never otherwise informed me of their filing for entry of default.

12. WSC timely filed an Answer to Plaintiff's Amended Complaint on June 20, 2018.

13. Upon learning of Plaintiff's Motion for Entry of Default, I contacted Plaintiff's counsel to explain why default should not have been entered and that the entry of default should be removed. A copy of correspondence I sent to Plaintiff's counsel is attached hereto as Exhibit B.

14. On behalf of WSC, we understood that the default, which had been entered on an initial pleading following service of an amended pleading which we timely answered, was not legally effective.

FURTHER AFFIANT SAYETH NOT.

Cheryl D. Shoun

Cheryl D. Shoun
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401
(843) 720-1762 (phone)
(843) 414-8238 (fax)

Subscribed and sworn before
me this 11th day of April, 2019.

Marian R Parish
Notary Public for South Carolina
My Commission Expires: 3/8/22

EXHIBIT A

February 16, 2018 Email to Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Friday, February 16, 2018 3:53 PM
To: jhayes@hayeslaw.org; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D.; Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Gentlemen:

I hoped to have the opportunity to call this week, in order to have the chance to actually speak with you. Unfortunately, my schedule did not agree.

I think you are aware that Marvin and I will be representing the "Wheelock" entities in this case. We understand that on January 18, 2018, you forwarded the Amended Complaint to the agent of service for WS JWH LLC. Subsequently, on January 22, 2018, the Amended Summons was forwarded to the agent for service. The Amended Summons was also sent to the agent for service for various Wheelock entities, but it was not accomplanied by the Amended Complaint, nor did they receive the origninal Summons or Complaint.

Would you please clarify service – specifically, what was sent to the agent of service for each Wheelock entity and on what date. In fact, in so doing, it may be helpful for everyone involved to clarify which Defendants have been served, what has been served on each, and the dates of service.

Thanks very much, and we look forward to hearing from you, hopefully very early next week.

Cheryl

Cheryl D. Shoun
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com

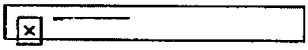
March 5-8, 2018 Emails with Plaintiff's Counsel

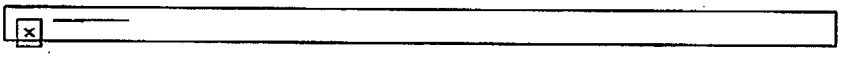
Carney, Tiffiney

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, March 08, 2018 11:58 AM
To: John Hayes
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D.; Trevino, Marilyn J.
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Got it! I'm sorry to have to reschedule.

Cheryl D. Shoun
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com





From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Thursday, March 8, 2018 11:57 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

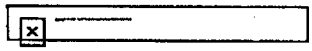
Just try me tomorrow at work

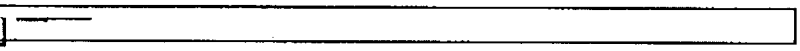
John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 8, 2018, at 11:44 AM, Shoun, Cheryl D. <CShoun@nexsenpruet.com> wrote:

> John: I am in a meeting that is going to run much longer than I anticipated. Do you have free time tomorrow?
>
> Thank you,
> Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
www.nexsenpruet.com



<image001.png> 

From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 11:44 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

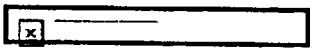
Tomorrow noon would work best if that is okay with you.

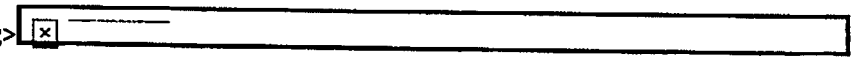
John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
jhayes@hayeslaw.org

From: "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
Date: Wednesday, March 7, 2018 at 10:12 AM
To: John Hayes <jhayes@hayeslaw.org>, Keith McCarty <ikeithmccarty@gmail.com>
Cc: "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Sure—I'll give you a call this afternoon. Would 3:30 or so work with your schedule?

Cheryl D. Shoun
Nexsen Pruet, LLC
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PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com



<image003.png> 

From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 10:01 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.

John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 6, 2018, at 10:57 AM, John Hayes <jhayes@hayeslaw.org> wrote:

> Cheryl, hope you are well. We can certainly work towards an earlier resolution with Wheelock in OHP but we will need back up documentation on the subcontractors involved to get to a comfortable place to discuss cutting out Wheelock. We expect the estimate shortly. How soon do you think you could provide us with the subcontractor information?
>
> Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.
>
> John C. Hayes, IV
> Hayes Law Firm, LLC
> 180 Meeting Street, Suite 330
> Charleston, SC 29401
> 843.805.7003 (Office)
> jhayes@hayeslaw.org
>
> **From:** "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
> **Date:** Monday, March 5, 2018 at 4:23 PM
> **To:** Keith McCarty <ikeithmccarty@gmail.com>
> **Cc:** John Hayes <jhayes@hayeslaw.org>, "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
> **Subject:** One Hamlin Place [IWOV-NPCHAR1.FID1048707]
>
> Hi Keith: Thank you again for speaking with me last Friday concerning our representation of various Wheelock entities in the referenced action.
>
> As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming. In that regard, we discussed our willingness to accept service of those amended pleadings on

behalf of the entities we represent in exchange for an agreement that all of the entities will have an additional 60 days from the date of service in order to respond. Frankly, my clients prefer to direct immediate attention and energy on attempts to resolve Waverly and One Hamlin Place. Although, as you indicated in our conversation, it is very early to address resolution of One Hamlin as you do not yet have any damage estimate.

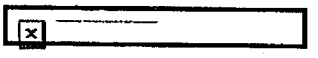
Additionally, because One Hamlin Place is different for the Wheelock entities than either Waverly or Madison, we have to reach out to various individuals in an effort to gather any relevant documentation as to construction. It appears that may take a significant amount of time.

If you and John are so kind to agree as to a period of 60 days following acceptable of service by us of the fourth amended pleadings, we will be glad to prepare a proposed consent order to be submitted to the court.

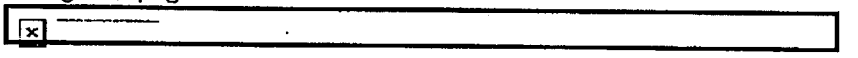
Thank you again, and I look forward to hearing from you.

Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
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April 26, 2018 Email with Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, April 26, 2018 1:40 PM
To: jhayes@hayeslaw.org
Cc: Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Hey John: Thanks very much for the call.

I am going to reach out to my client this afternoon. Before doing so, I would love to get copies of the green cards you have relative to service in January, 2018. Would you mind asking Jenna (or someone) to forward those cards to Marilyn. That way I can have everything in front of me when I call today.

I am copying Marilyn on this, though I am sure Jenna knows how to find her.

Thanks so much,
Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
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EXHIBIT B

NEXSEN|PRUET

Cheryl D. Shoun
Special Counsel
Admitted in SC

July 3, 2018

John C. Hayes, IV, Esq.
Hayes Law Firm
180 Meeting Street
Suite 330
Charleston, SC 29401

Keith McCarty, Esq.
McCarty Law firm
P.O. Box 30055
Charleston, SC 29417

RE: *One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245 and *Keisler, et al. v. JWHNC, et al.*, 2017-CP-1005246

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

John and Keith:

I am reaching out once again in an effort to resolve the issues surrounding the June 7-8 Entries of Default against certain Wheelock defendants in the referenced cases. While not exhaustive, the reasons for this request with respect to each action are reiterated below:

***One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245**

- Entry of Default against Wheelock Street Investment Management, I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC:
    - These entities *are not named in the lawsuit.* That alone justifies the removal of the June 7, 2018 Entry of Default against them.
- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, LP ("WSREF"):

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Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1762
F 843.414.8238
E CShoun@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

- Neither WSC nor WSREF received the original Summons or Complaint in this case.
- WSC and WSREF were served with an Amended Summons on or around January 22, 2018. *See* Ex. 1-2.
- Under SCRP 4(d), the "summons and complaint must be served together." WSC and WSREF were not served with the Amended Summons *and* Amended Complaint until May 21, 2018. This was the first proper service of any summons and complaint on WSC and WSREF.
- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
- In the cover letter to these amended papers, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." *See* Exs. 3-4, at 1. The Amended Summons likewise sets forth 30 days for a response.
- You moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired*, despite our conversations that had been ongoing since February.
- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.
- For all these reasons (though there are more), the June 7-8, 2018 Entries of Default against WSC should be removed.

- Entry of Default against Wheelock Street Investment Management, LLC ("WSIM"):
  - WSIM was served with a Summons and Complaint on or around January 12, 2018.
  - WSIM was served with an Amended Summons on or around January 22, 2018. Ex. 5

- That Amended Summons prompted me to reach out to you about the missing Amended Complaint and the service issues related to the other Wheelock defendants. *See* Ex. 6 (My email of Feb. 16, 2018 email to you both).

- During our subsequent conversations, you indicated that you would be serving a *Fourth Amended Complaint* on the Wheelock defendants. *See* Ex. 7 (March 3, 2018 email). ("As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming.").

- Given the service issues, I agreed to accept service on behalf of all the Wheelock defendants in exchange for an extension of time to answer the *forthcoming* amended pleadings. *Id.*

- You initially agreed but changed your mind for reasons of which I was and remain uncertain. *Id.* (March 6, 2018 email from John to me) ("Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.); *id.* (March 7, 2018 email from John to me) ("Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.").

- By late April, I asked you to send to me any green cards related to the purported January service of the Wheelock defendants. Ex. 8., to which I received no response, but you instead served WSIM with an Amended Summons and Amended Complaint on May 21, 2018, without any notice to me.

- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSIM, making the prior pleading moot and any response thereto unnecessary.

- In the cover letter to the amended papers, you stated that WSIM had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Ex. 9, at 1. And, again, the Amended Summons indicates a response is due within 30 days.

- Once again, you moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired.*
- WSIM timely answered the Amended Complaint on June 20, 2018.
- For these reasons (though there are more), the June 7, 2018 Entry of Default against WSIM should be removed.

***Keisler, et al. v. JWHNC*, et al., 2017-CP-1005246**

- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, L.P. ("WSREF"):
  - Neither WSC nor WSREF received the original Summons or Complaint in this case.
  - WSC and WSREF were served with the Amended Summons and Amended Complaint on May 21, 2018.
  - When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
  - Identical to your cover letters in *One Hamlin*, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Exs. 10-11, at 1. Again, please refer to what I believe is intended to be the Amended Summons, but instead labelled Amended Verified Complaint, which provides for a response due within 30 days.
  - Once again, you moved for Entries of Default without notice to me or my client almost two weeks *before the 30 days expired.*
  - Moreover, the Motions for the Entries of Default against WSC and WSREF are facially deficient.
    - The first Motion and Entry of Default against WSC, dated June 7, 2018, relies on an Affidavit of Service and mail return receipt for the service of a different party.

- The second Motion and Entry of Default against WSC, dated June 8, 2018, was based on the same incorrect mail return receipt.

- Similarly, the Motion and Entry of Default against WSREF, dated June 7, 2018, relies on a mail return receipt for the service of a different party.

- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.

- For these reasons (though there are more), the June 7, 2018 and June 8, 2018 Entries of Default against WSC and WSREF should be removed.

I will be more than happy to meet with you to discuss these defaults and the relevant exhibits, if necessary. It seems, however, that the foregoing, along with the documents referenced is adequate to secure the removal of the defaults and any additional documents resulting therefrom.

I hope to hear with you upon your receipt of this correspondence.

Sincerely,

Cheryl D. Shoun, Esq.

cc: Brian D. Duffy, Esq.
Mark E. Tully, Esq.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

AFFIDAVIT OF CHERYL D. SHOUN, ESQUIRE

(U.S.A), Inc.; Wheelock Street Real)
Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT,)
LLC; JW Homes, LLC; JWH RPIV,)
LLC; RP Falcon Land, LLC; Wieland)
Realty, LLC; RP Falcon Realty, LLC;)
Residential Partners II, LLC; Residential)
Partners III, LLC; Residential Partners)
IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine)
Builders, LLC; Jose Alfredo Sandoval;)
Chad Larsen d/b/a Chad Larsen Co.;)
Ivan Jose Paiz d/b/a Jose Construction;)
William B. Angel; East Coast Wall)
Systems, Inc.; Tracyinne Construction)
a/k/a T&C Construction, LLC;)
Frankcisco and Andrea DaCosta d/b/a)
AAA Coastline, Inc.; Jack R. Clark d/b/a)
Jack Clark Construction, LLC; Alex)
Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony)
Kirksey; Polly S. Clark d/b/a Glenn)
Clark Construction; Benjamin Mora)
a/k/a Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel)
L. Rogers d/b/a Rogers Roofing Co.,)
Inc. n/k/a Dan Rogers Roofing, LLC;)
William C. Mulhern d/b/a Bill's)
Painting; Mark A. McFarland d/b/a In)
the Wind, Inc.; Harbor Master, Inc.;)
Chad Hood; Kinco Ltd. a/k/a Kinco,)
Inc.; Atrium Companies, Inc. d/b/a)
Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard,)
Inc.; New Construction Drywall Hanger,)
LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. AC Construction, Corp. Third-Party Defendant.	)

I, Cheryl D. Shoun, Esq., being first duly sworn, depose and say:

1. I am over the age of eighteen (18), I am competent to make this Affidavit, and I have personal knowledge of the matters set forth herein.

2. Nexsen Pruet was the previous counsel for Defendant, Wheelock Street Real Estate Fund, LP ("WSREF") in this lawsuit; I along with Marvin Infinger, formerly of this firm, undertook the primary tasks of this representation.

3. Nexsen Pruet also was counsel for many of the Wheelock entities in other state and federal lawsuits, including Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. et al. (Charleston County case

no. 2013-CP-10-3326); Madison at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, LLC et al. (C/A No.: 2:15-cv-04120-DCN); and Waverly at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, et al. (C/A No.: 2:16-cv-02973-DCN) (the "earlier actions").

4. John C. Hayes, IV ("Hayes") and I. Keith McCarty ("McCarty")—Plaintiff's counsel in this lawsuit—were either counsel for plaintiffs, or otherwise aware of, involved or joined for discovery purposes, in the earlier actions. Hayes and McCarty communicated with me in the earlier actions numerous times regarding my clients and were aware I represented them.

5. Plaintiff never served me with its original Summons or Complaint in this action.

6. I am informed and believe Plaintiff served WSREF with an Amended Summons, but no Amended Complaint, on or around January 22, 2018.

7. I am further informed and believe that Plaintiff first served WSREF and the other Wheelock-affiliated defendants with both an Amended Summons and Amended Complaint on May 21, 2018. The Amended Summons stated that WSREF needed to file an Answer within 30 days.

8. In the months leading up to the June 7, 2018 entry of default, Plaintiff's counsel and I had been engaged in discussions relative to reaching an agreement as to a date of service that would be applicable to all affiliated parties, following which Nexsen Pruet would accept service for WSREF. During this time Plaintiff's counsel did not inform me of any potential default or their intention to file for entry of default. A copy of email correspondence from February 16, 2018 to April 26, 2018 is attached hereto as Exhibit A.

9. Without providing notice to me and, upon information and belief, without notice to WSREF, Plaintiff filed a Motion for Entry of Default on or around May 11, 2018 prior to the expiration of WSREF's 30-day answer deadline on June 21, 2018.

10. The Motion for Entry of Default and supporting affidavits state that they were directed to Marvin Infinger and me, as counsel for WSREF, but Plaintiff's counsel never sent me notice or a copy of these materials and never otherwise informed me of their filing for entry of default.

11. WSREF timely filed an Answer to Plaintiff's Amended Complaint on June 20, 2018.

12. Upon learning of Plaintiff's Motion for Entry of Default, I contacted Plaintiff's counsel to explain why default should not have been entered and that the entry of default should be removed. A copy of correspondence I sent to Plaintiff's counsel is attached hereto as Exhibit B.

13. On behalf of WSREF, we understood that the default, which had been entered on an initial pleading following service of an amended pleading which we timely answered, was not legally effective.

FURTHER AFFIANT SAYETH NOT.

Cheryl D. Shoun

Cheryl D. Shoun
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401
(843) 720-1762 (phone)
(843) 414-8238 (fax)

Subscribed and sworn before
me this 11th day of April, 2019.

Marian R Parish
Notary Public for South Carolina
My Commission Expires: 3/8/22

EXHIBIT A

February 16, 2018 Email to Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Friday, February 16, 2018 3:53 PM
To: jhayes@hayeslaw.org; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D.; Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Gentlemen:

I hoped to have the opportunity to call this week, in order to have the chance to actually speak with you. Unfortunately, my schedule did not agree.

I think you are aware that Marvin and I will be representing the "Wheelock" entities in this case. We understand that on January 18, 2018, you forwarded the Amended Complaint to the agent of service for WS JWH LLC. Subsequently, on January 22, 2018, the Amended Summons was forwarded to the agent for service. The Amended Summons was also sent to the agent for service for various Wheelock entities, but it was not accomplanied by the Amended Complaint, nor did they receive the origninal Summons or Complaint.

Would you please clarify service – specifically, what was sent to the agent of service for each Wheelock entity and on what date. In fact, in so doing, it may be helpful for everyone involved to clarify which Defendants have been served, what has been served on each, and the dates of service.

Thanks very much, and we look forward to hearing from you, hopefully very early next week.

Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
www.nexsenpruet.com

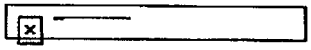
March 5-8, 2018 Emails with Plaintiff's Counsel

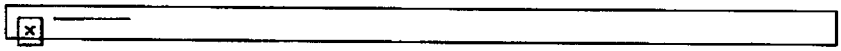
Carney, Tiffiney

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, March 08, 2018 11:58 AM
To: John Hayes
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D.; Trevino, Marilyn J.
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Got it! I'm sorry to have to reschedule.

Cheryl D. Shoun
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com





From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Thursday, March 8, 2018 11:57 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

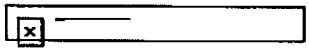
Just try me tomorrow at work

John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 8, 2018, at 11:44 AM, Shoun, Cheryl D. <CShoun@nexsenpruet.com> wrote:

> John: I am in a meeting that is going to run much longer than I anticipated. Do you have free time tomorrow?
>
> Thank you,
> Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
www.nexsenpruet.com



<image001.png> 

From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 11:44 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

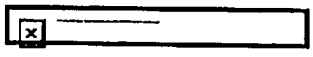
Tomorrow noon would work best if that is okay with you.

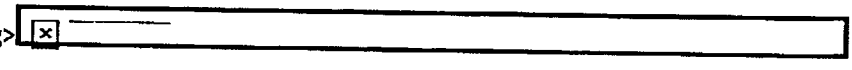
John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
jhayes@hayeslaw.org

From: "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
Date: Wednesday, March 7, 2018 at 10:12 AM
To: John Hayes <jhayes@hayeslaw.org>, Keith McCarty <ikeithmccarty@gmail.com>
Cc: "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Sure—I'll give you a call this afternoon. Would 3:30 or so work with your schedule?

Cheryl D. Shoun
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CShoun@nexsenpruet.com
www.nexsenpruet.com



<image003.png> 

From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 10:01 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.

John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 6, 2018, at 10:57 AM, John Hayes <jhayes@hayeslaw.org> wrote:

> Cheryl, hope you are well. We can certainly work towards an earlier resolution with Wheelock in OHP but we will need back up documentation on the subcontractors involved to get to a comfortable place to discuss cutting out Wheelock. We expect the estimate shortly. How soon do you think you could provide us with the subcontractor information?
>
> Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.
>
> John C. Hayes, IV
> Hayes Law Firm, LLC
> 180 Meeting Street, Suite 330
> Charleston, SC 29401
> 843.805.7003 (Office)
> jhayes@hayeslaw.org
>
> ---
>
> **From:** "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
> **Date:** Monday, March 5, 2018 at 4:23 PM
> **To:** Keith McCarty <ikeithmccarty@gmail.com>
> **Cc:** John Hayes <jhayes@hayeslaw.org>, "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
> **Subject:** One Hamlin Place [IWOV-NPCHAR1.FID1048707]
>
> Hi Keith: Thank you again for speaking with me last Friday concerning our representation of various Wheelock entities in the referenced action.
>
> As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming. In that regard, we discussed our willingness to accept service of those amended pleadings on

behalf of the entities we represent in exchange for an agreement that all of the entities will have an additional 60 days from the date of service in order to respond. Frankly, my clients prefer to direct immediate attention and energy on attempts to resolve Waverly and One Hamlin Place. Although, as you indicated in our conversation, it is very early to address resolution of One Hamlin as you do not yet have any damage estimate.

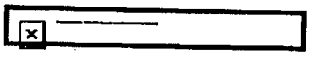
Additionally, because One Hamlin Place is different for the Wheelock entities than either Waverly or Madison, we have to reach out to various individuals in an effort to gather any relevant documentation as to construction. It appears that may take a significant amount of time.

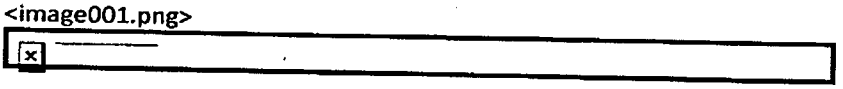
If you and John are so kind to agree as to a period of 60 days following acceptable of service by us of the fourth amended pleadings, we will be glad to prepare a proposed consent order to be submitted to the court.

Thank you again, and I look forward to hearing from you.

Cheryl

Cheryl D. Shoun
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April 26, 2018 Email with Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, April 26, 2018 1:40 PM
To: jhayes@hayeslaw.org
Cc: Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Hey John: Thanks very much for the call.

I am going to reach out to my client this afternoon. Before doing so, I would love to get copies of the green cards you have relative to service in January, 2018. Would you mind asking Jenna (or someone) to forward those cards to Marilyn. That way I can have everything in front of me when I call today.

I am copying Marilyn on this, though I am sure Jenna knows how to find her.

Thanks so much,
Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
www.nexsenpruet.com

EXHIBIT B

NEXSEN|PRUET

Cheryl D. Shoun
Special Counsel
Admitted in SC

July 3, 2018

John C. Hayes, IV, Esq.
Hayes Law Firm
180 Meeting Street
Suite 330
Charleston, SC 29401

Keith McCarty, Esq.
McCarty Law firm
P.O. Box 30055
Charleston, SC 29417

RE: *One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245 and *Keisler, et al. v. JWHNC, et al.*, 2017-CP-1005246

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

John and Keith:

I am reaching out once again in an effort to resolve the issues surrounding the June 7-8 Entries of Default against certain Wheelock defendants in the referenced cases. While not exhaustive, the reasons for this request with respect to each action are reiterated below:

***One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245**

- Entry of Default against Wheelock Street Investment Management, I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC:
    - These entities *are not named in the lawsuit.* That alone justifies the removal of the June 7, 2018 Entry of Default against them.
- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, LP ("WSREF"):

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Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1762
F 843.414.8238
E CShoun@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

- Neither WSC nor WSREF received the original Summons or Complaint in this case.
- WSC and WSREF were served with an Amended Summons on or around January 22, 2018. *See* Ex. 1-2.
- Under SCRP 4(d), the "summons and complaint must be served together." WSC and WSREF were not served with the Amended Summons *and* Amended Complaint until May 21, 2018. This was the first proper service of any summons and complaint on WSC and WSREF.
- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
- In the cover letter to these amended papers, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." *See* Exs. 3-4, at 1. The Amended Summons likewise sets forth 30 days for a response.
- You moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired*, despite our conversations that had been ongoing since February.
- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.
- For all these reasons (though there are more), the June 7-8, 2018 Entries of Default against WSC should be removed.

- Entry of Default against Wheelock Street Investment Management, LLC ("WSIM"):
  - WSIM was served with a Summons and Complaint on or around January 12, 2018.
  - WSIM was served with an Amended Summons on or around January 22, 2018. Ex. 5

- That Amended Summons prompted me to reach out to you about the missing Amended Complaint and the service issues related to the other Wheelock defendants. *See* Ex. 6 (My email of Feb. 16, 2018 email to you both).

- During our subsequent conversations, you indicated that you would be serving a *Fourth Amended Complaint* on the Wheelock defendants. *See* Ex. 7 (March 3, 2018 email). ("As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming.").

- Given the service issues, I agreed to accept service on behalf of all the Wheelock defendants in exchange for an extension of time to answer the *forthcoming* amended pleadings. *Id.*

- You initially agreed but changed your mind for reasons of which I was and remain uncertain. *Id.* (March 6, 2018 email from John to me) ("Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.); *id.* (March 7, 2018 email from John to me) ("Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.").

- By late April, I asked you to send to me any green cards related to the purported January service of the Wheelock defendants. Ex. 8., to which I received no response, but you instead served WSIM with an Amended Summons and Amended Complaint on May 21, 2018, without any notice to me.

- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSIM, making the prior pleading moot and any response thereto unnecessary.

- In the cover letter to the amended papers, you stated that WSIM had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Ex. 9, at 1. And, again, the Amended Summons indicates a response is due within 30 days.

- Once again, you moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired.*

- WSIM timely answered the Amended Complaint on June 20, 2018.

- For these reasons (though there are more), the June 7, 2018 Entry of Default against WSIM should be removed.

***Keisler, et al. v. JWHNC*, et al., 2017-CP-1005246**

- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, L.P. ("WSREF"):

  - Neither WSC nor WSREF received the original Summons or Complaint in this case.

  - WSC and WSREF were served with the Amended Summons and Amended Complaint on May 21, 2018.

  - When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.

  - Identical to your cover letters in *One Hamlin*, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Exs. 10-11, at 1. Again, please refer to what I believe is intended to be the Amended Summons, but instead labelled Amended Verified Complaint, which provides for a response due within 30 days.

  - Once again, you moved for Entries of Default without notice to me or my client almost two weeks *before the 30 days expired.*

  - Moreover, the Motions for the Entries of Default against WSC and WSREF are facially deficient.

    - The first Motion and Entry of Default against WSC, dated June 7, 2018, relies on an Affidavit of Service and mail return receipt for the service of a different party.

- The second Motion and Entry of Default against WSC, dated June 8, 2018, was based on the same incorrect mail return receipt.

- Similarly, the Motion and Entry of Default against WSREF, dated June 7, 2018, relies on a mail return receipt for the service of a different party.

- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.

- For these reasons (though there are more), the June 7, 2018 and June 8, 2018 Entries of Default against WSC and WSREF should be removed.

I will be more than happy to meet with you to discuss these defaults and the relevant exhibits, if necessary. It seems, however, that the foregoing, along with the documents referenced is adequate to secure the removal of the defaults and any additional documents resulting therefrom.

I hope to hear with you upon your receipt of this correspondence.

Sincerely,

Cheryl D. Shoun, Esq.

cc: Brian D. Duffy, Esq.
Mark E. Tully, Esq.

EXHIBIT D

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

WHEELOCK DEFENDANTS' RESPONSE TO PLAINTIFFS' AMENDED COMPLAINT

FILED
2018 JUN 20 PM 4:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; Defendants.	)

COMES NOW Defendants RP Falcon Properties, LLC (formerly known as JW Homes, LLC); RP Falcon Land, LLC (formerly known as JW Land Investment, LLC); RP Falcon Realty, LLC (formerly known as Wieland Realty, LLC); Residential Partners, LLC; JWH RPIV, LLC; WSREF NRT, LLC; WS JWH, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management, LLC; Wheelock Street Real Estate Fund, LP; Wheelock Street Real Estate Fund II, LP; and Wheelock Street Real Estate Fund V, LP (collectively, "Wheelock Defendants"), by and through the undersigned counsel, answers and otherwise responds to the Amended Complaint filed by Gary Keisler, as an individual an representative of others similarly situated (collectively, "Plaintiffs").

Wheelock Defendants' responses are made without waiving, and expressly reserving, all rights Wheelock Defendants have to file dispositive motions addressed to some or all of the claims asserted in the Amended Complaint. Except as expressly admitted herein, each and every allegation in the Amended Complaint is denied. With respect to the numbered paragraphs of the Amended Complaint, Wheelock Defendants respond as follows:

1. In response to Paragraph 1, Wheelock Defendants lack sufficient information to admit or deny whether Gary Keisler is a "citizen and resident of Charleston County, South Carolina, who at all times relevant hereto lives in a residential community known as One Hamlin

Place Townhomes, located in Mount Pleasant, South Carolina," and therefore deny the same. Wheelock Defendants also lack sufficient information to admit or deny the allegations in subsection (e) of Paragraph 1 and therefore deny the same. The remaining allegations in Paragraph 1, including subsections (a)-(d) of Paragraph 1, contain conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the remaining allegations in Paragraph 1, including subsections (a)-(d) of Paragraph 1.

1. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 2 and therefore deny the same.

2. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 3 and therefore deny the same.

3. In response to Paragraph 4, Wheelock Defendants admit, upon information and belief, that One Hamlin Place Townhomes is a section of the residential community, Hamlin Plantation, located in Mount Pleasant, South Carolina. Wheelock Defendants otherwise deny the allegations in Paragraph 4.

4. Paragraph 5 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 5 and therefore deny the same.

5. To the extent that the allegations in the first sentence of Paragraph 6 are directed at Wheelock Defendants, Wheelock Defendants deny the allegations in the first sentence of Paragraph 6. To the extent that the allegations in the first sentence of Paragraph 6 are directed at other parties, no response is required. The second sentence of Paragraph 6 is directed at other parties and no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in the second sentence of Paragraph 6

and therefore deny the same.

6. Wheelock Defendants deny the allegations in Paragraph 7.

7. Wheelock Defendants deny the allegations in Paragraph 8.

8. Wheelock Defendants deny the allegations in Paragraph 9.

9. Paragraph 10 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 10.

10. Wheelock Defendants admit, upon information and belief, the allegations in the first sentence of Paragraph 11. Wheelock Defendants deny the allegations in the second sentence of Paragraph 11.

11. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 12, including the allegations in subsections (a)-(f) of Paragraph 12, and therefore deny the same.

12. Paragraph 13 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 13 and therefore deny the same.

13. Paragraph 14 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 14 and therefore deny the same.

14. Paragraph 15 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 15 and therefore deny the same.

15. Paragraph 16 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or

deny the allegations in Paragraph 16 and therefore deny the same.

16. Paragraph 17 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 17 and therefore deny the same.

17. In response to the first sentence of Paragraph 18, Wheelock Defendants admit that Wheelock Street Capital, LLC is organized and existing under the laws of the State of Delaware and is involved in real estate investments. Wheelock Defendants otherwise deny the allegations in the first sentence of Paragraph 18. Wheelock Defendants also deny the allegations in the second sentence of Paragraph 18.

18. In response to Paragraph 19, Wheelock Defendants admit that Wheelock Street Real Estate Fund, LP is a limited partnership. Wheelock Defendants otherwise deny the allegations in Paragraph 19.

19. In response to Paragraph 20, Wheelock Defendants admit that Wheelock Street Investment Management, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 20.

20. In response to Paragraph 21, Wheelock Defendants admit that RP Falcon Properties, LLC was formerly known as JW Homes, LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 21.

21. In response to Paragraph 22, Wheelock Defendants admit that Residential Partners, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 22.

22. Paragraph 23 is directed at another party, and thus no response is required. To the

extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 23 and therefore deny the same.

23. In response to Paragraph 24, Wheelock Defendants admit that WS JWH, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 24.

24. Paragraph 25 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 25 and therefore deny the same.

25. Paragraph 26 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 26 and therefore deny the same.

26. Paragraph 27 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 27 and therefore deny the same.

27. In response to Paragraph 28, Wheelock Defendants admit that RP Falcon Land, LLC was formerly known as JW Land Investment, LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 28.

28. Paragraph 29 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 29 and therefore deny the same.

29. Paragraph 30 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or

deny the allegations in Paragraph 30 and therefore deny the same.

30. Paragraph 31 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 31 and therefore deny the same.

31. In response to Paragraph 32, Wheelock Defendants admit that Wheelock Street Real Estate Fund II, LP is a limited partnership and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 32.

32. In response to Paragraph 33, Wheelock Defendants admit that Wheelock Street Real Estate Fund V, LP is a limited partnership and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 33.

33. In response to Paragraph 34, Wheelock Defendants admit that WSREF NRT, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 34.

34. Wheelock Defendants admit the allegations in Paragraph 35.

35. In response to Paragraph 36, Wheelock Defendants admit that JWH RPIV, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 36.

36. In response to Paragraph 37, Wheelock Defendants admit that RP Falcon Land, LLC was formerly known as JW Land Investment, LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 37.

37. Wheelock Defendants deny the allegations in Paragraph 38.

38. In response to Paragraph 39, Wheelock Defendants admit that RP Falcon Realty,

LLC was formerly known as Wieland Realty, LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 39.

39. Paragraph 40 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 40 and therefore deny the same.

40. Paragraph 41 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 41 and therefore deny the same.

41. Paragraph 42 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 42 and therefore deny the same.

42. Wheelock Defendants deny the allegations in Paragraph 43, including subsections (a)-(f) of Paragraph 43.

43. Paragraph 44 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 44 and therefore deny the same.

44. Paragraph 45 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 45 and therefore deny the same.

45. Paragraph 46 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 46 and therefore deny the same.

46. Paragraph 47 is directed at other parties, and thus no response is required. To the

extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 47 and therefore deny the same.

47. Paragraph 48 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 48 and therefore deny the same.

48. Paragraph 49 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 49 and therefore deny the same.

49. Paragraph 50 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 50 and therefore deny the same.

50. In response to Paragraph 51, Wheelock Defendants state that Robert Parker was involved in the negotiation of the 2012 sale of assets of John Wieland Homes and Neighborhoods of the Carolinas, Inc. and John Wieland Homes and Neighborhoods, Inc. to Residential Partners, LLC. Wheelock Defendants otherwise deny the allegations in Paragraph 51.

51. Paragraph 52 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 52 and therefore deny the same.

52. Paragraph 53 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 53 and therefore deny the same.

53. Paragraph 54 is directed at another party, and thus no response is required. To the

extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 54 and therefore deny the same.

54. Paragraph 55 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 55 and therefore deny the same.

55. Paragraph 56 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 56 and therefore deny the same.

56. Paragraph 57 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 57 and therefore deny the same.

57. Paragraph 58 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 58 and therefore deny the same.

58. Paragraph 59 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 59 and therefore deny the same.

59. Paragraph 60 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 60 and therefore deny the same.

60. Paragraph 61 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 61 and therefore deny the same.

61. Paragraph 62 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 62 and therefore deny the same.

62. Paragraph 63 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 63 and therefore deny the same.

63. Paragraph 64 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 64 and therefore deny the same.

64. Paragraph 65 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 65 and therefore deny the same.

65. Paragraph 66 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 66 and therefore deny the same.

66. Paragraph 67 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 67 and therefore deny the same.

67. Paragraph 68 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 68 and therefore deny the same.

68. Paragraph 69 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or

deny the allegations in Paragraph 69 and therefore deny the same.

69. Paragraph 70 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 70 and therefore deny the same.

70. Paragraph 71 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 71 and therefore deny the same.

71. Paragraph 72 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 72 and therefore deny the same.

72. Paragraph 73 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 73 and therefore deny the same.

73. Paragraph 74 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 74 and therefore deny the same.

74. Paragraph 75 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 75 and therefore deny the same.

75. Paragraph 76 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 76 and therefore deny the same.

76. Paragraph 77 is directed at another party, and thus no response is required. To the

extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 77 and therefore deny the same.

77. Paragraph 78 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 78 and therefore deny the same.

78. Paragraph 79 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 79 and therefore deny the same.

79. Paragraph 80 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 80 and therefore deny the same.

80. Paragraph 81 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 81 and therefore deny the same.

81. Paragraph 82 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 82 and therefore deny the same.

82. Paragraph 83 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 83 and therefore deny the same.

83. Paragraph 84 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 84 and therefore deny the same.

84. Paragraph 85 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 85 and therefore deny the same.

85. Paragraph 86 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 86 and therefore deny the same.

86. Paragraph 87 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 87 and therefore deny the same.

87. Paragraph 88 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 88 and therefore deny the same.

88. Paragraph 89 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 89 and therefore deny the same.

89. Paragraph 90 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 90 and therefore deny the same.

90. Paragraph 91 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 91 and therefore deny the same.

91. Paragraph 92 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or

deny the allegations in Paragraph 92 and therefore deny the same.

92. Paragraph 93 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 93 and therefore deny the same.

93. Paragraph 94 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 94 and therefore deny the same.

94. Paragraph 95 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 95 and therefore deny the same.

95. Paragraph 96 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 96 and therefore deny the same.

96. Paragraph 97 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 97 and therefore deny the same.

97. Paragraph 98 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 98 and therefore deny the same.

98. Wheelock Defendants deny the allegations in Paragraph 99.

99. Wheelock Defendants deny the allegations in Paragraph 100.

100. Wheelock Defendants deny the allegations in Paragraph 101.

101. Wheelock Defendants deny the allegations of Paragraph 102.

102. Paragraph 103 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 103 and therefore deny the same.

103. Wheelock Defendants deny the allegations of Paragraph 104.

104. Wheelock Defendants deny the allegations of Paragraph 105.

105. Wheelock Defendants deny the allegations of Paragraph 106.

106. Wheelock Defendants deny the allegations of Paragraph 107.

107. Wheelock Defendants deny the allegations of Paragraph 108.

108. Wheelock Defendants deny the allegations of Paragraph 109.

109. Paragraph 110 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 103 and therefore deny the same.

110. Wheelock Defendants deny the allegations of Paragraph 111.

111. Paragraph 112 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 112.

112. Wheelock Defendants deny the allegations in Paragraph 113.

113. Wheelock Defendants deny the allegations in Paragraph 114.

114. Wheelock Defendants deny the allegations in Paragraph 115.

115. Paragraph 116 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 116 and therefore deny the same.

116. Paragraph 117 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or

125. In response to Paragraph 126, Wheelock Defendants state that Robert Parker was involved in the negotiation of the 2012 sale of assets of John Wieland Homes and Neighborhoods of the Carolinas, Inc. and John Wieland Homes and Neighborhoods, Inc. to Residential Partners, LLC. Wheelock Defendants otherwise deny the allegations in Paragraph 126.

126. Wheelock Defendants deny the allegations in Paragraph 127.

127. Wheelock Defendants deny the allegations in Paragraph 128.

128. Wheelock Defendants deny the allegations in Paragraph 129.

129. Wheelock Defendants deny the allegations in Paragraph 130.

130. Wheelock Defendants deny the allegations in Paragraph 131.

131. Wheelock Defendants deny the allegations in Paragraph 132.

132. Wheelock Defendants deny the allegations in Paragraph 133.

133. Wheelock Defendants deny the allegations in Paragraph 134.

134. Wheelock Defendants deny the allegations in Paragraph 135.

135. Wheelock Defendants deny the allegations in the first sentence of Paragraph 136. In response to the second sentence of Paragraph 136, Wheelock Defendants state the website of JW Homes, LLC speaks for itself and denies any mischaracterization of the contents of that website.

136. Wheelock Defendants deny the allegations in Paragraph 137.

137. Wheelock Defendants deny the allegations in Paragraph 138.

138. Wheelock Defendants deny the allegations in Paragraph 139.

139. Paragraph 140 directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or

deny the allegations in Paragraph 140 and therefore deny the same.

140. Wheelock Defendants deny the allegations in Paragraph 141.

141. Wheelock Defendants deny the allegations in Paragraph 142.

142. Wheelock Defendants deny the allegations in Paragraph 143.

143. Wheelock Defendants deny the allegations in Paragraph 144.

144. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 145 and therefore deny the same.

145. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 146 and therefore deny the same.

146. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 147 and therefore deny the same.

147. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 148 and therefore deny the same.

148. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 149 and therefore deny the same.

149. In response to Paragraph 150, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

150. In response to the first sentence of Paragraph 151, Wheelock Defendants lack sufficient information to admit or deny the allegations related to the information provided to Plaintiffs or their individual beliefs and therefore deny the same. Wheelock Defendants deny the remaining allegations in the first sentence of Paragraph 151. Wheelock Defendants also deny the allegations in the second sentence of Paragraph 151.

151. Wheelock Defendants deny the allegations in Paragraph 152.

152. Wheelock Defendants deny the allegations in Paragraph 153.

153. Wheelock Defendants deny the allegations in Paragraph 154.

154. Wheelock Defendants deny the allegations in Paragraph 155.

155. Wheelock Defendants deny the allegations in Paragraph 156.

156. Wheelock Defendants deny the allegations in Paragraph 157.

157. Wheelock Defendants deny the allegations in Paragraph 158.

158. Wheelock Defendants deny the allegations in Paragraph 159.

159. Wheelock Defendants deny the allegations in Paragraph 160.

160. Wheelock Defendants deny the allegations in Paragraph 161.

161. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 162 and therefore deny the same.

162. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 163 and therefore deny the same.

163. Wheelock Defendants deny the allegations in Paragraph 164.

164. Wheelock Defendants deny the allegations in Paragraph 165.

165. Wheelock Defendants deny the allegations in Paragraph 166.

166. Wheelock Defendants deny the allegations in Paragraph 167.

167. Wheelock Defendants deny the allegations in Paragraph 168.

168. Wheelock Defendants deny the allegations in Paragraph 169.

169. Wheelock Defendants deny the allegations in Paragraph 170.

170. Wheelock Defendants deny the allegations in Paragraph 171.

171. Wheelock Defendants deny the allegations in Paragraph 172.

172. Wheelock Defendants deny the allegations in Paragraph 173.

173. In response to Paragraph 174, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

174. Paragraph 175 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 175.

175. Wheelock Defendants deny the allegations in Paragraph 176.

176. Wheelock Defendants deny the allegations in Paragraph 177.

177. Wheelock Defendants deny the allegations in Paragraph 178.

178. Wheelock Defendants deny the allegations in Paragraph 179.

179. Wheelock Defendants deny the allegations in Paragraph 180.

180. Wheelock Defendants deny the allegations in Paragraph 181.

181. Wheelock Defendants deny the allegations in Paragraph 182.

182. In response to Paragraph 183, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

183. Wheelock Defendants deny the allegations in Paragraph 184.

184. Wheelock Defendants deny the allegations in Paragraph 185.

185. Wheelock Defendants deny the allegations in Paragraph 186.

186. In response to Paragraph 187, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

187. Wheelock Defendants deny the allegations in Paragraph 188.

188. Wheelock Defendants deny the allegations in Paragraph 189.

189. In response to Paragraph 190, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

190. Wheelock Defendants deny the allegations in Paragraph 191.

191. Wheelock Defendants deny the allegations in Paragraph 192.

192. Wheelock Defendants deny the allegations in Paragraph 193.

193. Wheelock Defendants deny the allegations in Paragraph 194.

194. Wheelock Defendants deny the allegations in Paragraph 195.

195. In response to Paragraph 196, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

196. Wheelock Defendants deny the allegations in Paragraph 197.

197. Wheelock Defendants deny the allegations in Paragraph 198.

198. Wheelock Defendants deny the allegations in Paragraph 199.

199. Wheelock Defendants deny the allegations in Paragraph 200.

200. In response to Paragraph 201, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

201. Wheelock Defendants deny the allegations in Paragraph 202, including subsections (a)-(v) of Paragraph 202.

202. Wheelock Defendants deny the allegations in Paragraph 203.

203. In response to Paragraph 204, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

204. Wheelock Defendants deny the allegations in Paragraph 205.

205. Wheelock Defendants deny the allegations in Paragraph 206.

206. Wheelock Defendants deny the allegations in Paragraph 207.

207. Wheelock Defendants deny the allegations in Paragraph 208.

208. In response to Paragraph 209, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

209. Wheelock Defendants deny the allegations in Paragraph 210.

210. Wheelock Defendants deny the allegations in Paragraph 211.

211. Wheelock Defendants deny the allegations in Paragraph 212.

212. Wheelock Defendants deny the allegations in Paragraph 213.

213. In response to Paragraph 214, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

214. Wheelock Defendants deny the allegations in Paragraph 215.

215. Wheelock Defendants deny the allegations in Paragraph 216.

216. Wheelock Defendants deny the allegations in Paragraph 217.

217. In response to Paragraph 218, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

218. Wheelock Defendants deny the allegations in Paragraph 219.

219. Wheelock Defendants deny the allegations in Paragraph 220.

220. Wheelock Defendants deny the allegations in Paragraph 221.

221. Wheelock Defendants deny the allegations in Paragraph 222.

222. Wheelock Defendants deny the allegations in Paragraph 223.

223. Wheelock Defendants deny the allegations in Paragraph 224.

224. Wheelock Defendants deny the allegations in Paragraph 225.

225. Wheelock Defendants deny the allegations in Paragraph 226.

226. Wheelock Defendants deny the allegations in Paragraph 227.

227. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 228 and therefore deny the same.

228. Wheelock Defendants lack sufficient information to admit or deny the allegations

in Paragraph 229 and therefore deny the same.

229. Wheelock Defendants deny the allegations in Paragraph 230.

230. Wheelock Defendants deny the allegations in Paragraph 231.

231. In response to Paragraph 232, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

232. Wheelock Defendants deny the allegations in Paragraph 233.

233. Wheelock Defendants deny the allegations in Paragraph 234.

234. Paragraph 235 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 235.

235. Wheelock Defendants deny the allegations in Paragraph 236.

236. Wheelock Defendants deny the allegations in Paragraph 237.

237. Wheelock Defendants deny the allegations in Paragraph 238.

238. Wheelock Defendants deny the allegations in Paragraph 239.

239. Wheelock Defendants deny the allegations in Paragraph 240.

240. In response to Paragraph 241, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

241. Paragraph 242 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 242.

242. Wheelock Defendants deny the allegations in Paragraph 243.

243. Wheelock Defendants deny the allegations in Paragraph 244.

244. Wheelock Defendants deny the allegations in Paragraph 245.

245. Wheelock Defendants deny the allegations in Paragraph 246.

246. In response to Paragraph 247, Wheelock Defendants repeat, re-allege, and

incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

247. Wheelock Defendants deny the allegations in Paragraph 248.

248. In response to Paragraph 249, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

249. Wheelock Defendants deny the allegations in Paragraph 250.

250. Wheelock Defendants deny the allegations in Paragraph 251.

251. Wheelock Defendants deny the allegations in Paragraph 252.

252. Wheelock Defendants deny the allegations in Paragraph 253 and the allegations in the following "WHEREFORE" paragraph, including subsections (a)-(d) of that paragraph.

ADDITIONAL DEFENSES

First Additional Defense

Plaintiffs' Amended Complaint should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action and failure to satisfy adequate pleading requirements for each Defendant.

Second Additional Defense

Plaintiffs' Amended Complaint should be dismissed for lack of personal jurisdiction under Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

Third Additional Defense

Plaintiffs' "causes of action" are not causes of action, but rather alleged remedies, equitable in nature, and should be determined by this Court alone and placed on a non-jury roster.

Fourth Additional Defense

Plaintiffs' action as a whole, and each cause of action individually, is barred by the applicable statutes of limitations and/or repose under South Carolina, Delaware, and/or Georgia law and/or federal law, as well as other state and federal statutes of limitations and/or repose.

Fifth Additional Defense

Plaintiffs have failed to plead their claims with the requisite specificity under Rules 8(a) and/or 9(b) of the South Carolina Rules of Civil Procedure, South Carolina, Georgia and/or Delaware law.

Sixth Additional Defense

Plaintiffs' cause of action for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), S.C. Code Ann. §§ 39-5-10 *et seq.*, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be granted because the SCUTPA plainly states that such a claim may not be maintained in a representative capacity. S.C. Code Ann. § 39-5-140(a).

Seventh Additional Defense

Plaintiffs' claims are barred or limited because they knew, should have known, or had reason to know the facts and circumstances on which their claim(s) are based. As a consequence, they are subject to the defenses of waiver, estoppel, laches, acquiescence, and similar concepts; their claims are barred by notice and knowledge; and their requests for relief are inequitable and so barred or limited by equitable doctrines, including unclean hands.

Eighth Additional Defense

Plaintiffs' claims are barred by their own contributory and/or comparative negligence and/or recklessness for their failure to properly maintain the subject properties and to mitigate any damages to those properties.

Ninth Additional Defense

Plaintiffs failed to mitigate their damages, if any, regardless of their contributory and/or comparative negligence and/or recklessness.

Tenth Additional Defense

Plaintiffs' claims are barred because their damages are the result of acts and omissions of other entities, over which Wheelock Defendants have or had no control.

Eleventh Additional Defense

Plaintiffs' claims are barred because they failed to make a claim within any applicable warranty period.

Twelfth Additional Defense

Wheelock Defendants made no warranties of any kind, express or implied, or any representations of any nature whatsoever to Plaintiffs. If such warranties were made, whether express or implied, which Wheelock Defendants specifically denies, then Plaintiffs' claims are barred because (a) they failed to give notice of any breach thereof, and/or (b) Plaintiffs did not rely on any warranties allegedly made by Wheelock Defendants.

Thirteenth Additional Defense

Plaintiffs' claim for punitive damages is barred because such an award would violate Wheelock Defendants' due process, equal protection, and other rights under the United States Constitution.

Fourteenth Additional Defense

Plaintiffs' claims are barred by the doctrine of corporate immunity and/or business judgment rule.

Fifteenth Additional Defense

Plaintiffs' claims are barred or should be dismissed by the doctrine of spoliation of evidence, as the Plaintiffs spoiled evidence and repaired alleged deficiencies without notice to Wheelock Defendants and without giving Wheelock Fund opportunity to observe the alleged deficiencies.

Sixteenth Additional Defense

Plaintiffs' claims are barred and/or should be stayed or dismissed because Plaintiffs' failed to comply with the South Carolina Notice and Opportunity to Cure Non-Residential Construction Defects Act, South Carolina Code § 40-11-510, *et. seq.*

Seventeenth Additional Defense

Plaintiffs' claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code § 40-59-810-860 (1976 as amended).

Eighteenth Additional Defense

Plaintiffs' claims are barred by the economic loss rule.

Nineteenth Additional Defense

Plaintiffs' and potential class action plaintiffs' claims are barred to the extent that they are improperly joined as one cause of action.

Twentieth Additional Defense

Plaintiffs' claims are barred because they have been settled, released, compromised, and/or waived.

Twenty-First Additional Defense

Plaintiffs lack standing to assert the claims in their Amended Complaint

Twenty-Second Additional Defense

Plaintiffs' claims are barred because there is no privity between Plaintiffs and Wheelock Defendants, and otherwise no fiduciary or special relationship between Plaintiffs and Wheelock Defendants.

Twenty-Third Additional Defense

Plaintiffs' claims are barred because they assumed the risk and/or accepted all portions of any alleged damages.

Twenty-Fourth Additional Defense

Plaintiffs' claims should be barred or, in the alternative, stayed pending a resolution of this dispute by arbitration to the extent such arbitration is required by the contract documents to which Plaintiffs are parties.

Twenty-Fifth Additional Defense

Wheelock Defendants are entitled to a right of setoff based on the settlement contributions of any other party to this action.

Twenty-Sixth Additional Defense

Wheelock Defendants reserve and do not waive the right to raise claims against any party and/or third parties, including, without limitation, those for indemnity and/or contribution.

Twenty-Seventh Additional Defense

Plaintiffs' Amended Complaint should be dismissed for insufficiency of process under Rule 12(b)(4) of South Carolina Rules of Civil Procedure and Rule 12(b)(5) for insufficiency of service of process.

Twenty-Eighth Additional Defense

Wheelock Defendants incorporate all applicable defenses asserted by other Defendants that are not otherwise specifically set forth in this set of Additional Defenses.

Wheelock Defendants hereby give notice that they intend to rely upon such and further defenses as may become available or apparent during discovery proceedings in this case and hereby reserves its right to amend its Answer and assert such defenses.

WHEREFORE, having fully answered the Plaintiffs' Amended Complaint herein, Wheelock Defendants pray for relief as follows:

Wheelock Defendants request that the Court dismiss Plaintiffs' Amended Complaint with prejudice, enter judgment in Wheelock Defendants' favor on all counts, and award such costs, expenses, and fees to Wheelock Defendants as this Court deems equitable, just, and proper.

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CShoun@nexsenpruet.com

Attorney for Wheelock Defendants

June 20, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document has been served upon the following counsel of record by US Mail on June 20, 2018.

John C. Hayes, IV, Esquire
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 2940 I
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.com

I. Keith McCarty, Esquire
McCarty Law Firm, PC
1212 Wappoo Road
Charleston, SC 29407
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ikeithmccarty@gmail.com

Attorneys for Plaintiffs

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2018 JUN 20 PM 4:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Ruthie Parish

NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401

EXHIBIT E

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	
Plaintiffs,	**ENTRY OF DEFAULT AGAINST WHEELOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.**
vs.	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

184

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANTS WHEELOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

This matter comes before the Court upon motion of the Plaintiffs for execution of an Entry of Default against Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. arising out of a construction defects action brought by the Plaintiffs. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiffs also seek referral of the matter to a Special Referee.

It appears that Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. are in default on the Complaint filed by Plaintiffs as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiffs.

IT IS THEREFORE ORDERED that default be entered against Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. in favor of the Plaintiffs Gary Keisler, et al.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!

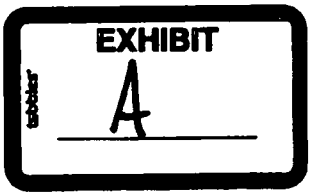
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

June 4, 2018

4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5246
	)	
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
	)	**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE**
Plaintiffs,	)	**AND MOTION FOR ENTRY OF DEFAULT AND**
vs.	)	**REFERRAL**
	)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	)	



Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET INVESTMENT MANAGEMENT, LLC

PERSONALLY APPEARED before me, John C. Hayes, IV, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiffs in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendant Wheelock Street Investment Management, LLC, by certified mail, return receipt requested on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.

Tyler E. Cloud, Esquire
Attorney for the Plaintiffs

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/10/20

NOW COME THE PLAINTIFFS, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC

Tyler E. Cloud, Esquire
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiffs

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
Plaintiff,	)	
vs.	)	**AFFIDAVIT OF SERVICE**
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Inc.; Wheelock Street Real Estate Fund)
II, LP; Wheelock Street Real Estate Fund)
V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
JWH RPIV, LLC; RP Falcon Land, LLC;)
Wieland Realty, LLC; RP Falcon Realty,)
LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Frankcisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc..; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark)
A. McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Investment Management, LLC with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on following page]

HAYES LAW FIRM, LLC

John C. Hayes, IV
Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~. May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Investment Management, LLC
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x William Lolley ☐ Agent ☐ Address

B. Received by (Printed Name) | C. Date of Delive

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 6438

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

JAN 22 2018

120.002-676

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5246
	)	
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
	)	**ENTRY OF DEFAULT AGAINST WHEELOCK STREET REAL ESTATE LAND FUND, L.P. AND REFERRAL TO SPECIAL REFEREE**
Plaintiffs,	)	
vs.	)	
	)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	)	

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2018 JUN -7 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

This matter comes before the Court upon motion of the Plaintiffs for execution of an Entry of Default against Defendant Wheelock Street Real Estate Fund, L.P. arising out of a construction defects action brought by the Plaintiffs. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiffs also seek referral of the matter to a Special Referee.

It appears that Defendant Wheelock Street Real Estate Fund, L.P. are in default on the Complaint filed by Plaintiffs as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiffs.

IT IS THEREFORE ORDERED that default be entered against Defendant Wheelock Street Real Estate Fund, L.P. in favor of the Plaintiffs Gary Keisler, et al.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the

Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

May 22, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5245
	)	
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
	)	**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE AND MOTION FOR ENTRY OF DEFAULT AND REFERRAL**
Plaintiffs,	)	
vs.	)	
	)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	)	



Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Real Estate Land Fund, L.P. by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.

Tyler E. Cloud, Esquire
Attorney for the Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC

Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
Plaintiff,	)	
vs.	)	**AFFIDAVIT OF SERVICE**
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),	)	

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2018 MAY 11 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Real Estate Fund, L.P. with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on the following page]

HAYES LAW FIRM, LLC

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Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
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Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~. May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X William Lolley ☐ Agent ☐ Address

B. Received by (Printed Name) | C. Date of Deliv

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 5967

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

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JAN 22 2018

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EXHIBIT F

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO: 2017-CP-10-5246
)
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),
)
Plaintiff,
)
vs.
)
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK
)

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO WHEELOCK DEFENDANTS' MOTION FOR EXPEDITED HEARING

FILED
2019 JUN 21 PM 4:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY
DC

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;

Defendants.

NOW COME the Plaintiffs, Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50) (hereinafter referred to as "Plaintiffs"), by and through their undersigned counsel, and hereby submit their Supplemental Memorandum in Opposition to Defendants' Motion for an Expedited Hearing.

BRIEF SUMMARY

- The Court divested itself of jurisdiction to hear Defendants' arguments.
- Defendants did not go into default by mistake of counsel.
- Defendants waited eight months to make this Motion.
- All of the matters argued by Defendants can be made before the Special Referee (with the benefit of witness testimony), in which Defendants may be successful, and they have the ability to appeal if they are not.
- This is the second or third time Defendants have attempted to circumvent the Special Referee.
- Defendants have filed these exact motions with the Special Referee, were scheduled with him at one point, and they were postponed in an attempt to mediate the case.
- To hold otherwise would negate the use of a special referee and defendants, in this and other matters, would try to circumvent court orders referring a case to a special referee.

ARGUMENT

The only motion that was before the Court on June 11, 2019 was Defendants' Motion for an Expedited Hearing. The Court requested that parties brief the issue as to whether it is able to "take back" jurisdiction of matters that have been referred to a special referee by court order, to determine whether the Court even has authority to hear Defendants' Motion for Expedited

Hearing. In their Supplemental Memorandum, Defendants inappropriately argue the merits of the underlying motions that they are moving to be expedited. These arguments must be made before the Special Referee.

There is no authority that would allow the Court to take back jurisdiction from the Special Referee to hear Defendants' Motion for an Expedited Hearing.

I. Plaintiffs Did Not Engage in Extrinsic Fraud and Properly Obtained Entries of Default and Orders of Reference.

In their Supplemental Memorandum, Defendants allege that Plaintiffs engaged in extrinsic fraud in obtaining Entries of Default and Orders of Referral to Special Referee, and that Rule 60 allows the Court to vacate orders when extrinsic fraud exists.

"Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action ... " *Chewing v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 2003.

Here, no extrinsic fraud exists because the Plaintiffs properly obtained Entries of Default and Orders of Reference upon Defendants' failure to timely answer the pleadings. Defendants insinuate that the fact that the Orders were entered into *ex parte* is fraudulent in some way. Plaintiffs dispute the assertion that they were entered into *ex parte*. However, the Supreme Court of South Carolina has held that the consent of a defaulting party is not required before the circuit court may refer the case to a special referee, **even if the defaulting defendant has made an appearance in the case**. *Roche v. Young Bros.*, Inc. of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998) (emphasis added). "To hold otherwise would mean that a defaulting party could acquire the right to veto the circuit court's reference authority by making some kind of appearance in the case.

This would be an incongruous result." *Id.* at 82-83. In *Roche*, the motion and subsequent order of reference were done *ex parte*. *Id.* at 79. Plaintiffs properly moved for the entries of default and orders of reference and were not required to notify Defendants of their intentions to move for default and to refer the case to a special referee when they failed to timely answer the pleadings.[1]

Plaintiffs did not omit or misrepresent any fact to the Court upon moving for entries of default. Defendants' claim that the pleading upon which the entry of default was granted was a nullity at the time that Judge Harrington executed the Orders because Plaintiffs had already amended the pleadings is patently false. Defendants failed to answer the Amended Complaint, which was filed on January 16, 2018. The Second Amended Complaint was not filed until January 30, 2019. Plaintiffs moved for entries of default on May 14, 2018. Judge Harrington had access to all of the filings in this case and was able to see whether or not there was another complaint filed. Plaintiffs did not misrepresent or omit any information. For these reasons, no extrinsic fraud exists.

A defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. *Howard v. Holiday Inns Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978). Defendants have not been deprived of their opportunity to be heard. By failing to timely answer the Complaint, they chose not to present their case or deny the allegations set forth in Plaintiffs' Complaint. Defendants are also not deprived of their opportunity to make a motion to vacate the default under Rule 60, as the Orders of Reference specifically states that the special referee has

[1] Defendants cite to *Davis v. Davis*, 236 S.C. 277, 113 S.E.2d 819 (1960) as authority for vacating the Orders of Reference. In *Davis*, the Court vacated a default judgment of divorce and order of reference on the ground that the divorce suit was fatally irregular for lack of notice to one of the spouses. This ruling arose from a divorce suit in which there was a *pro se* litigant who had answered the divorce pleadings, but was not provided notice of the motion for order of reference and default judgment. In the present case, the Defendants failed to timely answer, and the South Carolina Supreme Court has stated in *Roche* that defaulting parties' consent is not required for a referral.

jurisdiction to hear those motions. In fact, Defendants have filed Motions to Vacate with the Special Referee.

Because no extrinsic fraud exists on the part of Plaintiffs in obtaining Entries of Default and the Orders off Reference, and because Defendants have not been deprived of having the opportunity to be heard or try their case, the Court may not vacate the Orders of Referral under Rule 60. Defendants are attempting to circumvent the Court's Order of Referral with unsubstantiated allegations of fraud. [2]

II. Only the Special Referee Has Jurisdiction to Hear the Arguments Raised by Defendants.

"When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action[.]" S.C. Code Ann. § 14-11-85. Consistently with this statute, Rule 53(c), SCRCP, provides that, once a case has been referred, "the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter."

"When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers." *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 74-75, 773 S.E.2d 607, 616 (Ct. App. 2015) (quoting *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993)). "Once an action is referred, the master possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter." *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009).

[2] It is worth noting that the Defendants have alleged that counsel for Plaintiffs engaged in fraud, which is an extremely serious accusation, without any evidence except for a self-serving affidavit written by the attorney who was defense counsel at the time of the default.

The Orders explicitly give the Special Referee jurisdiction over Defendant's Motions, noting that he has jurisdiction over "all matters arising from or reasonably related to such action," including, but not limited to, "jurisdiction over any motions or actions to set aside Entry of Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b)." This is precisely what Defendants seek to do with their motions. Further, the Referral to Special Referee explicitly states, "**any and all hearings** shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County." (emphasis added).

Defendants may challenge the Entries of Default and Orders of Reference, but the proper jurisdiction is before the Special Referee, not the Circuit Court. If extrinsic fraud has actually been committed as Defendants allege, the Special Referee can properly decide that issue after taking testimony and hearing arguments. *See Wachovia Bank of South Carolina v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000) (finding that the order of reference "gives the master jurisdiction over the case and all matters arising from it [including the Defendant's Rule 60(b) Motion] until the master has performed all duties assigned to him.").

In their Supplemental Memorandum, Defendants incorrectly argue that Rule 53(b) SCRCP directs the return of matters from special referees upon the filing of a jury demand. However, Rule 38(d) provides: "A demand for trial by jury made as herein provided may not be withdrawn with the consent of the parties, **except where an opposing party is in default under Rule 55(a)**." (emphasis added).

Defendants did not cite any authority in their Supplemental Memorandum that would allow the Court to strip jurisdiction away from the Special Referee and confer it back to the Circuit Court. The majority of the case law that Defendants cite to is not South Carolina law or related federal

law, nor is it persuasive or on point.[3] Accordingly, these matters have been properly referred to the Special Referee, and the Defendants have the ability to make their underlying arguments before him, including challenging his jurisdiction. Further, S.C. Code § 14-11-100 allows the masters and special referees to take testimony.

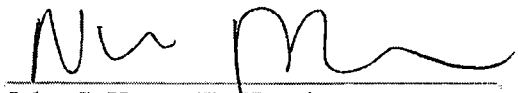
For the foregoing reasons, the Court should uphold its Orders of Reference to the Special Referee in this matter. To hold otherwise would mean that a defaulting party could acquire the right to veto the circuit court's reference authority by making unsubstantiated accusations of fraud and/or moving for a jury trial.

[Signature Page to Follow]

[3] For example, Defendants cite to *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957), in which the circuit court judge improperly referred the entire case and pending trial to the master without consent of any of the parties because of the court's "congested calendar". The facts of this case are completely inapplicable to the present case.

Respectfully Submitted,

HAYES LAW FIRM, LLC



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and

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Phone: (843) 793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFF

June 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

CERTIFICATE OF SERVICE

FILED
2019 JUN 21 PM 4:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; Defendants.	)

The undersigned hereby certifies that on the 21st day of June 2019, a true and correct copy of the attached *Plaintiffs' Supplemental Memorandum in Opposition to Wheelock Defendants' Motion for Expedited Hearing* was served upon all parties and/or their respective counsel of record by placing the same in the U.S. Mail and/or email with sufficient postage affixed and addressed as follows:

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pcornduff@gwblawfirm.com ***Attorneys for The Muhler Company, Inc.***	
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Andrew N. Cole Collins & Lacy, P.C. Post Office Box 12487 Columbia, SC 29211 acole@collinsandlacy.com ***Attorney for Jeorge Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc.***	Donna O. Tillis Robert C. Calamari Nelson Mullins Riley & Scarborough, LLP 1320 Main Street, 17th Floor Columbia, SC 29201 Donna.tillis@nelsonmullins.com Bob.calamari@nelsonmullins.com ***Attorneys for YKK (U.S.A.) Inc.***
Stephen L. Brown Mary S. Willis Young Clement Rivers, LLP P.O. Box 993 Charleston, SC 29401 sbrown@ycrlaw.com mwillis@ycrlaw.com ***Attorneys for New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.***	

Hayes Law Firm, LLC

Nina E. Meola

EXHIBIT G

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

FILED
2019 FEB 13 AM 10:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY

DEFENDANT WHEELOCK STREET CAPITAL, LLC'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ., ATTORNEYS FOR PLAINTIFFS

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will appear on behalf of Defendant Wheelock Street Capital, LLC ("this Defendant") and move this Court to set aside and vacate the entry of default. This motion will be based upon Rule 4(d)(8) and Rule 55(c) of the *South Carolina Rules of Civil Procedure*. As described herein and as will be shown more fully in a Memorandum In Support, good cause exists for setting aside the entry of default. This Defendant has a meritorious defense and has long since begun defending the suit via a timely response to the only effective service of the Amended Summons and Amended Complaint. Accordingly, no undue prejudice will result for Plaintiffs.

The grounds for this motion include the following:

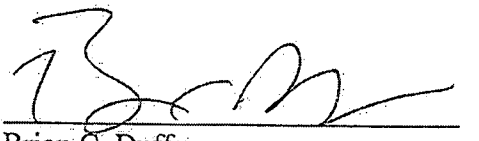
- Plaintiffs' failure to perfect service upon this Defendant in accordance with the *South Carolina Rules of Civil Procedure* and that personal jurisdiction, therefore, had not yet attached to this Defendant at the time default was entered;

- The amended pleadings and timely answers should render the default moot;
- The filings at issue were made without service on or other notice to counsel – despite the facts that counsel for Plaintiffs had been discussing service with counsel for this Defendant and that the very filings at issue suggested inaccurately to the Court that counsel was being notified; and
- The motion for entry of default and its supporting materials are facially inaccurate.

This motion is further based on the pleadings, the motions previously filed and the arguments of counsel thereon, applicable statutory and case law, and such evidence and/or memoranda as may be submitted at or prior to a hearing on this motion.

Pursuant to Rules 4(d)(8) and 55(c) of the *South Carolina Rules of Civil Procedure*, this Defendant respectfully submits that the entry of default must be set aside and vacated.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, undersigned counsel consulted with counsel for Plaintiffs prior to filing this motion, but the parties were unable to resolve the matter of this motion.



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Attorneys for Defendant Wheelock Street Capital, LLC

February 13, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELOCK STREET CAPITAL, LLC'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

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2019 FEB 13 AM 10: 13
JULIE J. ARMSTRONG
CLERK OF COURT
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Attorneys for Muhler, LLC a/k/a The Muhler Company, Inc.

Janice V. Pryor
DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

FILED
2019 FEB 13 AM 10:12
JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT WHEELOCK STREET REAL ESTATE FUND, LP'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT

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Defendants.	)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ., ATTORNEYS FOR PLAINTIFFS

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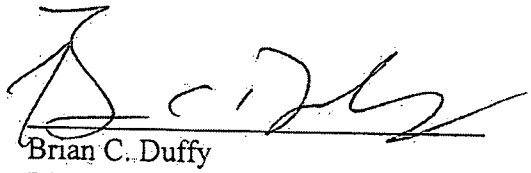
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Attorneys for Defendant Wheelock Street Real Estate Fund, LP

February 13, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT WHEELOCK STREET REAL ESTATE FUND, LP'S NOTICE OF MOTION AND MOTION TO SET ASIDE AND VACATE ENTRY OF DEFAULT** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

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FILED
2019 FEB 13 AM 10: 12
JULIE J. ARMSTRONG
CLERK OF COURT

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Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.

Janice V. Person
DUFFY & YOUNG, LLC

FEBRUARY 13, 2019

EXHIBIT H

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246

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Plaintiffs,

vs;

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2019 APR 26 PM 2:42
CLERK OF COURT

WHEELOCK STREET REAL ESTATE FUND, LP; WHEELOCK STREET INVESTMENT MANAGEMENT, LLC; WHEELOCK STREET CAPITAL, LLC; WHEELOCK STREET INVESTMENT MANAGEMENT I, LLC; WHEELOCK STREET INVESTMENT MANAGEMENT II, LLC; AND WHEELOCK STREET INVESTMENT MANAGEMENT V, LLC'S NOTICE OF MOTION AND MOTION FOR RECUSAL

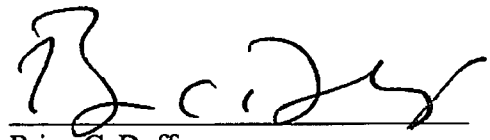
(U.S.A), Inc.; Wheelock Street Real)
Estate Fund II, LP; Wheelock Street)
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Realty, LLC; RP Falcon Realty, LLC;)
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Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony)
Kirksey; Polly S. Clark d/b/a Glenn)
Clark Construction; Benjamin Mora)
a/k/a Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel)
L. Rogers d/b/a Rogers Roofing Co.,)
Inc. n/k/a Dan Rogers Roofing, LLC;)
William C. Mulhern d/b/a Bill's)
Painting; Mark A. McFarland d/b/a In)
the Wind, Inc.; Harbor Master, Inc.;)
Chad Hood; Kinco Ltd. a/k/a Kinco,)
Inc.; Atrium Companies, Inc. d/b/a)
Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard,)
Inc.; New Construction Drywall Hanger,)
LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. AC Construction, Corp. Third-Party Defendant.	)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ., ATTORNEYS FOR PLAINTIFFS

PLEASE TAKE NOTICE that on the tenth day after service hereof, or as soon thereafter as the Court may provide, undersigned counsel will appear on behalf of Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management I, LLC; Wheelock Street Investment Management II, LLC; and Wheelock Street Investment Management V, LLC (collectively, the "Wheelock entities") and move the Special Referee appointed by this Court in its Order entered on May 22, 2018 to recuse himself from any further action or involvement in this litigation because he cannot

maintain his role in this litigation without violating Canons 2 and 3 of the Code of Judicial Conduct.



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Attorneys for the Wheelock Entities

April 26, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **WHEELOCK STREET REAL ESTATE FUND, LP; WHEELOCK STREET INVESTMENT MANAGEMENT, LLC; WHEELOCK STREET CAPITAL, LLC; WHEELOCK STREET INVESTMENT MANAGEMENT I, LLC; WHEELOCK STREET INVESTMENT MANAGEMENT II, LLC; AND WHEELOCK STREET INVESTMENT MANAGEMENT V, LLC'S NOTICE OF MOTION AND MOTION FOR RECUSAL** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

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2010 APR 26 PM 2:42
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CHARLESTON COUNTY

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Janice V. Prosen
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APRIL 26, 2019

EXHIBIT I

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

DEMAND FOR JURY TRIAL AND MOTION FOR EXPEDITED HEARING (PRIORITY MATTER)

FILED
2018 JUN -4 PM 2:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(U.S.A), Inc.; Wheelock Street Real)
Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT,)
LLC; JW Homes, LLC; JWH RPIV,)
LLC; RP Falcon Land, LLC; Wieland)
Realty, LLC; RP Falcon Realty, LLC;)
Residential Partners II, LLC; Residential)
Partners III, LLC; Residential Partners)
IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine)
Builders, LLC; Jose Alfredo Sandoval;)
Chad Larsen d/b/a Chad Larsen Co.;)
Ivan Jose Paiz d/b/a Jose Construction;)
William B. Angel; East Coast Wall)
Systems, Inc.; Tracyinne Construction)
a/k/a T&C Construction, LLC;)
Frankcisco and Andrea DaCosta d/b/a)
AAA Coastline, Inc.; Jack R. Clark d/b/a)
Jack Clark Construction, LLC; Alex)
Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony)
Kirksey; Polly S. Clark d/b/a Glenn)
Clark Construction; Benjamin Mora)
a/k/a Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel)
L. Rogers d/b/a Rogers Roofing Co.,)
Inc. n/k/a Dan Rogers Roofing, LLC;)
William C. Mulhern d/b/a Bill's)
Painting; Mark A. McFarland d/b/a In)
the Wind, Inc.; Harbor Master, Inc.;)
Chad Hood; Kinco Ltd. a/k/a Kinco,)
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Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard,)
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Defendants.	
Builders FirstSource-Southeast Group, LLC,	)
Third-Party Plaintiff,	)
v.	)
AC Construction, Corp.	)
Third-Party Defendant.	)

TO: I. KEITH McCARTY, ESQ.; JOHN HAYES, IV, ESQ.; AND NINA E. MEOLA, ESQ., ATTORNEYS FOR PLAINTIFFS

PLEASE TAKE NOTICE that Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management I, LLC; Wheelock Street Investment Management II, LLC; and Wheelock Street Investment Management V, LLC (collectively, the "Wheelock entities")[1], by and through the

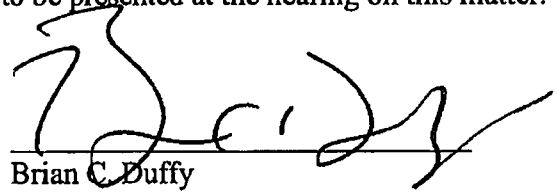
[1] The undersigned is specially appearing for Wheelock Street Investment Management I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC, which are not parties to this lawsuit but against which Plaintiffs sought an entry of default.

undersigned counsel, will move before the Presiding Judge of the Charleston County Court of Common Pleas, as soon as the parties may be heard, for an Order pursuant to Rule 40(h) of the South Carolina Rules of Civil Procedure granting an expedited hearing on their Motions to Vacate Orders of Referral to Special Referee as well as their Motions to Set Aside and Vacate Entry of Default and (collectively, the "Motions").

The moving parties were properly served and timely answered an Amended Summons and Amended Complaint and are rightful parties to this action. Among other grounds for the motion, the earlier pleading and alleged default were rendered moot by the amended pleading, service, and timely answer. The Court and not the Special Referee should decide the Rule 60 motions to vacate and the Rule 55(c) motions. The Plaintiffs have demanded a jury trial and these moving parties hereby confirm their demand for the same. The Wheelock entities will be deprived of their right to a jury trial if the Special Referee is allowed to decide matters in this action.

In the alternative to the request for an expedited hearing on the Motions, the Wheelock entities request that the Court grant a hearing on these Motions in due course and so advise the parties and the Special Referee that the Court will decide the Motions.

This motion is based upon the South Carolina Rules of Civil Procedure, applicable law, a memorandum of law which will be submitted before a hearing on this motion, argument of counsel, and any other matters the Court may permit to be presented at the hearing on this matter.



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June 4, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEMAND FOR JURY TRIAL AND MOTION FOR EXPEDITED HEARING (PRIORITY MATTER)** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

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FILED
2019 JUN -4 PM 2:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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Janice V. Prosser
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JUNE 4th, 2019

EXHIBIT J

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

MEMORANDUM IN SUPPORT OF DEMAND FOR JURY TRIAL AND MOTION FOR EXPEDITED HEARING (PRIORITY MATTER)

FILED
2019 JUN 10 PM 12:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(U.S.A), Inc.; Wheelock Street Real)
Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT,)
LLC; JW Homes, LLC; JWH RPIV,)
LLC; RP Falcon Land, LLC; Wieland)
Realty, LLC; RP Falcon Realty, LLC;)
Residential Partners II, LLC; Residential)
Partners III, LLC; Residential Partners)
IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine)
Builders, LLC; Jose Alfredo Sandoval;)
Chad Larsen d/b/a Chad Larsen Co.;)
Ivan Jose Paiz d/b/a Jose Construction;)
William B. Angel; East Coast Wall)
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Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern)
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Marc, Inc.; Emmanuel Kehagis d/b/a)
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Kirksey; Polly S. Clark d/b/a Glenn)
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Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
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Inc. n/k/a Dan Rogers Roofing, LLC;)
William C. Mulhern d/b/a Bill's)
Painting; Mark A. McFarland d/b/a In)
the Wind, Inc.; Harbor Master, Inc.;)
Chad Hood; Kinco Ltd. a/k/a Kinco,)
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Atrium Windows and Doors, Inc. a/k/a)
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Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. AC Construction, Corp. Third-Party Defendant.	)

COME NOW Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management I, LLC; Wheelock Street Investment Management II, LLC; and Wheelock Street Investment Management V, LLC (collectively, the "Wheelock entities"),[1] by and through the undersigned counsel, and submit their memorandum of law in support of the Demand for Jury Trial and Motion for Expedited Hearing.

[1] The undersigned is specially appearing for Wheelock Street Investment Management I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC, which are not even named as parties to this lawsuit but against which Plaintiff sought and secured entries of default.

INTRODUCTION

The defaults in this case are not proper and, in any event, are a nullity. Before the entry of default, Plaintiffs filed and served Amended Summonses and the Amended Complaint. The Wheelock entities timely answered the Amended Complaint. Counsel for Plaintiffs, however, after filing the amended complaint and while discussing service issues with counsel for the Wheelock entities and entertained an offer to accept service, sought entry of default on the *initial* complaint without informing counsel. The gamesmanship notwithstanding, the amended complaint had superseded the initial complaint and rendered the associated default efforts nullities. The Wheelock entities are parties and have participated and are participating in discovery in the case, yet Plaintiffs continue to seek a default hearing with the Special Referee (Daniel S. Slotchiver, Esq.) to whom the orders entering default referred the default matters. (See Email Correspondence at Ex. A.)

Allowing the Special Referee to decide issues in this case and proceed to a default judgment is improper for the many reasons set forth in corresponding motions and because the entries of default and Orders of referral are legal nullities and the Special Referee therefore lacks authority to take any action in this case.[2] Most important, the proceedings before the Special Referee will deny the Wheelock entities their due process rights to defend the claims against them on the merits and to a trial by jury.

Each of the Wheelock entities has sought relief in this action and the related *One Hamlin* action under Rule 55 and Rule 60. The specific facts and various grounds for relief are set forth

[2] The Wheelock entities have also moved for recusal of the Special Referee due to issues of bias and lack of impartiality. As discussed in the motion, the Special Referee is currently plaintiff's counsel in a matter where he seeks to protect a substantial default judgment against allegations that he secured the default improperly while in discussions with counsel for the defendant.

in the respective Motion to Set Aside and Vacate Entry of Default along with the Motion to Vacate Order of Referral to Special Referee (the "Motions to Vacate") and supporting memoranda and are incorporated here. Given the unique circumstances of this case, failure of the Court to address the Motions to Vacate and reconsider its prior Orders related thereto will affect the mode of trial and deprive the Wheelock entities of substantial rights. This Court deciding the motions will also serve the interests of judicial economy.

ARGUMENT

As set forth above and explained more fully in the Motions to Vacate, Plaintiffs seek to secure final judgment against the Wheelock entities in connection with a moot pleading. See, e.g., Memorandum in Support of Defendant Wheelock Street Capital, LLC's Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee, at 9-12. The Wheelock entities timely answered Plaintiffs' Amended Summons and Amended Complaint—making them parties to this case—and have participated actively in this litigation, appearing and participating at every deposition in the case, for example. (See Deposition Excerpts attached at Ex. B-1; Ex. B-2; and Ex. B-3.) Plaintiffs seek a default related to an *earlier* Complaint which does not contain many of additional factual allegations or claims which the Wheelock entities and other parties are currently litigating. Id. at 4. Because the original Complaint is not the operative pleading in this litigation, it was rendered moot by Plaintiffs' service of an Amended Summons and Complaint. For this reason, the original Complaint and any default or Order of referral related thereto is void. Id. at 11, 18; see Brock v. Doe, No. CIV.A. 3:10-2821-JFA, 2012 WL 786314, at *2 (D.S.C. Feb. 27, 2012), report and recommendation adopted, No. CA 3:10-2821-JFA-JRM, 2012 WL 786276 (D.S.C. Mar. 9, 2012) ("After these motions were filed, Plaintiffs amended their complaint. [Defendant] timely filed an answer to the amended complaint with a certificate of

service. The principles for setting aside an entry of default also support a finding that entry of default should not be made.").[3]

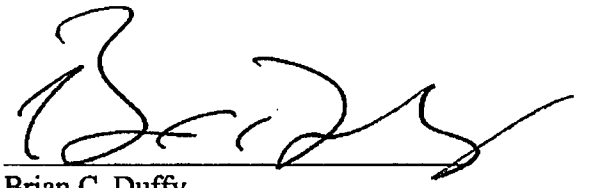
At the time Plaintiffs moved for entry of default it failed to inform the Court of the procedural history of this case. Plaintiffs did not inform the Court that it mooted the pleading connected to its attempted default (which naturally flows to any default or Order of referral related thereto), that it properly served the Wheelock entities with an Amended Summons and Complaint, or that it sought the entries of default at the same time it negotiated with counsel for the Wheelock entities regarding acceptance of service of amended pleadings. See Memorandum in Support of

[3] See also Brewer v. Grossbaum, No. 2:12-CV-1555 WBS DAD, 2014 WL 119233, at *1 (E.D. Cal. Jan. 9, 2014), report and recommendation adopted, No. 2:12-CV-1555 WBS DAD, 2014 WL 556039 (E.D. Cal. Feb. 12, 2014) ("In light of plaintiff's filing of an amended complaint, however, the court will deny as moot plaintiff's requests for entry of default ... since plaintiff's amended complaint supersedes the original complaint."); Hooker v. Goldstein & Assocs., LLC, No. 12-12232, 2013 WL 6163638, at *6 (E.D. Mich. Nov. 20, 2013) ("While [movant] obtained a default on the original complaint, '[t]he filing of an amended complaint supersedes an original complaint, renders the original complaint of no legal effect, and moots the clerk's entry of default as to the original complaint.'"); Greater St. Louis Constr. Laborers Welfare Fund v. A.G. Mack Contracting Co., No. 4:08–cv1947, 2009 WL 2916841, at * 1 (E.D. Mo. Sept.4, 2009) (holding that the entry of default relating to the original complaint was rendered moot when the plaintiff filed an amended complaint); U.S. S.E.C. v. Boey, No. 07-CV-39-SM, 2013 WL 1775444, at *1 (D.N.H. Apr. 25, 2013) ("The amended complaint superceded the original complaint. The original complaint is, therefore, a nullity. The clerk's default, based on [Defendant's] failure to answer or otherwise respond to the original complaint, which was entered months before the amended complaint was filed, is likewise a nullity."); Allstate Ins. Co. v. Yadgarov, No. 11-CV-6187 PKC VMS, 2014 WL 860019, at *8 (E.D.N.Y. Mar. 5, 2014) ("once the amended complaint becomes the operative complaint, a motion for default judgment made on a prior pleading should be denied. Similarly, several courts have found that once the original complaint is superseded, a clerk's entry of default on that pleading is mooted."); TD Banknorth, N.A. v. Hawkins, 2010 ME 104, ¶¶ 19-20, 5 A.3d 1042, 1047 ("when a complaint is amended, the original complaint is considered to be wholly replaced by the amended version... On this basis, the majority of jurisdictions require that a default be set aside when the complaint on which the default is entered is subsequently amended."); Winston v. City of Laurel, No. 2:12CV61-KS-MTP, 2012 WL 5381346, at *2 (S.D. Miss. Oct. 31, 2012) ("[A]n amended complaint supersedes [an] original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading... As a result, the original Complaint is no longer operative and the Defendant's default with respect to that pleading is now moot.") (internal citations and quotations omitted).

Defendant Wheelock Street Capital, LLC's Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee, at 4-6. A Court maintains authority to reconsider its own Orders, and with the relevant facts now squarely before the Court, the Wheelock entities pray it will exercise that right and end Plaintiffs' efforts to secure an improper advantage in this litigation. Allowing the Special Referee to move forward will deprive the Wheelock entities of their constitutional due process right to defend the claims against them on the merits and their inviolate right to a jury trial. S.C. Const. art. I, § 14; SCRCP 38. Further, this approach serves the interests of judicial economy by clearing the muddy waters created by Plaintiffs' efforts and placing this litigation in the best possible position to move forward on the merits.

CONCLUSION

For the foregoing reasons, the Wheelock entities respectfully request the Court to grant the Motions to Vacate or, in the alternative, set a hearing for the Motions at the earliest possible date and grant the Wheelock entities protection for any proceedings before the Special Referee in the interim.



Brian C. Duffy
Blake A. McKie
Stephen J. Bell
Duffy & Young, LLC
96 Broad Street
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Telephone: (843) 720-2044
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sbell@duffyandyoung.com
Attorneys for the Wheelock Entities

June 10, 2019
Charleston, South Carolina

EXHIBIT A

Brian Duffy

From: keith mccarty <ikeithmccarty@gmail.com>
Sent: Wednesday, June 5, 2019 9:49 AM
To: Daniel S Slotchiver
Cc: Brian Duffy; John Hayes; Susan Maulden; Stephen Bell; Blake A. McKie; Janice Prosen
Subject: Re: One Hamlin motions in front of Special Referee

Dan, it appears an agreement on how to proceed will not occur. Accordingly, I ask that you set the hearing as soon as convenient for you. Keith

On Tue, Jun 4, 2019 at 2:18 PM Daniel S Slotchiver <dan@slotchiverlaw.com> wrote:

All I can do is schedule a hearing, which I believe is in my province. Seems to me that you will need an Order of Protection to preclude it, but I'll let y'all hammer it out. In the meanwhile, I'm ready to set it.

Daniel S Slotchiver
Slotchiver & Slotchiver LLP
751 Johnnie Dodds Blvd Suite 100
Mt Pleasant SC 29464
(o)843-577-6531
(f)843-577-0261
dan@slotchiverlaw.com

Please note that we have moved and adjust future mailings accordingly

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On Jun 4, 2019, at 2:04 PM, Brian Duffy <bduffy@duffyandyoung.com> wrote:

Dan, John, and Keith –

As you know, we maintain that the Circuit Court should hear the motions challenging the default and referral. Although our discussions with Caroline left some uncertainty, it appears she is not scheduling any hearing.

Today we are filing a motion for an expedited hearing in Circuit Court.

I suggest we let the Court address the motion and our contention before moving forward.

Thanks,

Brian

Brian C. Duffy, Esq. | 843.720.2044 | www.duffyandyoung.com

From: Daniel S Slotchiver <dan@slotchiverlaw.com>
Sent: Friday, May 31, 2019 9:21 AM
To: keith mccarty <ikeithmccarty@gmail.com>
Cc: John Hayes <jhayes@hayeslaw.org>; Brian Duffy <bduffy@duffyandyoung.com>; Susan Maulden <paralegal@slotchiverlaw.com>
Subject: Re: One Hamlin motions in front of Special Referee

12th and 13th are best for me, but I can try to rework the other days if necessary? Brian?

Daniel S Slotchiver

Slotchiver & Slotchiver LLP

751 Johnnie Dodds Blvd Suite 100

Mt Pleasant SC 29464

(o)843-577-6531

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dan@slotchiverlaw.com

Please note that we have moved and adjust future mailings accordingly

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On May 31, 2019, at 8:56 AM, keith mccarty <ikeithmccarty@gmail.com> wrote:

Dear Dan, John and I are available on June 12, 13,14, 17 and 19 to appear before you as Special Referee in the One Hamlin case. Please let us know which date works best.
Thanks, Keith

--

I. Keith McCarty
McCarty Law Firm, PC
1212 Wappoo Road (29407)
P.O. Box 30055
Charleston, South Carolina 29417
Phone: 843-793-1272
Fax : 843-793-1282
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--

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From: John Hayes
To: Brian Duffy; Caroline Crisler, Leonard; Nina Meola
Cc: Dan; keith mccarty; Jena Lingle; Blake A. McKie; Pamela Jones; Stephen Bell
Subject: Re: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.
Date: Tuesday, March 12, 2019 4:16:21 PM

Caroline, I too regret having to go back and forth on this matter. All of these issues are for the special referee regardless of whether they are Rule 60 or a motion for reconsideration. Defendants may move under Rule 60, but the proper jurisdiction is before the Special Referee, not the Circuit Court. See Wachovia Bank of South Carolina v. Player, 341 S.C. 424, 535 S.E.2d 128 (2000), finding that the order of reference "gives the master jurisdiction over the case and all matters arising from it until the master has performed all duties assigned to him."

Again, I apologize for any inconvenience but Mr. Duffy needs to take this and the other matters up with the referee.

John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
jhayes@hayeslaw.org

From: Brian Duffy <bduffy@duffyandyoung.com>
Date: Tuesday, March 12, 2019 at 4:06 PM
To: John Hayes <jhayes@hayeslaw.org>, Caroline Leonard <ccleonard@charlestoncounty.org>, Nina Meola <nmeola@hayeslaw.org>
Cc: Dan <dan@slotchiverlaw.com>, Keith McCarty <ikeithmccarty@gmail.com>, Jena Lingle <jlingle@hayeslaw.org>, "Blake A. McKie" <BMcKie@duffyandyoung.com>, Pamela Jones <pjones@duffyandyoung.com>, Stephen Bell <sbell@duffyandyoung.com>
Subject: RE: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

Caroline,

I am sorry you have been put in the middle of the cross fire here.

Nevertheless, I need to respond to what was stated below. The motions I am referring to are Rule 60 motions, and there is no 10 day window.

The Court is entitled to reconsider its order. I expect it would very

much want to reconsider an order issued ex parte that has fundamental errors.

Best,
Brian

Brian C. Duffy, Esq. | 843.720.2044 | www.duffyandyoung.com

From: John Hayes <jhayes@hayeslaw.org>
Sent: Tuesday, March 12, 2019 3:59 PM
To: Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>; Brian Duffy <bduffy@duffyandyoung.com>; Nina Meola <nmeola@hayeslaw.org>
Cc: Dan <dan@slotchiverlaw.com>; keith mccarty <ikeithmccarty@gmail.com>; Jena Lingle <jlingle@hayeslaw.org>; Blake A. McKie <BMcKie@duffyandyoung.com>; Pamela Jones <pjones@duffyandyoung.com>; Stephen Bell <sbell@duffyandyoung.com>
Subject: Re: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

Caroline, hope you are well. Once the court refers the matter to the special referee it divests itself of jurisdiction in this matter. Everything mentioned by Mr. Duffy is to be heard by the special referee according to the rules. Mr. Duffy has the ability to bring these arguments in front of the special referee. Mr. Duffy is attempting to get around the special referee which currently has jurisdiction. In addition, the orders of referral were signed in June of last year and it has been way past the 10 day window for a motion for reconsideration. Thank you for your consideration.

John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
jhayes@hayeslaw.org

From: Caroline Leonard <ccleonard@charlestoncounty.org>
Date: Tuesday, March 12, 2019 at 3:51 PM
To: Brian Duffy <bduffy@duffyandyoung.com>, Nina Meola <nmeola@hayeslaw.org>
Cc: John Hayes <jhayes@hayeslaw.org>, Dan <dan@slotchiverlaw.com>, Keith McCarty <ikeithmccarty@gmail.com>, Jena Lingle <jlingle@hayeslaw.org>, "Blake A. McKie" <BMcKie@duffyandyoung.com>, Pamela Jones <pjones@duffyandyoung.com>, Stephen Bell <sbell@duffyandyoung.com>
Subject: Re: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

I believe motions for reconsideration are appropriately heard by the judge who issued them. If this

is not the case, please let me know and I will have Lisa schedule these for you.

Caroline C. Leonard
Civil Court Docket Manager
Charleston County Clerk Of Court
100 Broad Street
Charleston, SC 29401
E-Mail: ccleonard@charlestoncounty.org
843%948-5013 (Office)

From: Brian Duffy <bduffy@duffyandyoung.com>
Sent: Tuesday, March 12, 2019 3:20:56 PM
To: Caroline Crisler. Leonard; Nina Meola
Cc: John Hayes; Dan; keith mccarty; Jena Lingle; Blake A. McKie; Pamela Jones; Stephen Bell
Subject: RE: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

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Caroline,

Thanks for your email. Respectfully, however, I think my clients are entitled to have a judge hear motions for reconsideration of the orders at issue here. For one thing, many of my clients are in fact parties to the case because when the plaintiffs served the amended summons and amended complaint (after the alleged default), my clients answered timely. So, I believe they are entitled to have the motions heard in court.

As another matter, there are basic points demonstrating that the Orders are in error which the court should entertain reconsidering. As an example, certain clients were put in default despite the fact that they never were named as parties in the complaint. I think the court would want to reconsider an order for entities the court put in default and referred to a special referee when the entities are not even named parties to the complaint.

I would appreciate you setting these for a hearing. If you disagree, would it be appropriate for me to raise the issue with Judge Young as Chief Administrative Judge?

Thanks very much,
Brian

Brian C. Duffy, Esq. | 843.720.2044 | www.duffyandyoung.com

From: Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>
Sent: Thursday, February 28, 2019 11:20 AM
To: Nina Meola <nmeola@hayeslaw.org>
Cc: John Hayes <jhayes@hayeslaw.org>; Brian Duffy <bduffy@duffyandyoung.com>; Dan <dan@slotchiverlaw.com>; keith mccarty <ikeithmccarty@gmail.com>; Jena Lingle <jlingle@hayeslaw.org>
Subject: RE: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

These matters were referred to the Special Referee by Judge Harrington. It would be appropriate for the Special Referee to hear matters in this case.

Caroline C. Leonard
Common Pleas Docket Manager
Charleston, County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401
ccleonard@charlestoncounty.org
843-958-5013 (Office)
843-958-5020 (Fax)

CourtPlus

From: Nina Meola <nmeola@hayeslaw.org>
Sent: Thursday, February 28, 2019 11:03 AM
To: Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>
Cc: John Hayes <jhayes@hayeslaw.org>; Brian Duffy <bduffy@duffyandyoung.com>; Dan <dan@slotchiverlaw.com>; keith mccarty <ikeithmccarty@gmail.com>; Jena Lingle <jlingle@hayeslaw.org>
Subject: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

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One Hamlin Place Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.
Case No.: 2017-CP-10-5245

HLF File No.: 120.001

Gary Keisler, Individually and as Class Representative, et al. vs Middlesex Holdings, LLC, et al.
Case No.: 2017-CP-10-05246
HLF File No.: 120.002

Dear Caroline:

Please find the attached correspondence from John Hayes in the above-referenced cases. Thank you.

Sincerely,

Nina E. Meola | Attorney at Law | Hayes Law Firm, LLC
180 Meeting Street | Suite 330 | Charleston, SC 29401
(843) 805-7003 | nmeola@hayeslaw.org | www.hayeslaw.org

HAYES LAW FIRM, LLC

180 Meeting Street – Suite 330
Charleston, South Carolina 29401
Tel: (843) 805-7003

John C. Hayes, IV
Email: jhayes@hayeslaw.org

Nina E. Mcola
Email: nmcola@hayeslaw.org

February 28, 2019

VIA EMAIL ONLY:
Caroline C. Leonard
100 Broad Street, Suite 106
Charleston, SC 29401
ccleonard@charlestoncounty.org

Re: *One Hamlin Place Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.*
Case No.: 2017-CP-10-5245
HLF File No.: 120.001

Gary Kelsler, Individually and as Class Representative, et al. vs Middlesex Holdings, LLC, et al.
Case No.: 2017-CP-10-05246
HLF File No.: 120.002

Dear Caroline:

Hope you are well. It has come to our attention that in the above-referenced cases, Defendants Wheelock Street Real Estate Land Fund, LP, Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc., Wheelock Street Investment Management, LLC I, II, & V, and Wheelock Street Investment Management, LLC have filed with the Court Motions to Vacate the Orders of Default and Motions to Vacate the Orders of Referral to the Special Referee against them. Judge Harrington signed the respective Orders of Default and Referral to Special Referee in this matter, attached hereto. Pursuant to Rule 53(b)-(c) SCRCP, this case (as to these Defendants) has been referred to the Special Referee. Jurisdiction to hear Defendants' motions stands with the Special Referee, Dan Slotchiver.

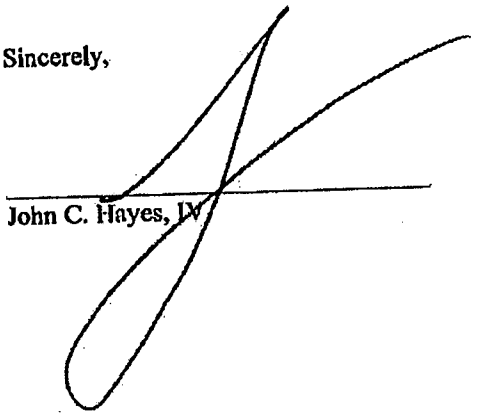
The Orders explicitly give the Special Referee jurisdiction over Defendant's motions, noting that he has jurisdiction over "all matters arising from or reasonably related to such action," including, but not limited to, "jurisdiction over any motions or actions to set aside Entry of Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b)." This is precisely what Defendants seek to do with its motions. Further, the Referral to Special Referee explicitly states, "**any and all hearings** shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County." [Emphasis added]

Defendants may move under Rule 60, but the proper jurisdiction is before the Special Referee, not the Circuit Court. See also *Wachovia Bank of South Carolina v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000), finding that the order of reference "gives the master jurisdiction over the case and all matters arising from it [including the Defendant's Rule 60(b) Motion] until the master has performed all duties assigned to him."

The Court has not set hearings on these motions, and we respectfully request that the Court confirm that Defendants must move the Special Referee to hear their motions. Thank you for your consideration in this matter.

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

Sincerely,



John C. Hayes, IV

Cc: Brian Duffy, Esq.
Dan Slotchiver, Esq.

EXHIBIT B-1

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

ONE HAMLIN PLACE TOWNHOME ASSOCIATION, INC., Plaintiff, -versus- JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., et al., Defendants.	Case No.: 2017-CP-10-5245

THE DEPOSITION OF RUSSELL T. MEASE was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Thursday, the 14th day of March 2019, at the offices of Robertson Hollingsworth Manos & Rahn, 550 King Street, Suite 300, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

A P P E A R A N C E S

For the Plaintiff:
McCARTY LAW FIRM
Attorneys at Law
1212 Wappoo Road
Charleston, SC 29407
BY: MR. I. KEITH McCARTY

For the Defendants:
ROBERTSON HOLLINGSWORTH MANOS & RAHN
Attorneys at Law
550 King Street, Suite 300
Charleston, SC 29403
BY: MR. THEODORE L. MANOS

HOWELL GIBSON & HUGHES
Attorneys at Law
P.O. Box 40
Beaufort, SC 29901
BY: MR. STEPHEN P. HUGHES (by phone)

COLLINS & LACY
Attorneys at Law
P.O. Box 12487
Columbia, SC 29211
BY: MR. ANDREW N. COLE

LUZURIAGA MIMS, LLP
Attorneys at Law
50 Immigration Street, Suite 200
Charleston, SC 29403
BY: MR. J. BARNWELL FISHBURNE, JR. (by phone)

NELSON MULLINS
Attorneys at Law
3751 Robert M. Grissom Parkway, Suite 300
Myrtle Beach, SC 29577
BY: MS. DONNA O. TILLIS (by phone)

YOUNG CLEMENT RIVERS
Attorneys at Law
25 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. STEPHEN L. BROWN (by phone)

A P P E A R A N C E S (cont.)

GALLIVAN WHITE & BOYD
Attorneys at Law
P.O. Box 22768
Charleston, SC 29413
BY: MR. JOHN A. JONES (by phone)

DUFFY & YOUNG
Attorneys at Law
96 Broad Street
Charleston, SC 29401
BY: MR. BRIAN C. DUFFY

YOUNG CLEMENT RIVERS
Attorneys at Law
25 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. JASON A. DAIGLE (by phone)

Reported by:
MS. JANICE O. DARBY
(843) 814-7666 (direct)

I N D E X

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By Mr. Duffy	

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Q And then building code compliance, failure analysis and forensic investigation is just a general catch-all about the roofing materials meeting the building code and/or the fasteners meeting the building code?

A In general, yes.

Q Yesterday when you were preparing for your deposition, did you meet with anybody or talk to anybody?

A I spoke to Mr. McCarty briefly.

Q Anything substantive in that conversation about documents, facts or otherwise?

A No. I really just wanted to know who had testified so far.

Q Did you speak to Mr. Glick?

A No.

Q What other documents, if any, did you review yesterday prior to giving your testimony today?

A Nothing that we haven't already discussed.

MR. MANOS: Thank you.

E X A M I N A T I O N

BY MR. DUFFY:

Q Mr. Mease, I'm Brian Duffy. I represent

RP Falcon and some associated entities. And I want to ask you first just a few follow-ups from my notes, and I'll start at the most recent. And I apologize. I'm sure I missed some things. I'll just ask you for some clarification.

You were recently going through the chart that had the different building codes, and it indicated that we are now directed to follow the BOCA National Building Code. Is that right?

A Again, I want to say it very clearly. The James Hardie document uses a conversion and points us to using those columns in the table. We're not really following the BOCA code. We are using a translated number from that column.

Q That was somehow associated from a switch to an international code?

A Correct. So when the international codes came out, they didn't perfectly align with either of the three codes. Those all were designed under the fastest mile wind speeds. So the international codes took us to the three-second gust wind speeds, so you couldn't directly translate to one of the old codes. We had to do a conversion. And they did their conversion to align with the BOCA data.

Q And when was that that the international

code took effect?

A We first used the IRC 2000 in South Carolina, July 1, 2002.

Q Now, also in the James Hardie materials we were comparing the siding nail versus a roofing nail. Do you recall that?

A Yes.

Q And the issue you had with the choice of the siding nail was the diameter of the face of the nail?

A Yeah, the head diameter which defines a capacity that's described by the HardiePlank installation instructions.

Q I was just curious about the fact that the siding nail is longer than the roofing nail that is shown. Is that right?

A Correct.

Q And is there any added benefit to having a two-inch nail versus a one-and-a-quarter-inch nail on the siding?

A I chuckle because I've heard a lot of engineers try to do their own evaluation of siding installations. And one of the things that they like to do is a pull test on a nail.

This fact of the roofing nail being

shorter than the siding nail kind of points to the fact that I've always said that usually that's not the failure mechanism. Usually the 5/16th inch board will pull through the nails, not the nails pull out of the wall. So it has to do with the failure mechanism. The weakest point in the chain is where you're going to lose capacity.

The length of the nail typically is not the problem. And that is pointed to by the HardiePlank instructions. They say you can use a short roofing nail or a longer siding nail. The shaft doesn't really play as far into the capacity as the head size. The head size is the critical element. When you think about that, more surface area on the face of the board gives you a better capacity.

Q And no other independent benefit from a longer nail for this application?

A You do get more pull-out capacity. But again, I don't think that's the typical failure mode, and that's what the instructions kind of point to.

Q Explain that for me a little bit, the benefit of the more pull-out capacity.

A Well, again, I say it's not really that

big of a benefit. It's just a fact. A longer nail installed into wood is going to have a higher pull-out capacity than a shorter nail. It's just physics. More shaft contact with the material, the wood.

So if Hardie tells you a roofing nail that has a one-and-a-half-inch shaft has a greater capacity than a siding nail that has a two-inch shaft, well, that tells me very clearly and quickly that the shaft length is not the weakest point in the chain.

Q Going back to a little bit of your earlier testimony, and we'll get through some other pictures and everything, but essentially in your overall approach, when you were on site, if you identified a repair that had been done that you noted or expected a repair had been done, did you document that in your notes and in the photos?

A Yes. I think I answered that earlier. Yes, I identified locations where it appeared that there had been repairs.

Q And Mr. Glick was the first person to contact you about this matter. Is that right?

A Yes.

Q Can you tell me -- Is he the one who gave

you essentially your marching orders in this case?

A Yes. I was essentially a subcontractor to Mr. Glick to provide expert information in these two areas that he asked me to do, the roofs and the siding installation.

Q The way Mr. Glick describes it, if you want to get 17 or 17A in front of you -- I'm looking on page 2 at the bottom of the introduction -- he refers to your visit with him to the property and describes that the purpose of it as getting a general understanding of the townhouse complex as well as the construction materials and methods of construction that have led to water intrusion.

Would you agree that that was the purpose of your work?

A Yes, in general.

Q And focus in particular on buildings 5 through 11 right now. I'll just ask you generally. With your analysis of the roofs on buildings 5 through 11, you did not find any materials or methods of construction that led to water intrusion. Is that right?

A I don't have the buildings memorized. I'll have to look and see.

MR. COLE: Do you have Exhibit 3?

BY MR. DUFFY:

Q If Exhibit 3 helps, please reference it. If it helps to check section D of the report where you address the roofs of buildings 7, 8, 9, 10 and 11, I don't see any reference to water intrusion.

A Well, building 8, in my notes I state that the Hydro-Stop roof is a thin application with no cant strips, areas of ponding and blistering. Blistering is created by water intrusion. I do note it on building 8.

Q Well, that gets me to a different question then. Are all of your opinions about any problems with the roofs reflected in Exhibit 17, or do we have to look somewhere else?

A No. Generally, 17 describes the conditions overall on the property. And I've identified and highlighted some specifics on certain buildings, but not every single detail that I saw is included in that report. That was one example that I just mentioned.

Q So you were referring to your notes, which is Exhibit 22. Is that right?

A I don't know the number.

Q These (indicating)?

A Yes.

Q And you were looking at building 8. Is that right?

A Yes.

Q And on the second line there's the word "blistering"?

A Yes.

Q Why don't you just go ahead and read for me your notes about building 8 so everybody knows what your handwriting is.

A "Hydro-Stop roof, thin application, no cant strips, areas of ponding, blistering, drip edge creating ponding, no kick-out at eave/parapet intersection, parapet trim with gaps both horizontal and vertical, backs of wood trim not painted with unacceptable moisture content, photos 26 through 36." And also there were photos 1 through 25 previously. Sorry.

Q You mentioned that you were the one who drafted section D of this Exhibit 17. Is that right?

A Yes.

Q There isn't a reference to blistering. Am I correct?

A Correct.

Q Is blistering a material part of your

opinion of analyzing building 8?

A Yes.

Q Well, tell me then the extent that blistering changes your opinion reflected in Exhibit 17.

A It doesn't. I mentioned that areas of improper installation are going to have to be repaired in the Hydro-Stop roofs before a proper installation is performed. This area of blistering will be captured as part of that work.

Q So is it fair to say that Mr. Glick approached you for the purpose of identifying the construction materials and methods of construction that have led to water intrusion?

I'm reading from his purpose, but generally I would like to know what you understood your role to be.

A Yes. I was there to evaluate the roofs, look for any evidence of water intrusion -- that's part of what we do all the time -- the materials and the products that were used and their application, were they done properly. That was all part of my purpose.

Q So beyond the blistering noted on building 8, which doesn't change any of your

recommendations, as I understand it, that's in Exhibit 17. Is that right?

A Correct.

Q Is there any other building with any other water intrusion among buildings 5 through 11?

And would you please note for the record what you're reviewing when you're answering.

A Building 11, image No. 326 from folder 1 shows some evidence of blistering on that roof.

Q You've been reviewing something over there. Have you been going through the pictures? Is that right?

A Yes.

Q So you've been going through the photos of buildings 5 through 11, and you identified photo number what?

A 326, I believe I said.

Q And you identified 326 as indicating some blistering?

A Correct.

(Discussion off the record.)

A There's also some evidence of blistering on building 10, photo 18 from folder No. 2.

BY MR. DUFFY:

Q I don't want you to end up going through

every photo right now, because we are going to go through them. But can you tell me what -- Just tell me how far you've gotten at this point. Which buildings have you been looking through the photos for?

A I don't recall.

Q I mean, if you're almost finished, great. But otherwise, I would rather that just ask you some more questions.

A Just the ones I've mentioned so far. Maybe one more.

Q In Exhibit 17, which is where your opinions have been articulated, is there any place where you identify blistering or water intrusion for any building 5 through 11?

A No.

Q And your purpose, you agreed earlier, was to get out there and find out what materials and methods led to water intrusion. Right?

A Correct.

Q And in the opinion you delivered to Mr. Glick you didn't identify anything for buildings 5 through 11 that had water intrusion. Correct?

A Well, I didn't identify the blistering on any of the buildings. It's just something that I

captured in my notes. I spent more time talking about the deficiencies in the installation and what I felt were the necessary means to correct them.

Q Is it fair to say blistering was not high on your list of concerns?

A Sure, it is.

Q Well, it didn't make it into your report, though, did it?

A That's right. But like I said, it's a symptom of a bad installation. It's a symptom of the thin application that I did document. I didn't put every single thing that I saw in the field in the report. I was being general in nature.

Q Well, if you look at the descriptions of building 1, 3, for example, you indicate there's evidence of water intrusion, which was one of the primary purposes, as you've just said, of what your work was. But you didn't indicate that for 5 through 11. Right?

A Yes, as I said a minute ago.

Q Now you're telling me that there's blistering that gives you concerns about water intrusion for some of those buildings?

A Yes.

Q But you didn't think to include that as

part of your opinions to deliver in the report. Why not?

A Again, it's a symptom of a bad installation. I was looking more at the Hydro-Stop installation as the cause -- excuse me, the problems with the installation. There were a few symptoms. The blistering, I didn't see it everywhere, but I did see evidence of it. But for whatever reason, I just didn't include it in the report.

Q And what causes blistering?

A Water intrusion.

Q You said it's a symptom of poor installation. Can you tell me something more direct than that?

A Yes. The problem is it's very thin, as I mentioned. You have to remember, Hydro-Stop is a water soluble product. So it counts on the buildup of that material to resist water intrusion. When you have a thin application and you have moisture sitting on that roof every day like we talked about, probably twice a day most days, when the dew settles on the building, then over time that's going to test that installation and its resistance to water. If it's very thin, it's more apt to let moisture come through.

Now, it's not necessarily a hole in the roof that's allowing a big leak like you would see on the inside. But it does allow some of that moisture to seep beneath the fabric, which we see typically as blistering.

Q How many projects have you worked on by essentially what you described as a subcontracting effort for Mr. Glick?

A Maybe three.

Q How many times have you worked on projects with Mr. McCarty or Mr. Hayes?

A Probably over the ten years that I've known them, I would guess maybe ten.

Q Are there instances when either of those attorneys or Mr. Glick contacted you for your analysis where you found that there were no problems with the roofs?

A Well, it's not always roofs. I look at a lot of things for them.

But no. Every case that I have worked with them on there's a reason to have a case. There are problems. So, yes, I find deficiencies. If there were no deficiencies, there wouldn't be a case.

Q Do you recall any instances where any of

those three gentlemen approached you to work on a case where you declined?

A Now you're really testing my memory. Because if it didn't turn into a job, I'm not sure that I'm going to remember it very well.

Nothing comes to mind, but I can't say that for 100 percent surety.

Q Now, all your work, am I correct, as a forensic consultant involves a claim of some sort. Is that right?

A Not always. Sometimes I'm asked to forensically evaluate a building for purposes of someone potentially buying a property. So it's an assessment. It's the same skill set. But it's not for litigation. It's just for evaluation. I've done that quite a few times.

Q Let's say on average for the last five years, what percentage of your income is derived by that type of analysis that doesn't involve a claim versus the kind that involves a claim?

A Well, based on income, it's very small because it's not nearly as involved as a forensic investigation, writing reports, and going out and doing multiple field visits and those type of things.

So financially, not very much. But I've done them several -- I would say on average over the last 15 years -- Gosh, it's hard to say. Probably two to four a year, maybe.

Q I'm not going to press further, but just give me an understanding of how much of your income is the non-claim-related analysis versus the claim-related analysis?

A Like I say, it's going to be a very small percentage.

Q Five percent? One percent?

A I don't know a number, but it's a very small percentage. Because those are usually a couple hours looking at a building and reporting to a potential buyer. It's not even an all-day investigation like this. It's going to be a small percentage.

Q Mr. Mease, Mr. Glick mentioned that he talked with you at length after your visit, and I believe he was referencing your photos. Do you recall discussions with Mr. Glick?

A Yes. Like I said, we did discuss the findings. He wanted to know what I saw. As I recall, he related a few things that he found in the walls that we chatted about.

Q Did any of that discussion that you understand lead to something that's in Exhibit 17, or was Exhibit 17 something -- your contributions shown in 17A developed independent of that discussion?

A No. My findings were independent. The discussions we had were around what I said in the report. What I relayed to him is what I put in the document.

Q Did you have that discussion before you had delivered your part of the report or after?

A No. It was before. We talked on site at the end of the day, the day of the investigation.

Q Any other discussions after that that you recall?

A Maybe. I don't remember.

Q In your opinion, can you just broadly describe what the purpose of a roof is on a residential structure.

A I tell people all the time: If your roof is bad or your foundation is bad, it doesn't really matter what's in the middle. So the roof is very important to the structure because it protects the elements of the building that are not designed to be exposed to the weather. That is the interior

components and also the framing of the building.

Q And so if I understand your point correctly, it's protecting the structure and what's inside from the weather?

A Correct, as the code says.

Q Is there anywhere in buildings 5 through 11 that you recall where the roof is not protecting the inside from the weather?

A It was related to me that one instance that we talked about earlier with the shingles on the back dormer. I don't remember the unit number. But again, me personally, no, I've not been inside any of the buildings.

Q So the roofs generally are serving their purpose?

A Based on the information that I have right now, yes, they are generally serving their purpose.

Q I'm looking on page 3 of Exhibit 17. Page 3 of Exhibit 17A, you have bracketed the one paragraph beginning "the HardiePlank." Do you see that?

A Yes.

Q Have you discussed all of your opinions relevant to that paragraph with Mr. Manos earlier

today?

A Yes.

Q And item Nos. 2 and 3 in the list below -- the lack of proper fasteners and the lack of fasteners in studs -- have you given us all the bases for your opinions relative to Nos. 2 and 3?

A Yes. That had to do with the NER 405 regulation.

Q Now I'm going to focus on section D of the report. You start talking first about 7, 8, 9, 10 and 11 in that first paragraph, that they are covered with a Hydro-Stop liquid-applied membrane. Do you know which particular product was applied? Which Hydro-Stop product?

A Not specifically, no. You would have to see the buckets to know that.

Q Do you have an understanding of whether or not the applications differ depending on which Hydro-Stop product is used?

A Not according to the specification about insulation over plywood. They tell you that you have to use -- Premium coat is what they call it.

Q And you're consulting the Hydro-Stop manual that you were talking about earlier with Mr. Manos. Is that right?

A Yes.

Q Do you have an understanding of how that Hydro-Stop membrane ages, what's the ordinary wear and tear for it?

A Yeah. Like I said earlier, if you have a proper application, then most of the products require a five to seven year recoating of the finish coat.

Q And do you have any understanding whether any of these buildings 7, 8, 9, 10 and 11 have a refinish?

A I have no information on that. Did not appear to be based on the visual observations.

Q Now, I read that this is what's called a self-flashing membrane. Is that accurate?

A I'm not sure what's meant by that. A membrane is waterproof. So, yes, it would be self-flashing as long as it's installed properly. That's the purpose of the product.

Q Beyond that, you don't have any understanding what they would intend self-flashing to mean in the Hydro-Stop materials?

A I'd be glad to look at the specific information around that term so I could understand it. But it's a waterproofing membrane. It should

be self-flashing. That's what it does. It sheds water.

Q One of your criticisms is the thinness of the application. Is that right?

A Yes.

Q Did you take any measurements of what was there?

A I couldn't without disturbing the membrane. I had no way to patch it. So my basis is in the fact that you could see all of the reinforcing materials through the last coat of Hydro-Stop. In fact, you could actually take your finger and pick at the edge of those fabric installations, which should not be possible if it's properly laid up.

Q And what are those materials that you're referring to?

A Well, it's talked about here in the manual. Foundation coats, the Hydro-Stop polyester non-woven stitch bonded and heat-set fabric, and then the finish coats.

Q Did you draft the language that says "the fabric used in the application is not fully impregnated with material and is telegraphing through the installation"?

A Yes, I did.

Q Doesn't sound like a math major. I'm impressed.

A Thank you.

Q Can you describe for me what you mean by that a little bit more, please? "The fabric used in the application is not fully impregnated with material," what does that mean?

A I think a picture is worth a thousand words. I would rather show you because it's very apparent when you see the photographs. So give me just a second to find one.

Very quickly, if you'll look in folder 2, image No. 8, I think this is on building 10. I'm not sure what that exhibit number is.

Q It should be 33. And you're looking at No. 8?

A Yes. IMG_8. When you look at that photograph, you can clearly see the definitive edges of each of the fabric underlayments that have been placed. In fact, you can take your finger or a knife and pick that edge up and pull that fabric up. If you have two base coats and two finish coats, there's no way we should be able to see that fabric with that clarity.

Q And so you're referring on image 8 to the line that goes from top to bottom vertically that's about sort of the left third of the page, and then in the middle of that there's one that goes across horizontally?

A Right. Those are the edges of the reinforcing fabric. We should not be able to see them with that clarity.

Q Now, similar to the TPO, obviously a different application, the Hydro-Stop liquid membrane is something that you can patch. Is that right?

A Yes. And that's why I say in my recommendations that repairs can be made to the system and bring it up to the standards required by the manufacturer and I didn't call for complete replacement.

MR. DUFFY: Why don't we stop there. To be continued.

(The deposition adjourned.)

EXHIBIT B-2

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2017-CP-10-5245

ONE HAMLIN PLACE TOWNHOME ASSOCIATION, INC.,

Plaintiff,

vs.

JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., AS SUCCESSOR BY STATUTORY MERGER TO JOHN WIELAND HOMES AND NEIGHBORHOODS OF SOUTH CAROLINA, INC., et al.,

Defendants.

* * * * * * * * * * * * * * * * *

VOLUME I

DEPOSITION OF: MYLES GLICK, AIA, LEED, AP

DATE TAKEN: Friday, March 8, 2019

TIME: 10:07 a.m.

PLACE: Young Clement Rivers
25 Calhoun Street, 4th Floor
Charleston, South Carolina

REPORTED BY: EVE WILBANKS
Registered Professional Reporter, Certified LiveNote Reporter and Notary Public

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package. It was 2024. And it was site visit 6/12/2018.

Q. 6/12/2018. Are there photos with it?

A. There was no written report. I've got the photos in front of me, yes, sir.

Q. And they're dated June 12th of '18?

A. Yes, sir.

Q. Okay.

A. And it should have been in the --

Q. I don't see that they're in my documents. That doesn't mean that they weren't at some point. Any others that you can think of?

A. No. There was just those two trips after the initial two days of destructive testing.

MR. MCKIE: What was the unit number?

MR. MANOS: 2024.

BY MR. MANOS:

Q. Going back to the plans, when I interrupted myself, we were talking about the plans -- and I'm paraphrasing, Mr. Glick, but you said, in your mind, the plans that you reviewed were totally inadequate, but your report did not focus on the plans themselves; and you generally said that you thought at some point you may be receiving additional plans that were used to

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kind of --

Q. What is it about the yellow that makes you believe it's not Hardie?

A. Hardie doesn't have yellow on the back. It has that little stamp that I took a picture of. It's all the same gray color. This is the only place we actually found that.

Q. When you're doing destructive test 27 -- go to 86, please. Are you with me, Myles?

A. Yes. I've got it.

Q. 86 should be a "Vertical flashing leg too short" photo.

A. Yes.

Q. This tells us that destructive test 27 was in the rear on the side with the white panel?

A. Yes. And what is really interesting about this is actually what's shown on 84 and 85 leading up to this, and that is, this is building 10. This is the latest building -- this is 2014. And as you can see from my meter readings, I got 38.3 percent and 32.7. This wall is wet. And I did not dare open it up.

MR. MCKIE: What slide are those meter readings on?

MR. MANOS: 84 and 85.

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show the condition of the sheathing underneath, correct?

A. Correct. That means it was probably solid.

Q. Let's go to building 7, unit 2020.

A. But you did notice that there was no fastener?

Q. Yeah. I can read certainly where you're pointing out issues.

A. Okay. What number now?

Q. We're going to 116.

A. Unit 2020.

Q. What am I looking at in 118?

A. These people said they had a bunch of concerns about floors dropping. And it was in fact a heck of a gap. In 117, I stuck my ruler under there. That's probably a little less than an eighth of an inch thick.

Q. And then you go back in 120 as well. Other than observing that condition, did you do any specific investigation?

A. No. I believe this was at the second floor.

Q. Okay.

MR. MCKIE: Teddy, just real quick.

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There were no test cuts in that unit?

THE WITNESS: No. It was just interior. You know, they let the people know that I'm there. And then they say, Can you come look? I've got these issues. They showed me their deckboards that just weren't cut right on 123. That's just really bad craftsmanship. That's not movement; that's just bad.

BY MR. MANOS:

Q. Pushing on to 124, this drywall crack that we see over -- is that a framed doorway?

A. Yes.

Q. And this is one of the ones we talked about earlier; you made an observation, but you haven't done any specific investigation of what might be causing that?

A. Correct.

Q. Going to DT-31, unit 2016 at building 7, slide 138, Myles, where you're noting sheathing deterioration --

A. Yes, sir.

Q. -- if you look at the slide before, at 137, we're again in an area underneath this white panelling, correct?

A. Yes.

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is waived by the Deponent.

MYLES GLICK, AIA, LEED, AP, PREVIOUSLY SWORN.

EXAMINATION

BY MR. MCKIE:

Q. Mr. Glick, my name is Blake McKie. I am representing several different entities that are responsible for a portion of the buildings at this project. If you've got your report in front of you, on page 2, it lists several different buildings, 1 through 11.

And as we discussed last Friday, the companies that I represent, we're referring to them collectively as the Wheelock Defendants. And I'll represent to you that buildings 5 through 11, which were constructed in or around 2013 and 2014, are buildings that were done by a Wheelock-related entity. And that's going to be the focus of my questions, most of which were covered on Friday by Teddy, so I'm not going to rehash a lot of the construction issues, but I did have some follow-up questions and questions specific to some of the

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test cuts that you did on Wheelock-built units.

If you will turn with me to page 10 of your report, one of the units that I don't think we discussed on Friday is unit 3065. If you'd look at destructive testing entry No. 18, just a question for you there, I noticed in the report that the double-flange window and dry sheathing, the items that you list under that DT, are in bold. Is there any reason for that, or is that just a typographical issue?

A. There's no significance to it.

Q. And then just one other bit of housekeeping on that unit, I noticed, starting at DT-18, it lists unit 3065 as being building 9. But then further down, if you look at DT-21 and -22, also unit 3065, it's listing it as building 11. Can you clarify that for me?

A. It's all building 9 if it's unit 3065.

Q. I'm going to hand you Exhibit 14. And if you could turn with me to slide 194, please.

MR. COLE: Which exhibit?

MR. MCKIE: 14, November 2nd photos.

BY MR. MCKIE:

Q. All right, Myles. I don't think we had any questions on Friday related to this unit

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specifically, so I just want to go through some of the issues there, which I imagine will be similar to what we spent Friday talking about. But can you walk me through the destructive testing you did? And for your reference, it's DT-18, DT-19, -21 and -22 appear to be test cuts in or around this unit. And I think your comments start on 196.

A. They're all in the same area of the white panels in the back. The windows are identified by the profile of the window itself, the exterior profile. That's why it has the comment under 18, "Double-flange window." I'm trying to find where we opened it up. I think it's further on.

Q. If you look at 223 -- slide 223, there's some additional photographs there of this unit. On 223 --

A. If you look at 227, it's the opening of the DT. They're not in order, as I explained last Friday, because this is the order they were taken in, because I had two crews. So I was going back between buildings. So you would take a before picture; you'd tell the crew to take something off; then you'd go run to another building and go

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document what the other crew did.

But you look at 227 and you can see that the -- the same problems existed in terms of the caulked-shut flashing. But in this case, the OSB was dry.

Q. And where is that photo taken?

A. That's between the drip and the bottom of the window, 227.

Q. And then I guess if we work our way backwards, slide 226, you've got a notation there, "Flashing caulked shut"?

A. Correct.

Q. Can you talk me through that again, the issues with that?

A. You've got a board, a HardiePlank board, that is seen in 194. And that is against the flashing at the drip. And you can see on the left side of my picture, right above the word "Flashing caulked shut" on 226, that I'm pointing with my awl at the caulk. We had to actually cut the caulk to get the board out. So it should have been a quarter-inch space; by holding that board against the flashing, you seal everything shut.

Q. 225, what are you showing there?

A. It's the space between the windows, and

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it demonstrates the double-flange window.

Q. 224, talk to me about that photograph.

A. 224 is a good example of, again, the lack of caulking, where the trim board meets the actual panel. And you can see the little pieces of caulking that are there, that they're just very skinny; and, as a consequence, you'll see where the water intrusion has ended up on the metal between the boards. So you're getting some vertical movement of water intrusion. In this case, it is hitting the flashing and discoloring it.

Q. And then 223?

A. 223 shows the reverse-lap. After you remove that same board we've been talking about, the Tyvek or the WRB is on the wrong side of the vertical leg of the flashing.

Q. Again, these issues that you're identifying in 3065 are consistent throughout the project, correct?

A. Yes, sir.

Q. On your report, on page 10, DT-22, "Lack of blocking for trim board," is that -- is there a photograph that corresponds with that?

A. Yes, there is, actually. It may be in

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the next set or further back. I actually pointed that out last Friday. I came across those photos. There's two or three where there's literally nothing. There's a board, and you put your hand in the back of it, and there's a space of 4, inches.

Q. That was my next question. What you're indicating in DT-22 was present in other areas; it's not specific to unit 3065?

A. No. It was the only place I found it. The before picture is 200 for that particular location of DT-22. So when you remove that board that has the tape on it, there's literally nothing in back of it. I don't know how it was held in.

Q. So slide 200 where you indicate "Lack of blocking behind trim"?

A. And then if you go to 219, I've cut that board now, and there's literally nothing there.

Q. And 219 is showing the lack of blocking support on unit 3081; is that correct?

A. Correct. And all the way to the right you can see there's a tie-down brace that's not nailed to anything either. So it's a framing -- two framing problems there; without the blocking, there's nothing to nail the brace to. So that

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picture actually has two problems with it.

Q. I'm going to jump around a bit. If you can go to slide 163 for me, we talked about this on Friday.

A. 163?

Q. Yes.

A. It looks like a before picture of DT-17.

Q. Okay. And then continuing on through to 164, another -- I just want it clear for the record, it's just another typical issue that you found there, "Lack of proper caulk joints"; is that what you're indicating in that photograph?

A. Yes, sir.

Q. Have you done any analysis -- I think Teddy asked you this on Friday -- about who built what units or what buildings on this project?

A. Well, I have in my report that there were buildings built at different times. I was aware that there were a number of different companies, my understanding was all associated with John Wieland Homes, and they all had the John Wieland Tyvek. So there's probably some nuances to the relationships that don't fall in my bailiwick, but the attorneys can take care of -- I was aware of it, but what was really interesting

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is I testified on Friday that the massive amount of construction deficiencies that were found -- really on building 1 -- exist on all the buildings, which is odd, given that there was supposedly two companies and different people and a number of years in between. The only difference was the magnitude of the damage. They're newer buildings; they're moving in the right direction in terms of damage, if that could be considered right, but we don't want any damage. But it has been definitely illustrated throughout all the photographs that all the buildings have those problems; it's just one variation or another in terms of moisture intrusion.

Q. But you've made no effort to divvy up who did what in each of those units?

A. No, sir.

Q. And this may have also been covered on Friday, but can you tell me how you decided what buildings to cut and what units to cut?

A. Uh, yes. It originally started out as a walk-through of the units to understand if I could see what was happening, and building 1 provided a clue. The other clue was just looking around on the outside to see that it appeared that every

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building was built the exact same way, just by the way the materials were laying on top of each other; the flashing was caulked shut, things of that nature. You could see that with your naked eye. So I wanted to test that, and I believe I touched every single building to make sure in fact it was built the exact same way, and it was. So it was really a decision driven by construction deficiencies allowing water intrusion, and then just following through.

Q. And it's my understanding that you don't have any plans to do additional testing or investigation at this property; is that correct?

A. Correct.

Q. If you could, go to what we've marked as Exhibit 15, and it's your November 3rd, 2017, photographs. Slide 163 --

A. If you could hand me that, I'd appreciate it. Thank you. You said 163?

Q. 163. And this appears to be showing a photograph of unit 3077 at building 9. You've got it labeled as DT No. 35. You've indicated there "HVAC drain above dripping on negative sloped flashing without end dams." I just wanted you to confirm for me that this issue was an

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isolated issue to this unit; is that correct?

A. Yes, sir.

Q. So there are no other buildings and no other units where you saw this issue?

A. Well, the issue -- let's break it down. There were a lot of places where I saw negative flashing without end dams. That's consistent throughout the project. What is different about this is the owner in this case thought she had water intrusion, I believe I testified to. And, you know, I think if we go and open this up, this is the one that had the pictures with my hand wet on 167. I literally opened it up and you could see the Tyvek backwards with the flashing. The flashing too short in the vertical leg.

So in my estimation, because it had not rained for a week, that moisture that was behind the siding is coming from the dripping. So unless someone pointed that out to me, I didn't really investigate that particular issue. She happened to point that out to me because she had mentioned on the inside that she had the window touched up, the trim, drywall, that she was getting moisture. And she asked me to find out where it was coming from. It was probably not a good idea to have a

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drip uncontrolled from that high up. It should have been draining to the bottom of the building in a more controlled manner. Really just a PVC inside the wall; that's how it's usually done.

This thing kind of sticks out with a fake louver over it, which is a good way to hide it. But as you can see in 163, the water stains are on the building; they're wearing the paint, unusually so, from other areas just around it. It just sticks out like a sore thumb.

Q. And that HVAC drain that's dripping, I guess my question was, did you see other units with dripping issues like this?

A. There was one other that's in the package, where the drain is actually about 6 inches above the trim. I actually had gotten them mixed up, if you recall, between the two units. So there's two pictures in here that that happened. But I saw that one just by myself. This owner pointed this out to me.

Q. Going back to your report, if you would turn with me to page 6 and then to the top of page 7, can you tell me -- and I'm concerned with units 2020, 2044, 3077, and then 3017. These are all under a category, it's noted as "Interior

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observations." Can you tell me which of those four units that I've just listed that you only did an interior observation on?

From what I can tell, I think it's just 2020 from the others that ended up having test cuts done on them. But can you confirm that for me?

A. The only ones that I believe were after this list on page 6 was, I believe, 2024, where they asked me to come over in June of 2018, and they had water intrusion. And that was Exhibit 19.

Q. So 2020 and 2024 interior observations only, no test cuts, correct?

A. Correct. I was inside the unit. I didn't make any interior test cuts. There was no need to do that in people's houses.

Q. That was my next question for you. Any reason why there was no destructive testing done on unit 2020?

A. Just not to rip up somebody's house and have a hole in their drywall when it wasn't necessary. It's an invasive process, and people don't even like holes in the outside; this particular group wanted those holes to be fixed

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after we got done very, very well. Even if we had a piece of bent flashing, we had CRC go back and actually replace the flashing, even though it's going to come off eventually.

Q. What I'm getting at is, the issues that were present in units 2020 and 2024, these were issues that were pervasive, if will you will, throughout the project and, therefore, you didn't feel a need to do testing on those particular units?

A. Well, I can't tell you if they're pervasive throughout the entire project because I only went in those few units. That's a pretty small sampling.

Q. And can you remind me again, the presence of termites where you noted that, I think it was just a couple of units; is that correct?

A. 3013 and 3017 had massive termites.

Q. And 3013 is in which building?

A. Number 1.

Q. And is that the same with 3017?

A. Yes, sir.

Q. The buildings that were constructed in 2013 and 2014, are there any issues in those later-constructed buildings that are separate and

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unique from the earlier buildings done in 2009 through 2011?

A. The only -- one issue that I found that was really just unique was the lack of blocking in DT-22.

Q. Talk to me about that.

A. That's the one we talked about a few months (sic) ago. It was just a screw-up in the framing. But all the other issues were the same.

Q. So that was --

A. Let me go back to one of my answers. I was just flipping through. On page 10, I do note live termites in DT-23. And that is 3017. So, yes, both those units, 3013 and 3017, are the ones that had live termites. I just wanted to confirm that.

Q. Can you point to me -- we were just talking about DT-22 and that unique issue to the later-constructed buildings. Can you point to me in the slides where that is and where you've indicated that? To me, it looks like it's around slide 221 or so in your November 2nd, 2017, photograph.

A. Yes. It's 220. And -- I'm sorry, 219 and 220. That's it. And that's the brace I was

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talking about. The steel brace in 219 is a tie-down. And that's over a screened porch.

Q. All right. A couple more for you. There were some photographs shown to you, and I think it looks like in Exhibit 19 -- maybe not. -- no. Strike that.

There's some photographs of some stair repairs. It's actually Exhibit 7.

A. It looks like it's Exhibit No. 7, unit 3013.

Q. And we may have covered this on Friday, but I didn't have it in my notes. Can you talk me through that issue and what prompted those photographs to be taken?

A. I received a call from Mr. Hayes that one of the units was repairing their stairs. They were just rotted. And they wanted me to go out there, and this was the status of the stairs when I got there. And they had replaced, as you can see in the photographs, a lot of pickets.

I think what is significant -- extremely significant -- there's no numbers because it's one Exhibit. But there are a number of pictures of demolition, and I'll just describe them as a piece of framing with a nail sticking out. And I can

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mark them if you'd like. The end of the nail and then another photograph with the head of the nail, those nails are incredibly rusty, so it is my opinion that these stairs rotted and fell apart because they did not have galvanized nails, which are required by code. So these stairs and the cost of repair is a real construction deficiency, and I'm afraid that the other stairs are made as well the same way. I don't have any proof of that, because the only other stair that was being rebuilt and that demolition pieces of had been removed is the very first building. The first day I got there, they already had replaced them. You can see because it wasn't painted, but the debris was gone. So now we've got two stairs that are rotted, and I really did not investigate the others because this unit, Exhibit 7, was in 2018. So it looks like we're starting to have some problems with pickets and framing with nongalvanized nails.

Q. That was going to be my next question. So you do your destructive testing in early November of 2017, and then this was at a later visit in 2018 to inspect this issue?

A. They asked me to look at it. I really

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didn't do an inspection. I pulled up, and most of it was rebuilt. But there was a pile of bad wood, so I just took pictures. I did not take anything apart. It had already been taken apart.

Q. But this is not an issue that you explored in November of 2017?

A. No.

Q. One other question that I wanted to ask you, I know you've been involved in some prior cases as an expert in which Wheelock -- where a Wheelock-related entity was a named defendant. Do you have any general opinions of them as an entity or their related entities?

A. If you're referring to the project called Waverly, my opinion is, I believe John Wieland Homes and Wheelock did a very, very poor job as a developer, as a general contractor, managing the subs, managing the jobs. Because, again, all the projects -- all the buildings -- and Waverly had the exact same problems as well -- not necessarily the exact same ones that are on One Hamlin Place, but very, very similar, actually, because of the nature of the construction. I would not give them high grades.

Q. And outside of --

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A. And one other thing, or the subs. I mean, this was a problem from the top down. I mean, the developer, the contractor -- the general contractor, and all the subcontractors. Nobody did anything right, and it never looked like there was any supervision on the job, which is called for in state law by the general contractor. And I think that's why we have so many problems with these projects. It's just -- someone ran the job that no one could identify who ran it. That's what it looks like to me. If we had an isolated stair that fell apart, that's not a lawsuit. I mean, something went wrong; they didn't treat the wood right. It's unfortunate, but, I mean, we've got problems throughout these buildings.

Q. And when you say "these buildings," you're referring collectively to what you saw in Waverly and what you're seeing in One Hamlin?

A. Yes, sir.

Q. Have you been involved as an expert in any other cases, aside from Waverly and this One Hamlin case, in which a Wheelock defendant was involved, that you're aware of?

A. I don't believe so.

Q. We covered this on Friday, I believe,

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but my understanding is you're deferring all of the roofing-related issues and opinions related to that to Russell Mease, correct?

A. Yes, sir.

Q. There were some mention made to plans that would have been used on this One Hamlin project. And correct me if I'm wrong, but you had been provided a set of plans from, I believe, Mr. McCarty at some point in 2015; is that right?

A. I believe it was 2017, and it was Mr. McCarty. I didn't have any plans from him originally. But the plan that is mentioned, I must have had from Waverly. Because you can see they're the same units. I mean, they literally are the same building, a unit. Because, again, they're unit plans; they're not building plans. And they seem to not have the same -- let me rephrase that. The plans I got for Waverly, and the plans I got from One Hamlin Place just seemed to have no architectural detailing. And I'm amazed. I mean, companies as big as John Wieland and its successor, Wheelock, I mean, they build these units all over the place. These are all computer-generated; they're not hand-drafted, in other words. Their software -- it's probably in

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their files.

I know that Keith McCarty had a hard time getting a set, maybe because they couldn't find them. I'm not saying anyone was holding them back. It's just, again, they came. And when they finally came, they're structural or electrical, there's no architectural. I don't know what somebody was supposed to build other than what they thought they should build.

Q. Is it your belief that the same set of plans was used on this One Hamlin project from 2009 through the last building, 2014?

A. Well, I only have the set of plans that Mr. McCarty gave me. So I haven't checked the dates on those. But the units are all built the same in the field, but that doesn't say much. Because I just testified that there's no architectural detailing, so I don't think they used plans for that. They may have used the structural plans for the unit types. I can't say they didn't.

Q. In your report, on page 2, in the introduction, you make reference to the International Residential Code, IRC.

A. Yes, sir.

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Q. It says that the 2006 and 2009 IRC would apply to the original construction. At what point did the 2009 code apply?

A. It probably came in for the later phases, in '13 and '14. There's no change to the provisions, though.

Q. That was my question.

A. The code doesn't change that much. I'm sure that the 2009 code -- it wasn't adopted in 2009. It was later than that. So I suspect it was in play for '13 and '14, and then the 2006 was the first two groups, 2009, 2011.

Q. But -- you jumped to my question there -- no drastic differences in the provisions from the '06 to '09 code that would be an issue here?

A. No. All the deficiencies that are listed here are the same deficiencies in both codes.

Q. I had a note -- you had some comments on unit 2008, about a poor choice of boards. Do you recall what that was? And if you don't, that's fine. It's just a note I had from Friday.

A. I don't recall. It's building 6, but I don't recall what we said.

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MR. MCKIE: All right, Mr. Glick. I may have some follow-ups, but I appreciate your time. Thank you.

THE WITNESS: Thank you.

EXAMINATION

BY MR. COLE:

Q. I'm going to sit here, unless you need me to move down. I'll try to speak up, and we've got the speakers in the middle of us here.

Myles, did you ever get a copy of the original or any of the Amended Complaints that were filed in this case?

A. I cannot tell you one way or the other, sitting here today.

Q. Do you know what any of the named Defendants or third-party Defendants actually did on the project?

A. I've not seen any subcontractor's particular job.

Q. You're not intending to offer any opinions about what any particular scope of work of any of the subs would have been?

A. Not at this time.

Q. You were asked some questions about the different developers of the properties. And I

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EXHIBIT B-3

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

ONE HAMLIN PLACE TOWNHOME ASSOCIATION, INC.,	)	
Plaintiff,	)	
-versus-	)	Case No.: 2017-CP-10-5245
JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., et al.,	)	
Defendants.	)	

THE DEPOSITION OF PAUL KENNEDY was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 p.m. on Wednesday, the 17th day of April 2019, at the offices of Robertson Hollingsworth Manos & Rahn, 550 King Street, Suite 300, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

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outside of the four partners. So 23 in total.

Q So 23, four partners. How many administrative and not hammering nails?

A We have three administrators, three project managers outside of Patrick.

Q That gets us to ten. So there's about nine people hammering nails?

A So there's three guys that are essentially assistant superintendents, and then the remainder five would be true superintendents. And the assistant superintendents fluctuate where they will perform work as well depending upon the project.

Q So you-all don't really employ master craftsmen to do woodwork and siding and stuff like that on any regular basis?

A That's correct, yes.

MR. MANOS: I'm going to pass you on to some of the other lawyers. If you want to take a quick break, we can do that.

(Recess taken.)

E X A M I N A T I O N

BY MR. McKIE:

Q Mr. Kennedy, my name is Blake McKie. I represent RP Falcon and some associated entities in

this lawsuit. RP Falcon is formerly known as JW Homes. Do you have any knowledge about that company?

A I do not, no.

Q Do you have any knowledge in the general sense of who built the 11 buildings at One Hamlin Place?

A Other than, I guess, seeing the design documents that indicate Wieland and the litigation captions that I've received, that's the only thing that I know about the contractor, I guess.

Q So you're not in a position to provide any testimony about who built which building at One Hamlin Place?

A That's correct.

Q Do you know when the various buildings were built? I'm looking for years.

A I do not.

Q Your repair estimates were completed in June of 2018. Is that correct?

A I believe it was May, but I'd have to go back and take a look at that.

Q Prior to May or June of 2018 when the repair estimates were completed by you, how many times had you been out to the One Hamlin Place

property?

A Probably less than five.

Q And in those five visits, did you view any destructive testing?

A No.

Q Since May or June of 2018 when you completed the repair estimates, have you been back out to the property?

A Been out maybe a couple of times to meet with the board, I guess, and the board meetings.

Q Aside from board meetings, no other visits to the property?

A No.

Q On any of your visits to the property did you physically enter a unit?

A Yes, we did.

Q How many units do you think you have set foot in?

A Less than probably five.

Q And you have -- I know you've got a missing notebook, but do you have a record of what units you physically set foot in?

A Yeah, I don't believe I kept a record of that.

Q As you sit here today, can you recall

which units you stepped foot in?

A I cannot.

Q Do you know which buildings those units were in?

A I do not.

Q How many different occasions have you communicated in person with any unit owners?

A Just the board, I guess, ultimately. And in person, I've met them I think twice or three times now.

Q How many times did you meet in person with the board prior to creating your repair estimate?

A I don't know that I met with them at all.

Q So the couple of times you've met with the board was after creating the repair estimates. Correct?

A Yes.

Q Have Mr. McCarty's or Mr. Hayes' law firm or the board asked you to update your repair estimates since May or June of 2018?

A No.

Q Do you have any plans to do so?

A No.

Q Do you anticipate doing any additional

work at One Hamlin Place?

A Not at this time, no.

Q If you could pull -- I forget the exhibit number. Maybe someone can help me out. The Excel spreadsheet.

A 45 is the partial.

Q If you can pull up the sheet -- I think it's sheet 1, whatever page that would be, and tell me what exhibit that is.

A Sheet No. 2, I guess, was the other exhibit.

Q I don't want that, the other one. What number is that?

MS. MEOLA: 45.

BY MR. McKIE:

Q If you look in the bottom left-hand corner of that document, there is a section that's in bold. Do you see what I'm looking at there?

A A section that is in bold?

Q You might need to turn to the next page where everything is totaled at the bottom. So the last sheet of Exhibit 45. Do you see the bold section there?

A Yes. That starts with line item 101 --

Q 101, correct. Just so I have it clear in

my mind, line items 101 to 105 in column B stretching through F there, scope of work, insurance and business licenses, fee, P&P bond, A/E fee, what is the purpose of this section right here?

A I guess the purpose of it is that it describes each of the components of the overall costs associated with the project that are outside the scope.

Q Outside the scope of what?

A Scope of repairs. So ultimately, there's scope of work in the items, I guess, 1 through 98. And then quantified, I guess, in line items 101. 102 illustrates the insurance and business license fees. And then our general construction fee on 103. And then a performance and payment bond on 104. And then an A&E fee on 105.

Q So that has nothing to do with the repair estimate that you put together for building 1?

A I mean, it does have something to do with the estimate as to the fact that I would be required to pay business license fees and have an insurance policy in place for that. And ultimately, I'm not going to do it free of charge. So it's going to have some cost associated with it. If the owner requires that there be a performance and payment

bond, as most construction litigation projects do, then that would be the fee associated with the performance and payment bond.

Q You testified that the repair estimates that you've put together were based off -- I think you phrased it as building 1 plans that you had available. Is that correct?

A That's correct.

Q Any reason in particular that you picked building No. 1?

A No. Just other than it has the largest number of units and it was just sequentially in order.

Q So the assumption that you're making is that all 11 buildings are similar in nature from a repair point of view to building No. 1?

A That's correct.

Q If building No. 1 was built in 2009 and buildings 8, 9, 10 and 11 were not built until 2014, would that have any impact on the repair numbers in your estimate?

A I would probably have to defer to Myles and his team as to his belief and understanding of the destructive testing that they've done to this point and their knowledge of the project. I'm just

basing my scope off of what they've relayed to me.

Q So there's no accounting in your repair estimates for different age buildings?

A Correct. I haven't said that building 11 is going to be in 50 percent better condition than building 1, no.

Q Do you believe that all 11 buildings utilized the same or similar materials during original construction?

A In terms of cladding components or in terms of just generalization of construction?

Q Generalization of construction.

A It's my understanding, yes, that they are similar in construction.

Q What do you base that understanding on?

A Just my conversations with Myles Glick.

Q Do you have any knowledge about the identities of the various subcontractors that worked on these 11 buildings during original construction?

A No.

Q Do you know if different subcontractors worked on different buildings?

A I'm sure they did, but that's just based on my knowledge of construction.

Q If different subcontractors worked on the

various buildings, would that have an impact on your repair estimate?

A I don't know that it has an impact on it. It may have an impact on the scope. But I would defer that to Myles.

Q So my understanding is the only differences in the 11 building repair estimates that you've done is based purely on the number of units. Any other differentiating factors?

A I believe that there is some difference factor between the shingled roofs and the low slope. I'd have to go back to look at that in a little further detail to determine that condition.

Q And elaborate on that for me, if you will.

A So there's a cost differential where architectural shingles -- As I've mentioned before, I think we had a budgetary number in there of about $300 a square. And the TPO roofing or the low-sloped roofing was about $600 a square. Typically, they kind of balance out in the fact that if you've got a sloped roof, you've got essentially twice the square footage that you would in a flat-surfaced area. So the pricing difference is about the same at the end of the day whether or not

you put a low slope or a pitched roof on the structure.

Q Other than the number of units in a particular building and what kind of roof was on a particular building, any other differentiating factors in your repair estimate?

A There was some discussion of the percentages of claddings. But, no, ultimately we didn't get that detailed to the pricing analysis.

Q How many times did you meet with Myles Glick in person prior to creating your repair estimates?

A I believe we met twice and had maybe a couple phone conferences and maybe a few emails as previously shown.

Q Have you met with him again or communicated with him again since creating your repair estimates?

A Not in reference to this project.

Q Same question for Russell Mease. Have you met with him in person?

A I don't believe I've met with Russell at all in regards to this project.

Q Have you communicated with Russell at all?

A No.

MR. McKIE: Mr. Kennedy, I may have a couple follow-ups at the end, but I'm going to pass you on. Thank you.

THE WITNESS: Thank you.

E X A M I N A T I O N

BY MR. RIVERA:

Q Mr. Kennedy, my name is Nick Rivera, and I'm here on behalf of defendant Daniel L. Rogers, doing business as Rogers Roofing Company, Inc., n/k/a Dan Rogers Roofing, LLC. Have you ever heard of that company before?

A I don't believe that I have.

Q Are you familiar with their scope of work on this project or other projects?

A No.

Q I'll be very brief with you, but from -- It's my understanding from your repair estimate that you've provided to everybody that it is a conceptual estimate. Correct?

A That's correct, yes.

Q When Mr. Manos was asking you questions in regard to specific line items, I think your response was there are no the nuts and bolts to this estimate for you to be able to answer specific

CASE NO: 2017-CP-10-5246

I hereby certify that the foregoing **MEMORANDUM IN SUPPORT OF DEMAND FOR JURY TRIAL AND MOTION FOR EXPEDITED HEARING (PRIORITY MATTER)** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

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FILED
2019 JUN 10 P 12:48
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JUNE 10, 2019

EXHIBIT K

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO WHEELOCK DEFENDANTS' MOTION FOR EXPEDITED HEARING

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;

Defendants.

NOW COME the Plaintiffs, Gary Keisler, individually and as class representative, John Does (1-50), and Jane Does (1-50), (hereinafter referred to as "Plaintiffs"), by and through their undersigned counsel, and hereby move this Honorable Court to deny Defendants' Motion for an Expedited Hearing.

RELEVANT PROCEDURAL AND FACTUAL HISTORY

- Judge Harrington signed the respective Entries of Default and Order of Referral to Special Referee on June 7-8, 2018. (Exhibit A).
- Defendants filed Motions to Set Aside & Vacate Default on February 13, 2019.
- On February 28, 2019, the Court advised that it was appropriate for the Special Referee to hear the Motions, not the Circuit Court. (Exhibit B).
- The Motions were set to be heard by the Special Referee on May 10, 2019.
- As the date of the hearing approached, the parties came to an agreement to postpone the hearing in an attempt to mediate the case. (Exhibit C).
- Defense counsel later decided it was no longer willing to mediate the case as agreed, and filed the subject Motion for Expedited Hearing and Demand for Jury Trial with the Court on June 4, 2019.
- On Friday, June 7, 2019 at 4pm, Plaintiffs received notification that the subject Motions were to be heard by the Court on Tuesday, June 11, 2019.

ARGUMENT

Defendants filed the subject Demand for Jury Trial and Motion for Expedited hearing without conferring with Plaintiffs as required by Rule 11. In Defendants' Memorandum in Support of their Motions for Expedited Hearings, they do not address any reason or ground as to why they should be granted an expedited hearing on their Motions to Vacate. In fact, they only

argue the merits of their Motions to Vacate in their Memorandum in Support of their Motion for an Expedited Hearing. There is no reason, nor is there anything pending, that would require the Court to expedite Defendants' hearings. This is a clear attempt by Defendants to get the Court to hear their arguments and prevent the Special Referee from hearing these matters, who is, in fact, the proper person to hear them.

I. The Circuit Court does not have jurisdiction to hear Defendants' motions.

"A master's authority to determine issues referred to him by the circuit court is a question of subject matter jurisdiction[.]" *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 74-75, 773 S.E.2d 607, 616 (Ct. App. 2015); *accord Bunkum v. Manor Properties*, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (Ct. App. 1995) (question concerning scope of master's authority under order of reference was "issue[] relating to subject matter jurisdiction"); *Bonney v. Granger*, 292 S.C. 308, 322, 356 S.E.2d 138, 147 (Ct. App. 1987) ("[b]y consenting to an order of reference without limitation, [the appellant] submitted to the master's subject matter jurisdiction to the same extent as if the matter were before the circuit court"). By statute, "When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action[.]" S.C. Code Ann. § 14-11-85. Consistently with this statute, Rule 53(c), SCRCP, provides that, once a case has been referred, "the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter."

"When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers." *Deep Keel*, 413 S.C. at 75 (quoting *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993)). "Once an action is referred, the master

possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter." *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009). Accordingly, when a case is referred to a master-in-equity without any limitations on the scope of the master's power, i.e., the entire case is referred, subject matter jurisdiction over the whole case is moved from the circuit court and is vested in the equity court of the master. *Normandy Corp.*, 688 S.E.2d at 142; *Bonney*, 292 S.C. at 322; *see Deep Keel*, 413 S.C. at 75; *Smith Cos.*, 311 S.C. at 360.

Entries of Default and Orders of Referral to a Special Referee against Defendants Wheelock Street Real Estate Land Fund, LP, Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc., Wheelock Street Investment Management, LLC I, II, & V, and Wheelock Street Investment Management, LLC were signed by Judge Harrington in June 2018. (Exhibit A). Pursuant to Rule 53(b)-(c) SCRCP, this case (as to these Defendants) has been referred to the Special Referee. Therefore, jurisdiction to hear Defendants' Motions stands with the Special Referee, Dan Slotchiver. In fact, the Special Referee is ready to hear these matters as **Defendants have filed these Motions with the Special Referee**. These Motions are currently pending before the Special Referee in addition to Defendants' Motion for Recusal.

The Orders explicitly give the Special Referee jurisdiction over Defendant's Motions, noting that he has jurisdiction over "all matters arising from or reasonably related to such action," including, but not limited to, "jurisdiction over any motions or actions to set aside Entry of Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b)." This is precisely what Defendants seek to do with its motions. Further, the Referral to Special Referee explicitly states, "**any and all hearings** shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County." (emphasis added).

Defendants may move under Rules 55 and 60, but the proper jurisdiction is before the Special Referee, not the Circuit Court. *See Wachovia Bank of South Carolina v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000) (finding that the order of reference "gives the master jurisdiction over the case and all matters arising from it [including the Defendant's Rule 60(b) Motion] until the master has performed all duties assigned to him.")

II. Defendants are attempting to circumvent the Special Referee.

The Defendants had already filed Motions to Vacate with the Court earlier this year. Because the Court divested itself of jurisdiction when it referred this case (as to these Defendants) to the Special Referee, the Court said that it was proper for the Special Referee to hear them rather than the Court. (Exhibit B). Once the hearings were scheduled with the Special Referee, parties agreed to postpone the hearing in an attempt to mediate the case. Now, Defendants are suddenly unwilling to mediate and have filed the subject motions in an effort to get around what the Court had previously said.

III. Even if the Circuit Court did have jurisdiction to hear the subject motions, which it does not, the hearings as to the merits of Defendants' Motions to Vacate are improper at this time.

Defendants filed their Motions for an Expedited Hearing and Demand for a Jury Trial on June 4, 2019. On June 7, the subject hearing was set on the roster for June 11, 2019. Late in the afternoon the day before the hearing, Defendants dropped off their 100-page memorandums in support of their Motions to Plaintiffs' counsel. There is no reason, nor is there anything pending, that would require the Court to expedite Defendants' hearings on this matter. Moving forward with the Motions to Vacate at the hearing on June 11, 2019 would be extremely prejudicial to Plaintiffs and Defendants have not stated any reason or ground for expediting these hearings.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFF

June 11, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

CERTIFICATE OF SERVICE

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

The undersigned hereby certifies that on the 11th day of June 2019, a true and correct copy of the attached *Plaintiffs' Memorandum in Opposition to Wheelock Defendants' Motion for Expedited Hearing* was served upon all parties and/or their respective counsel of record by placing the same in the U.S. Mail and/or email with sufficient postage affixed and addressed as follows:

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Hayes Law Firm, LLC

Nina E. Meola

EXHIBIT A

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON))) Gary Keisler, Individually, and as Class Representative, John Does (1-50), and Jane Does (1-50), Plaintiff,) vs.)) John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., et al., Defendant.)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-5246 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney: Tyler E. Cloud, Bar No. 103155 Address: 180 Meeting Street, Suite 330 Charleston, SC 29401 Phone: 843-805-7003Fax 843-573-7388 E-mail: tcloud@hayeslaw.org Other:	Defendant's Attorney: Theodore Manos, Bar No: 8660 Address: 550 King Street, Suite 300 Charleston, SC 29403 Phone: 843.723.6470 Fax E-mail: tlm@roblaw.net Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Default Judgment
Estimated Time Needed: Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — Date submitted: 5/14/2018

SECTION III: Motion Fee

☒ PAID – AMOUNT: $
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE_____ Date:
CLERK'S VERIFICATION	
Collected by:_____ Date Filed: _____ ☐ MOTION FEE COLLECTED: $ _____ ☐ CONTESTED – AMOUNT DUE: $ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

ENTRY OF DEFAULT AGAINST WHEELOCK STREET REAL ESTATE LAND FUND, L.P. AND REFERRAL TO SPECIAL REFEREE

FILED
2018 JUN -7 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

1 of 7

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

2 of 4

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

This matter comes before the Court upon motion of the Plaintiffs for execution of an Entry of Default against Defendant Wheelock Street Real Estate Fund, L.P. arising out of a construction defects action brought by the Plaintiffs. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiffs also seek referral of the matter to a Special Referee.

It appears that Defendant Wheelock Street Real Estate Fund, L.P. are in default on the Complaint filed by Plaintiffs as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiffs.

IT IS THEREFORE ORDERED that default be entered against Defendant Wheelock Street Real Estate Fund, L.P. in favor of the Plaintiffs Gary Keisler, et al.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the

Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

May 22, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

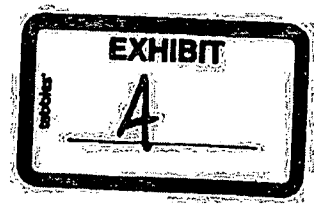
Plaintiffs,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5245

AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE AND MOTION FOR ENTRY OF DEFAULT AND REFERRAL



Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;
Valencia Medina;

Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Real Estate Land Fund, L.P. by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.

Tyler E. Cloud, Esquire
Attorney for the Plaintiff

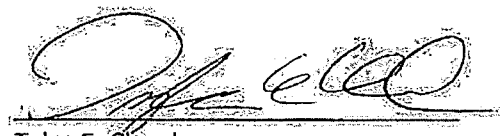
SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC



Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO: 2017-CP-10-5246

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),

AFFIDAVIT OF SERVICE

FILED
2018 MAY 11 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Real Estate Fund, L.P. with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on the following page]

HAYES LAW FIRM, LLC

John C. Hayes, IV
Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~ May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature: William Lolley ☐ Agent ☐ Addressee

X

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☑ Yes

2. Article Number
(Transfer from service label) 7011 3500 0000 4260 5967

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

RECEIVED
JAN 22 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2017-CP-10-5246
)	
Gary Keisler, Individually, and as Class Representative, John Does (1-50), and Jane Does (1-50),)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., et al.,)	
Defendant.)	

Plaintiff's Attorney: Tyler E. Cloud, Bar No. 103155 Address: 180 Meeting Street, Suite 330 Charleston, SC 29401 Phone: 843-805-7003Fax 843-573-7388 E-mail: tcloud@hayeslaw.org Other: _____	Defendant's Attorney: Theodore Manos, Bar No. 8660 Address: 550 King Street, Suite 300 Charleston, SC 29403 Phone: 843.723.6470 Fax_____ E-mail: tlm@roblaw.net Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Default Judgment
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☒ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — Date submitted: 5/14/2018

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date:

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $_____
☐ CONTESTED – AMOUNT DUE: $_____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

ENTRY OF DEFAULT AGAINST WHEELOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

FILED
2018 JUN -7 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

184

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;
Valencia Medina;

Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANTS WHEELOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

This matter comes before the Court upon motion of the Plaintiffs for execution of an Entry of Default against Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. arising out of a construction defects action brought by the Plaintiffs. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiffs also seek referral of the matter to a Special Referee.

It appears that Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. are in default on the Complaint filed by Plaintiffs as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiffs.

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IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

3 & 4

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

June 4, 2018

4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE AND MOTION FOR ENTRY OF DEFAULT AND REFERRAL



Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;
Valencia Medina;

Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET INVESTMENT MANAGEMENT, LLC

PERSONALLY APPEARED before me, John C. Hayes, IV, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiffs in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendant Wheelock Street Investment Management, LLC, by certified mail, return receipt requested on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.

Tyler E. Cloud, Esquire
Attorney for the Plaintiffs

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/10/20

NOW COME THE PLAINTIFFS, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC



Tyler E. Cloud, Esquire
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiffs

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),

AFFIDAVIT OF SERVICE

FILED
2018 MAY 11 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Investment Management, LLC with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on following page]

HAYES LAW FIRM, LLC

John C. Hayes, IV
Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~ May 2018.

Notary Public for South Carolina
My Commission Expires: 9/10/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Investment Management, LLC
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x William Lolley ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 6438

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

* Sender: Please print your name, address, and ZIP+4 in this box *

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

JAN 22 2018

20-002-SC

EXHIBIT B

Subject: RE: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.
Date: Thursday, February 28, 2019 at 11:20:04 AM Eastern Standard Time
From: Caroline Crisler. Leonard
To: Nina Meola
CC: John Hayes, Brian Duffy, Dan, keith mccarty, Jena Lingle

These matters were referred to the Special Referee by Judge Harrington. It would be appropriate for the Special Referee to hear matters in this case.

Caroline C. Leonard
Common Pleas Docket Manager
Charleston, County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401
ccleonard@charlestoncounty.org
843-958-5013 (Office)
843-958-5020 (Fax)

CourtPlus

From: Nina Meola <nmeola@hayeslaw.org>
Sent: Thursday, February 28, 2019 11:03 AM
To: Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>
Cc: John Hayes <jhayes@hayeslaw.org>; Brian Duffy <bduffy@duffyandyoung.com>; Dan <dan@slotchiverlaw.com>; keith mccarty <ikeithmccarty@gmail.com>; Jena Lingle <jlingle@hayeslaw.org>
Subject: One Hamlin v. Wheelock, et al. & Keisler, et al. v. Wheelock, et al.

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.

One Hamlin Place Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.
Case No.: 2017-CP-10-5245
HLF File No.: 120.001

Gary Keisler, Individually and as Class Representative, et al. vs Middlesex Holdings, LLC, et al.
Case No.: 2017-CP-10-05246
HLF File No.: 120.002

Dear Caroline:

Please find the attached correspondence from John Hayes in the above-referenced cases. Thank you.

Sincerely,

Nina E. Meola | Attorney at Law | Hayes Law Firm, LLC
180 Meeting Street | Suite 330 | Charleston, SC 29401
(843) 805-7003 | nmeola@hayeslaw.org | www.hayeslaw.org

EXHIBIT C

Subject: Fwd: One Hamlin
Date: Monday, June 10, 2019 at 4:47:06 PM Eastern Daylight Time
From: keith mccarty
To: John Hayes

---------- Forwarded message ---------
From: **keith mccarty** <ikeithmccarty@gmail.com>
Date: Mon, May 6, 2019 at 8:09 AM
Subject: One Hamlin
To: Dan <dan@slotchiverlaw.com>, Brian Duffy <bduffy@duffyandyoung.com>, John Hayes <jhayes@hayeslaw.org>

Dear Dan, Please allow this email to serve as formal notification to you, in your capacity as Special Referee in this case, that the parties have agreed to postpone the hearing in this matter previously scheduled to take place on Friday, May 10th. The reason for this postponement is to allow the matter to be mediated. We will be in contact with you to schedule an alternative date. Please contact me should you have questions. Keith McCarty

I. Keith McCarty
McCarty Law Firm, PC
1212 Wappoo Road (29407)
P.O. Box 30055
Charleston, South Carolina 29417
Phone: 843-793-1272
Fax : 843-793-1282
This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you received this message in error, please send a reply, delete the message immediately, and do not forward this message to any other person. This e-mail, along with any attachments, is covered and protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521.

I. Keith McCarty
McCarty Law Firm, PC
1212 Wappoo Road (29407)
P.O. Box 30055
Charleston, South Carolina 29417
Phone: 843-793-1272
Fax : 843-793-1282
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EXHIBIT L

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO. 2017-CP-10-05245
ONE HAMLIN PLACE TOWNHOME ASSOCIATION, INC.,)	
Plaintiff,)	Transcript of Record
vs.)	Date: June 12, 2019
JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., ET. AL,)	
Defendants.	

* * * * * * * * * * * * * * * * * *

B E F O R E:

The Honorable Craig D. Brown

* * * * * * * * * * * * * * * * * *

Denise J. Lauder, RPR

Ninth Judicial Circuit

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

JOHN C. HAYES, IV, ESQUIRE
180 Meeting Street, Suite 330
Charleston, SC 29401
KEITH MCCARTY, ESQUIRE
McCarty Law Firm, PC
P. O. Box 3055
Charleston, SC 29417

REPRESENTING THE DEFENDANT:

BRIAN DUFFY, ESQUIRE
BLAKE MCKIE, ESQUIRE
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

just don't see how I have authority to do that.

MR. DUFFY: Well, it was sent by order of this Court, and this Court can look and determine that the ex parte representations were not adequate, and that the order should not have been entered.

I mean, seriously, Your Honor there are three entities that aren't even named in the suit that are in default that we have to go argue for. I mean, it's that obvious. And the suggestion that the Court is powerless to reverse one of its own orders for an entity that --

THE COURT: I'll tell you what, I'll give you ten days to brief that issue for me because I don't think any court -- I don't think that this court has authority regardless, once they've given jurisdiction away, just to reach out and take it back.

And I may be wrong, okay? I haven't dealt with this issue before. I've never had anybody in the years that I have practiced law and since I've been on the bench ask for me to pull a case back that has been referred to a special referee.

And I'm not saying that -- I'm not

EXHIBIT M

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5245
One Hamlin Place Townhome)
Association, Inc.),)
)
Plaintiff,)
)
vs;)
)
John Wieland Homes and)
Neighborhoods of the Carolinas, Inc. as)
successor by statutory merger to John)
Wieland Homes and Neighborhoods of)
South Carolina, Inc.; John Wieland)
Homes of Charleston, Inc.; John)
Wieland Homes, Inc. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support)
Services of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a)
John Wieland Homes and)
Neighborhoods, Inc.; Wheelock Street)
Real Estate Fund, LP; Wheelock Street)
Investment Management, LLC; RP)
Falcon Properties, LLC; Residential)
Partners, LLC; Middlesex Holdings,)
LLC; WS JWH, LLC; JWC Phoenix,)
LLC; Bridgemill Land, LLC;)
Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty)
Associates, Inc. a/k/a Wieland Realty)
Associates, Inc.; John Wieland,)
individually; Sue Wieland; Lindsey)
Parker; Robert Parker; Jack Wieland;)
Jorge Medina; Jorge Medina a/k/a JMC)
Construction, Inc. a/k/a JMC)
Construction, LLC; John Does (20-50);)
and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource -)
Southeast Group, LLC; Muhler LLC)
a/k/a The Muhler Company, Inc.; YKK)

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED HEARING AND TO DECIDE MOTIONS TO VACATE ORDER OF REFERRALS TO SPECIAL REFEREE AND MOTIONS TO VACATE DEFAULTS

FILED
2019 JUN 17 PM 12:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ D.C.

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC.	)
Defendants.	
Builders FirstSource-Southeast Group, LLC,	)
Third-Party Plaintiff,	)
v.	)
AC Construction, Corp.	)
Third-Party Defendant.	)

COME NOW Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management I, LLC; Wheelock Street Investment Management II, LLC; and Wheelock Street Investment Management V, LLC (collectively, the "Wheelock entities"),[1] by and through the undersigned counsel, and submit their supplemental memorandum of law in support of their Motion for Expedited Hearing and to decide Motions to Vacate Order of Referral to Special Referee and Motions to Set Aside and Vacate Default.

[1] The undersigned is specially appearing for Wheelock Street Investment Management I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC, which are not even named as parties to this lawsuit but against which Plaintiff sought and secured entries of default.

BRIEF INTRODUCTION

Counsel for the Wheelock entities argued their Motion for Expedited Hearing and Jury Demand before Judge D. Craig Brown on June 11, 2019. At the hearing, Judge Brown asked counsel to submit supplemental memoranda on the narrow issue of whether or not his Honor has the authority to withdraw the Orders of Referral to the Special Referee in this matter (Daniel J. Slotchiver, Esq.) issued by former Circuit Court Judge Kristi Lea Harrington. The Wheelock entities respectfully submit this memorandum and ask that it supplement the many filings of record addressing the defaults and orders of reference.

ARGUMENT

The existing default proceedings are a result of a fraud on this court. In seeking to deny the Wheelock entities—rightful parties to this lawsuit—an audience with this Court and the opportunity to defend the merits of the claims against them and have a trial by jury, the Plaintiff asks this Court to condone the fraud and further its resulting harm. Respectfully, this Court must not and, as set forth below, need not indulge that request.

This Court may withdraw or vacate the order of reference pursuant to any one or a combination of the following sources of authority:

- Rule 60(b) permits this Court to vacate orders—even final judgments—based on extrinsic fraud, which exists here; *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action. . . . It is fraud which misleads a court in determining issues and induces the court to find for the party

perpetrating the fraud.") (internal quotation marks and citation omitted); *Ray v. Ray*, 374 S.C. 79, 647 S.E.2d 237 (2007) (holding extrinsic fraud justified reversal and noting such fraud "does, or attempts to, subvert the integrity of the Court itself, *or* is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication") (emphasis in original) (quoting *Evans v. Gunter*, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988) (quoting H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 (2nd ed. 1985))); *see also Hagy v. Pruitt*, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000) ("The legislature cannot restrict the judicial branch's exercise of its inherent authority, which includes the inherent authority to set aside a judgment on the ground of extrinsic fraud.") (internal citation omitted);

- *Davis v. Davis*, 236 S.C. 277, 113 S.E.2d 819 (1960) (affirming circuit court order vacating default judgment where mistaken representations of default led to order of reference without provision of notice of motion for order of reference or of the order).
- Rule 53(b) directs the return of matters from special referees upon the filing of a jury demand, which demand was in fact made by Plaintiff in each complaint (including the Amended Complaint that replaced the initial complaint upon which default was improperly entered) and subsequently by defendant parties; pursuit of the improper default will prejudice the Wheelock entities *and* other parties who are alleged to have acted in concert with and caused the same damages as the parties against whom defaults have been entered;
- It is the trial court that must correct an improper order of reference, including in circumstances as here where the Order impermissibly delegates constitutional judicial power that Wheelock entities are entitled to have the Court exercise and where such

reference was made without consent or the notice or opportunity to be heard; *see La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957) (affirming writ of mandamus directing district court to vacate reference to special master under federal rule 53(b) where it amounted to "abdication of the judicial function depriving the parties of a trial before the court on the basic issues involved in the litigation"); *United States v. Microsoft Corp.*, 147 F.3d 935, 954-955 (D.C. Cir. 1998) (directing district court to revoke or revise its reference to special master which improperly authorized determination of rights of parties); *In re Bituminous Coal Operators' Ass'n*, 949 F.2d 1165, 1168 (D.C. Cir. 1991) (directing district court to revise order of reference and holding trial courts "ha[ve] no discretion to impose on parties against their will 'a surrogate judge,' a substitute from the private bar charged with responsibility for adjudication of the case"); *see also State ex rel. Universal Processing Servs. of Wisconsin, LLC v. Circuit Court of Milwaukee Cty.*, 892 N.W.2d 267, 284–85 (Wis. 2017) (collecting cases of other state courts rejecting delegation of judicial power without consent).

- This Court's inherent authority to protect the credibility of the judicial process and ensure just results; *see generally Jones v. Leagan*, 384 S.C. 1, 684, S.E.2d 6 (Ct. App. 2009) ("Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible."); *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962) (recognizing "inherent control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases").
- Rule 1, SCRCP, dictates that the Court's rules "shall be construed to secure the just, speedy, and inexpensive determination of every action" and denying the requested relief; denying the relief requested would instead insist that the Wheelock entities, including three entities

who were *not even named in the lawsuit*, must go through proceedings with the special referee and await a default judgment before it may seek relief which must bypass this Court and go to an appellate court who likely then would direct this Court to vacate the Order of Reference—a wasteful, patently inefficient process for all concerned that will further expose plaintiff for its abuse of process.

I. The Orders of Referral Were Issued As A Result of Extrinsic Fraud By Plaintiff's Counsel

The Orders referring the default matters to the Special Referee were issued by former Circuit Court Judge Kristi Lea Harrington on the basis of *ex parte* filings which intentionally omitted material information and included the false representations including that the communication was not *ex parte*. Had Plaintiff either (a) informed the Court that the pleading on which she was being asked to enter default and order a reference had been rendered a nullity by the amended complaint filed nearly four months before the request or (b) actually directed the filings to counsel for the Wheelock entities as they represented on their face they had been, Plaintiff would not have achieved the benefit of entries of default nor an order of reference. The Court would not have delegated the entire judicial function of these cases, trampling the constitutional rights of the Wheelock entities, without those intentional misrepresentations. These omissions and misrepresentations particularly in the *ex parte* context require action to correct the extrinsic fraud. *See Chewning*, 354 S.C. at 81, 579 S.E.2d at 610 ("Extrinsic fraud is fraud that . . . deprives a person of the opportunity to be heard . . . and induces the court to find for the party perpetrating the fraud.") (internal quotation marks and citation omitted); *Ray*, 374 S.C. 79, 647 S.E.2d 237 (2007) (extrinsic fraud includes "fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication").

The extrinsic fraud does not end there. The Wheelock entities have detailed in their respective prior submissions to this Court the many improper actions Plaintiff's counsel employed to achieve the results, which they incorporate here by reference. More specifically, Plaintiff's counsel had not only filed the amended complaint long before they sought entry of default and an order of reference, they had attempted to serve the amended complaint on the Wheelock entities by mail twice (though they had not included both the Amended Summons and Amended Complaint in the mailings). Those efforts prompted defense counsel to contact Plaintiff's counsel to learn more about the service and offer to accept service. *See* Shoun Aff., Ex. A.[2] Plaintiff's counsel not only suggested they would agree to an extension and work out service, they indicated they were filing yet another amended complaint. In fact Plaintiff's counsel filed a motion to amend yet again before seeking default on the initial complaint. Before default was entered, Plaintiff successfully served the Wheelock entities with the Amended Complaint. Nevertheless, Plaintiff had filed for entry of default without informing the Wheelock entities' counsel. In fact, Plaintiff's counsel falsely represented in the filing that it was directing the motion to the Wheelock entities' counsel. *See* Shoun Aff. at ¶ 10.

Plaintiff cannot effectively address the infirmities of the Order of Reference at issue—and they do not even try. For example, Plaintiffs' counsel does not deny that they secured entries of default against entities they did not even name in the lawsuit. Nor do they promise to correct that completely absurd result. They seek to move forward and press for default judgment—and they just tell this Court it is too late! Plaintiff's improper *ex parte* representations to a now former

[2] The Shoun Affidavit attached as Exhibit A is for Wheelock Street Capital. Similar Affidavits were filed regarding Wheelock Street Real Estate Fund, LP and Wheelock Street Investment Management, LLC.

Circuit Court Judge achieved their goal of entry of default and reference to an attorney they chose. They now thumb their nose at the Court and say it is too late for the Court to correct the injustice.

Would this Court continue the Plaintiff's charade if the complaint at issue was a nullity because it had never been filed? The situation is analogous except it is worse here—that would have been easier for the court to have discovered in the first instance even in an *ex parte* context.

South Carolina Rules of Civil Procedure Rule 60(b)(3) permits relief from an order where the order resulted from "fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b)(4) permits relief from an order where the order is void. The authorities discussed above permit this Court to act.

Plaintiff's counsel's actions to obtain the order of reference were fraudulent. Their continued efforts to pursue judgment on a pleading that is a nullity and against certain entities that they did not name in the lawsuit are continued efforts in a fraudulent scheme. This Court should not be a part. Judge Harrington no longer is on the bench to correct the departure from the Court's duty to adjudge cases. Counsel for the Wheelock entities, therefore, request that this Court address their motions in the interests of justice and the integrity of the judicial process.

II. The Special Referee Has No Authority or Jurisdiction to Hear Challenges to the Orders of Referral

The South Carolina Supreme Court has held that "pursuant to Rule 53, SCRCP, a master has no power or authority except that which is given to him by the order of reference." *Bunkum v. Manor Properties*, 321 S.C. 95, 98 (Ct. App. 1996). Judge Harrington's Orders of Referral do not specifically grant the Special Referee the authority or jurisdiction to handle challenges to the Orders themselves. Pursuant to Rule 53, the Special Referee has no power or authority to hear challenges related to the very Orders of Referral that supposedly give him power and authority. Thus, the power and authority rests solely in the hands of a Circuit Court Judge. Judge Harrington

no longer is on the bench to hear the Wheelock entities' challenges to her Orders which were fraudulently obtained by Plaintiff's counsel; thus, it is only proper that his Honor assume his rightful jurisdiction and authority in this matter.

III. The Orders of Referral Are Void

Lastly, the service of an Amended Complaint rendered the original Complaint moot and a legal nullity as outlined in the Wheelock entities Memorandum provided to his Honor. Any alleged defaults and the corresponding Orders of Referral related thereto are accordingly void, thus stripping the Special Referee of any power or authority he may have. Plaintiffs' affidavits in support of their motions for entry of default and referral also are facially inaccurate and misleading. For example, Plaintiff's counsel represented to the Court that it served Wheelock Street Capital, LLC on January 12, 2017—nearly a year before the original Complaint was filed. The Orders of Referral are therefore void and should be vacated pursuant to Rules 55(c) and 60(b)(4), SCRCP.

CONCLUSION

For the foregoing reasons, a Circuit Court Judge has the authority and retains jurisdiction to withdraw the Orders of Referral to the Special Referee in this matter.



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Attorneys for the Wheelock Entities

June 17, 2019
Charleston, South Carolina

CASE NO: 2017-CP-10-5246

I hereby certify that the foregoing **SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO VACATE ORDER OF REFERRAL TO SPECIAL REFEREE** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

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Robertson Hollingsworth Manos & Rahn, LLC
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CHARLESTON COUNTY, SC
2019 JUN 17 PM 12:34
FILED

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freeman@wgfllaw.com
Attorneys for Middlesex Holdings, LLC

DUFFY & YOUNG, LLC

JUNE 17, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5245
One Hamlin Place Townhome)
Association, Inc.,)
)
Plaintiff,)
)
vs;)
)
John Wieland Homes and)
Neighborhoods of the Carolinas, Inc. as)
successor by statutory merger to John)
Wieland Homes and Neighborhoods of) **AFFIDAVIT OF CHERYL D. SHOUN,**
South Carolina, Inc.; John Wieland) **ESQUIRE**
Homes of Charleston, Inc.; John)
Wieland Homes, Inc. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support)
Services of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a)
John Wieland Homes and)
Neighborhoods, Inc.; Wheelock Street)
Real Estate Fund, LP; Wheelock Street)
Investment Management, LLC; RP)
Falcon Properties, LLC; Residential)
Partners, LLC; Middlesex Holdings,)
LLC; WS JWH, LLC; JWC Phoenix,)
LLC; Bridgemill Land, LLC;)
Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty)
Associates, Inc. a/k/a Wieland Realty)
Associates, Inc.; John Wieland,)
individually; Sue Wieland; Lindsey)
Parker; Robert Parker; Jack Wieland;)
Jorge Medina; Jorge Medina a/k/a JMC)
Construction, Inc. a/k/a JMC)
Construction, LLC; John Does (20-50);)
and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource -)
Southeast Group, LLC; Muhler LLC)
a/k/a The Muhler Company, Inc.; YKK)

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC.

Defendants.

Builders FirstSource-Southeast Group, LLC,

Third-Party Plaintiff,

v.

AC Construction, Corp.

Third-Party Defendant.

I, Cheryl D. Shoun, Esq., being first duly sworn, depose and say:

1. I am over the age of eighteen (18), I am competent to make this Affidavit, and I have personal knowledge of the matters set forth herein.

2. Nexsen Pruet was the previous counsel for Defendant, Wheelock Street Capital, LLC ("WSC") in this lawsuit; I along with Marvin Infinger, formerly of this firm, undertook the primary tasks of this representation.

3. Nexsen Pruet also was counsel for many of the Wheelock entities in other state and federal lawsuits, including Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. et al. (Charleston County case no. 2013-CP-10-3326); Madison at Hamlin Plantation Townhome Association, Inc. et al. v.

Residential Partners, LLC et al. (C/A No.: 2:15-cv-04120-DCN); and Waverly at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, et al. (C/A No.: 2:16-cv-02973-DCN) (the "earlier actions").

4. John C. Hayes, IV ("Hayes") and I. Keith McCarty ("McCarty")—Plaintiff's counsel in this lawsuit—were either counsel for plaintiffs, or otherwise aware of, involved or joined for discovery purposes, in the earlier actions. Hayes and McCarty communicated with me in the earlier actions numerous times regarding my clients and were aware I represented them.

5. Plaintiff never served me with its original Summons or Complaint in this action.

6. I am informed and believe Plaintiff served WSC with an Amended Summons, but no Amended Complaint, on or around January 22, 2018.

7. I am further informed and believe that Plaintiff first served WSC and the other Wheelock-affiliated defendants with both an Amended Summons and Amended Complaint on May 21, 2018. The Amended Summons stated that WSC needed to file an Answer within 30 days.

8. In the months leading up to the June 7, 2018 entry of default, Plaintiff's counsel and I had been engaged in discussions relative to reaching an agreement as to a date of service that would be applicable to all affiliated parties, following which Nexsen Pruet would accept service for WSC. During this time Plaintiff's counsel did not inform me of any potential default or their intention to file for entry of default. A copy of email correspondence from February 16, 2018 to April 26, 2018 is attached hereto as Exhibit A.

9. Without providing notice to me and, upon information and belief, without notice to WSC, Plaintiff filed a Motion for Entry of Default on or around May 11, 2018 prior to the expiration of WSC's 30-day answer deadline on June 21, 2018.

10. The Motion for Entry of Default and supporting affidavits state that they were directed to Marvin Infinger and me, as counsel for WSC, but Plaintiff's counsel never sent me notice or a copy of these materials and never otherwise informed me of their filing for entry of default.

11. WSC timely filed an Answer to Plaintiff's Amended Complaint on June 20, 2018.

12. Upon learning of Plaintiff's Motion for Entry of Default, I contacted Plaintiff's counsel to explain why default should not have been entered and that the entry of default should be removed. A copy of correspondence I sent to Plaintiff's counsel is attached hereto as Exhibit B.

13. On behalf of WSC, we understood that the default, which had been entered on an initial pleading following service of an amended pleading which we timely answered, was not legally effective.

FURTHER AFFIANT SAYETH NOT.

Cheryl D. Shoun

Cheryl D. Shoun
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401
(843) 720-1762 (phone)
(843) 414-8238 (fax)

Subscribed and sworn before
me this 11th day of April, 2019.

Marian R Parish
Notary Public for South Carolina
My Commission Expires: 3/8/22

EXHIBIT A

February 16, 2018 Email to Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Friday, February 16, 2018 3:53 PM
To: jhayes@hayeslaw.org; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D.; Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Gentlemen:

I hoped to have the opportunity to call this week, in order to have the chance to actually speak with you. Unfortunately, my schedule did not agree.

I think you are aware that Marvin and I will be representing the "Wheelock" entities in this case. We understand that on January 18, 2018, you forwarded the Amended Complaint to the agent of service for WS JWH LLC. Subsequently, on January 22, 2018, the Amended Summons was forwarded to the agent for service. The Amended Summons was also sent to the agent for service for various Wheelock entities, but it was not accomplanied by the Amended Complaint, nor did they receive the origninal Summons or Complaint.

Would you please clarify service – specifically, what was sent to the agent of service for each Wheelock entity and on what date. In fact, in so doing, it may be helpful for everyone involved to clarify which Defendants have been served, what has been served on each, and the dates of service.

Thanks very much, and we look forward to hearing from you, hopefully very early next week.

Cheryl

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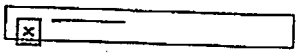
March 5-8, 2018 Emails with Plaintiff's Counsel

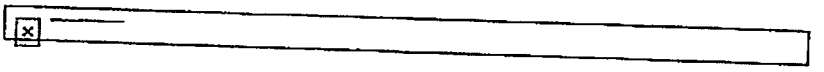
Carney, Tiffiney

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, March 08, 2018 11:58 AM
To: John Hayes
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D.; Trevino, Marilyn J.
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Got it! I'm sorry to have to reschedule.

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CShoun@nexsenpruet.com
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From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Thursday, March 8, 2018 11:57 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Just try me tomorrow at work

John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 8, 2018, at 11:44 AM, Shoun, Cheryl D. <CShoun@nexsenpruet.com> wrote:

> John: I am in a meeting that is going to run much longer than I anticipated. Do you have free time tomorrow?
>
> Thank you,
> Cheryl

Cheryl D. Shoun
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www.nexsenpruet.com

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From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 11:44 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; jkeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Tomorrow noon would work best if that is okay with you.

John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
jhayes@hayeslaw.org

From: "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
Date: Wednesday, March 7, 2018 at 10:12 AM
To: John Hayes <jhayes@hayeslaw.org>, Keith McCarty <jkeithmccarty@gmail.com>
Cc: "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Sure—I'll give you a call this afternoon. Would 3:30 or so work with your schedule?

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<image003.png>

From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 10:01 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.

John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 6, 2018, at 10:57 AM, John Hayes <jhayes@hayeslaw.org> wrote:

> Cheryl, hope you are well. We can certainly work towards an earlier resolution with Wheelock in OHP but we will need back up documentation on the subcontractors involved to get to a comfortable place to discuss cutting out Wheelock. We expect the estimate shortly. How soon do you think you could provide us with the subcontractor information?
>
> Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.
>
> John C. Hayes, IV
> Hayes Law Firm, LLC
> 180 Meeting Street, Suite 330
> Charleston, SC 29401
> 843.805.7003 (Office)
> jhayes@hayeslaw.org
>
> **From:** "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
> **Date:** Monday, March 5, 2018 at 4:23 PM
> **To:** Keith McCarty <ikeithmccarty@gmail.com>
> **Cc:** John Hayes <jhayes@hayeslaw.org>, "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
> **Subject:** One Hamlin Place [IWOV-NPCHAR1.FID1048707]
>
> Hi Keith: Thank you again for speaking with me last Friday concerning our representation of various Wheelock entities in the referenced action.
>
> As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming. In that regard, we discussed our willingness to accept service of those amended pleadings on

behalf of the entities we represent in exchange for an agreement that all of the entities will have an additional 60 days from the date of service in order to respond. Frankly, my clients prefer to direct immediate attention and energy on attempts to resolve Waverly and One Hamlin Place. Although, as you indicated in our conversation, it is very early to address resolution of One Hamlin as you do not yet have any damage estimate.

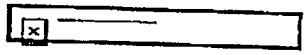
Additionally, because One Hamlin Place is different for the Wheelock entities than either Waverly or Madison, we have to reach out to various individuals in an effort to gather any relevant documentation as to construction. It appears that may take a significant amount of time.

If you and John are so kind to agree as to a period of 60 days following acceptable of service by us of the fourth amended pleadings, we will be glad to prepare a proposed consent order to be submitted to the court.

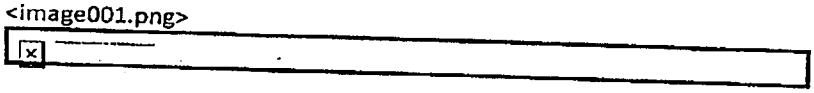
Thank you again, and I look forward to hearing from you.

Cheryl

Cheryl D. Shoun
Nexsen Pruet, LLC
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Charleston, SC 29401
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April 26, 2018 Email with Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, April 26, 2018 1:40 PM
To: jhayes@hayeslaw.org
Cc: Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

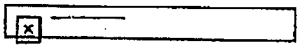
Hey John: Thanks very much for the call.

I am going to reach out to my client this afternoon. Before doing so, I would love to get copies of the green cards you have relative to service in January, 2018. Would you mind asking Jenna (or someone) to forward those cards to Marilyn. That way I can have everything in front of me when I call today.

I am copying Marilyn on this, though I am sure Jenna knows how to find her.

Thanks so much,
Cheryl

Cheryl D. Shoun
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
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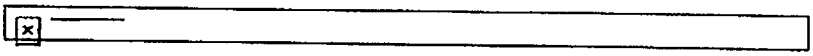


EXHIBIT B

NEXSEN|PRUET

Cheryl D. Shoun
Special Counsel
Admitted in SC

July 3, 2018

John C. Hayes, IV, Esq.
Hayes Law Firm
180 Meeting Street
Suite 330
Charleston, SC 29401

Keith McCarty, Esq.
McCarty Law firm
P.O. Box 30055
Charleston, SC 29417

RE: *One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245 and *Keisler, et al. v. JWHNC, et al.*, 2017-CP-1005246

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

John and Keith:

I am reaching out once again in an effort to resolve the issues surrounding the June 7-8 Entries of Default against certain Wheelock defendants in the referenced cases. While not exhaustive, the reasons for this request with respect to each action are reiterated below:

***One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245**

- Entry of Default against Wheelock Street Investment Management, I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC:
    - These entities *are not named in the lawsuit.* That alone justifies the removal of the June 7, 2018 Entry of Default against them.
- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, LP ("WSREF"):

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1762
F 843.414.8238
E CShoun@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

- Neither WSC nor WSREF received the original Summons or Complaint in this case.
- WSC and WSREF were served with an Amended Summons on or around January 22, 2018. *See* Ex. 1-2.
- Under SCRP 4(d), the "summons and complaint must be served together." WSC and WSREF were not served with the Amended Summons *and* Amended Complaint until May 21, 2018. This was the first proper service of any summons and complaint on WSC and WSREF.
- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
- In the cover letter to these amended papers, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." *See* Exs. 3-4, at 1. The Amended Summons likewise sets forth 30 days for a response.
- You moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired*, despite our conversations that had been ongoing since February.
- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.
- For all these reasons (though there are more), the June 7-8, 2018 Entries of Default against WSC should be removed.

- Entry of Default against Wheelock Street Investment Management, LLC ("WSIM"):
  - WSIM was served with a Summons and Complaint on or around January 12, 2018.
  - WSIM was served with an Amended Summons on or around January 22, 2018. Ex. 5

- That Amended Summons prompted me to reach out to you about the missing Amended Complaint and the service issues related to the other Wheelock defendants. *See* Ex. 6 (My email of Feb. 16, 2018 email to you both).

- During our subsequent conversations, you indicated that you would be serving a *Fourth Amended Complaint* on the Wheelock defendants. *See* Ex. 7 (March 3, 2018 email). ("As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming.").

- Given the service issues, I agreed to accept service on behalf of all the Wheelock defendants in exchange for an extension of time to answer the *forthcoming* amended pleadings. *Id.*

- You initially agreed but changed your mind for reasons of which I was and remain uncertain. *Id.* (March 6, 2018 email from John to me) ("Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.); *id.* (March 7, 2018 email from John to me) ("Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.").

- By late April, I asked you to send to me any green cards related to the purported January service of the Wheelock defendants. Ex. 8., to which I received no response, but you instead served WSIM with an Amended Summons and Amended Complaint on May 21, 2018, without any notice to me.

- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSIM, making the prior pleading moot and any response thereto unnecessary.

- In the cover letter to the amended papers, you stated that WSIM had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Ex. 9, at 1. And, again, the Amended Summons indicates a response is due within 30 days.

- Once again, you moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired.*
- WSIM timely answered the Amended Complaint on June 20, 2018.
- For these reasons (though there are more), the June 7, 2018 Entry of Default against WSIM should be removed.

***Keisler, et al. v. JWHNC*, et al., 2017-CP-1005246**

- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, L.P. ("WSREF"):
  - Neither WSC nor WSREF received the original Summons or Complaint in this case.
  - WSC and WSREF were served with the Amended Summons and Amended Complaint on May 21, 2018.
  - When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
  - Identical to your cover letters in *One Hamlin*, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Exs. 10-11, at 1. Again, please refer to what I believe is intended to be the Amended Summons, but instead labelled Amended Verified Complaint, which provides for a response due within 30 days.
  - Once again, you moved for Entries of Default without notice to me or my client almost two weeks *before the 30 days expired.*
  - Moreover, the Motions for the Entries of Default against WSC and WSREF are facially deficient.
    - The first Motion and Entry of Default against WSC, dated June 7, 2018, relies on an Affidavit of Service and mail return receipt for the service of a different party.

- The second Motion and Entry of Default against WSC, dated June 8, 2018, was based on the same incorrect mail return receipt.

- Similarly, the Motion and Entry of Default against WSREF, dated June 7, 2018, relies on a mail return receipt for the service of a different party.

- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.

- For these reasons (though there are more), the June 7, 2018 and June 8, 2018 Entries of Default against WSC and WSREF should be removed.

I will be more than happy to meet with you to discuss these defaults and the relevant exhibits, if necessary. It seems, however, that the foregoing, along with the documents referenced is adequate to secure the removal of the defaults and any additional documents resulting therefrom.

I hope to hear with you upon your receipt of this correspondence.

Sincerely,

Cheryl D. Shoun, Esq.

cc: Brian D. Duffy, Esq.
Mark E. Tully, Esq.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246

Gary Keisler, individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

REPLY IN SUPPORT OF MOTION FOR EXPEDITED HEARING AND TO DECIDE MOTIONS TO VACATE ORDER OF REFERRALS TO SPECIAL REFEREE AND MOTIONS TO VACATE DEFAULTS

FILED
2019 JUN 27 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(U.S.A), Inc.; Wheelock Street Real)
Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT,)
LLC; JW Homes, LLC; JWH RPIV,)
LLC; RP Falcon Land, LLC; Wieland)
Realty, LLC; RP Falcon Realty, LLC;)
Residential Partners II, LLC; Residential)
Partners III, LLC; Residential Partners)
IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine)
Builders, LLC; Jose Alfredo Sandoval;)
Chad Larsen d/b/a Chad Larsen Co.;)
Ivan Jose Paiz d/b/a Jose Construction;)
William B. Angel; East Coast Wall)
Systems, Inc.; Tracyinne Construction)
a/k/a T&C Construction, LLC;)
Frankcisco and Andrea DaCosta d/b/a)
AAA Coastline, Inc.; Jack R. Clark d/b/a)
Jack Clark Construction, LLC; Alex)
Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc.; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony)
Kirksey; Polly S. Clark d/b/a Glenn)
Clark Construction; Benjamin Mora)
a/k/a Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel)
L. Rogers d/b/a Rogers Roofing Co.,)
Inc. n/k/a Dan Rogers Roofing, LLC;)
William C. Mulhern d/b/a Bill's)
Painting; Mark A. McFarland d/b/a In)
the Wind, Inc.; Harbor Master, Inc.;)
Chad Hood; Kinco Ltd. a/k/a Kinco,)
Inc.; Atrium Companies, Inc. d/b/a)
Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard,)
Inc.; New Construction Drywall Hanger,)
LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. AC Construction, Corp. Third-Party Defendant.	)

The Plaintiffs' Supplemental Memorandum provides further support for this Court to grant relief to the Wheelock Entities.[1] Plaintiffs fail to address directly the actual issues and instead summarily declare the defaults "proper." In their efforts to sidestep the issues, Plaintiffs step out of bounds yet again. Because they cannot overcome the fact that the defaults are infirmly founded on a complaint that is a legal nullity which they continue to pursue, Plaintiffs now represent to this Court that the defaults were entered on the *Amended* Complaint. (Plt. Supp. Mem. at 5.)

[1] For purposes of this motion, the "Wheelock Entities" are Wheelock Street Real Estate Fund, LP and Wheelock Street Capital, LLC.

The contention that the defaults are based on failure to timely respond to the *Amended* Complaint is not just wrong—it is directly at odds with what Plaintiffs' counsel has represented to this Court from the outset. In seeking entries of default, Plaintiffs' counsel swore repeatedly in affidavits presented to the Court that it had served "a copy of the Summons and Complaint." *See* Affs. of Service in support of Entries of Default, attached hereto as Exhibit A. Accordingly, it is no surprise that the Court's Orders at issue, entering default and referring the matters to the Special Referee, find the defaults to be based on "the Complaint," and not the Amended Complaint. Moreover, the green card number for the return-receipt mailing which Plaintiffs' counsel filed in support of the entry of default of Wheelock Street Real Estate Fund, LP matches the green card number served with the *initial* Complaint. *Compare, e.g.*, Entry of Default attached hereto as Exhibit B *with* Initial Complaint green card, attached hereto as Exhibit C.[2] The green card filed in support of the entry of default of Wheelock Street Real Estate Fund, LP states, in handwriting, "~~Amd~~ S&C" to indicate that default was sought only in connection with the initial Complaint. *See* Exhibit B.

Finally, another reason the Plaintiffs' most recent sleight of hand will not go unnoticed is that, as Plaintiffs' counsel's own prior statements demonstrate, they recognize that they had never properly served the Amended Summons and Amended Complaint in time to seek default when they did. For effective service of process under Rule 4, SCRCP, a summons and complaint must be served "together." As reflected in the timeline below, which is similar to what was submitted as Court Exhibit 1 at the hearing of this matter, Plaintiffs' initial efforts to effect service failed because they failed to serve the Amended Summons and Amended Complaint together. *See* Apr.

[2] The Wheelock Entities note that Plaintiffs supported their default of Wheelock Street Real Estate Fund, LP with the green card of Wheelock Street Capital, LLC. The default of Wheelock Street Capital, LLC was supported by the green card of a separate entity not held in default in this matter.

11, 2019 Aff. of Cheryl D. Shoun, attached hereto as Exhibit D, at ¶ 6. Having recognized the failure to effect proper service under Rule 4, Plaintiffs' counsel served the Amended Summons and Amended Complaint on May 21, 2018. The cover letter directed to each of the Wheelock Entities indicated that a responsive pleading was due in 30 days. *See* May 16, 2018 Cover letters enclosing Amended Summons and Complaint, attached hereto as Exhibit E. Each Wheelock Entity timely answered the Amended Complaint.

If on May 11 of 2018 when Plaintiffs' counsel was signing affidavits of service in support of filings for default based on service of the "Summons and Complaint" counsel actually meant and the Court somehow divined that it was the *Amended* Complaint at issue (*see* Exhibit A), why did counsel then serve the allegedly defaulting parties with the Amended Summons and Amended Complaint by letter of May 16, 2018? *See* Exhibit E. As demonstrated by those actions and the timeline below of relevant filing and service events, the Plaintiffs' new effort to convince this Court to permit them to move forward on the improper defaults is belied by counsel's own actions.

- October 12, 2017: Initial Complaints filed.
- January 16, 2018: Amended Complaints filed.
- January 18, 2018: Service efforts for *Initial Complaint* received by CSC.
- January 25, 2018: Amended Complaint served in Keisler.
    - Served *without* amended summons though cover letter dated January 16, 2018 purported to enclose *both* amended summons and amended complaint. *See* Exhibit D.
- February – April: discussions among counsel. *See, e.g.*, Memorandum in Support of Defendant Wheelock Street Capital, LLC's Motion to Set Aside and Vacate Entry of Default and Motion to Vacate Order of Referral to Special Referee, at 4-6.
    - Wheelock Entities counsel seeks clarification re: service and dates.
        - Including offer to accept service for all defendants and seek thirty-day extension.

- Understanding that another amendment is forthcoming.

- May 7, 2018: Plaintiffs file Motion to Amend the Amended Complaint.

- May 11, 2018: Plaintiffs file affidavits in support of default on *Initial Complaint.*
  - Counsel *not* copied despite statement in motion.
  - Green card number attached to Entry of Default matches number from service of initial complaint. See Exhibits B and C.
  - Someone associated with the default filings (Plaintiffs' counsel presumably) writes "Amd S&C" on green card *and then strikes out* "Amd." *See* Exhibit B.

- May 21, 2018: All Wheelock entities are served in both cases with Amended Summons and Amended Complaint.
  - Cover letter directs Wheelock Entities to respond within 30 days. *See* Exhibit E.

- June 7, 2018: entries of default on *Initial Complaint.*
  - Counsel *not* copied despite statement in motion.

- June 20, 2018: Timely Answers filed to Amended Complaint.

- January 10, 2019: Plaintiffs file memorandum in support of motion to amend Amended Complaint.

- January 15, 2019: Court grants motion to amend.

- January 30, 2019: Plaintiffs file Second Amended Complaint.

- March 4, 2019: Wheelock entities timely file Answers to Second Am. Complaint.

Along with the effort to declare now the *Amended* Complaint to be at issue in the defaults, Plaintiffs bypass most of the issues at stake and summarily argue that they "properly obtained Entries of Default" and "did not omit or misrepresent any fact to the Court." Plt. Supp. Mem. at 4, 5. Plaintiffs do cite *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998) and argue that it was not required to obtain the Wheelock Entities consent for the referral nor to notify them of the intent to see default. Plaintiffs miss the point about its *ex parte* requests for

relief. The adversarial parties were not present. In such circumstances, Plaintiffs' counsel's duty of candor to the court is "at its highest." *In re Broome*, 356 S.C. 302, 318, 589 S.E.2d 188, 197 (2003); *see* RPC 3.3(d), S.C. App. Ct. Rule 407 ("In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse."). Whichever pleading on which Plaintiffs contend they were seeking entries of default, additional facts specified above and in related briefing should have been presented to the trial court.

Plaintiffs cite *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003) and other cases for the proposition that "[r]elief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." Avoiding a real contest in this case in which Plaintiffs contend there are millions of dollars in damages defendants are responsible for is exactly what Plaintiffs' counsel hope to achieve. The Wheelock Entities respectfully request that the Court not allow the scheme to continue.

As set forth in the earlier briefing and further supported above, the Circuit Court has the authority and jurisdiction to withdraw the Orders of Referral to the Special Referee in this matter and should disregard Plaintiffs' improper attempts to prevent the Court from hearing the Wheelock Entities' pending motions.

Brian C. Duffy
Blake A. McKie
Stephen J. Bell
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044

Fax: (843) 720-2047
bduffy@duffyandyoung.com
bmckie@duffyandyoung.com
sbell@duffyandyoung.com
Attorneys for the Wheelock Entities

June 27, 2019
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO: 2017-CP-10-5246

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

AFFIDAVIT OF SERVICE

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),

FILED
2018 MAY 11 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Inc.; Wheelock Street Real Estate Fund)
II, LP; Wheelock Street Real Estate Fund)
V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
JWH RPIV, LLC; RP Falcon Land, LLC;)
Wieland Realty, LLC; RP Falcon Realty,)
LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Frankcisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc..; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark)
A. McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Investment Management, LLC with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on following page]

HAYES LAW FIRM, LLC

John C. Hayes, IV
Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~. May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Investment Management, LLC
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X William Colley ☐ Agent ☐ Address

B. Received by (Printed Name) | C. Date of Deliv

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 6438

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

JAN 22 2018

120.002.SG

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),)	
Plaintiff,)	
vs.)	**AFFIDAVIT OF SERVICE**
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),)	

FILED
2018 MAY 11 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Inc.; Wheelock Street Real Estate Fund)
II, LP; Wheelock Street Real Estate Fund)
V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
JWH RPIV, LLC; RP Falcon Land, LLC;)
Wieland Realty, LLC; RP Falcon Realty,)
LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Frankcisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc..; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark)
A. McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Real Estate Fund, L.P. with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on the following page]

HAYES LAW FIRM, LLC

John C. Hayes, IV
Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~. May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X William Lolley ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 5967

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

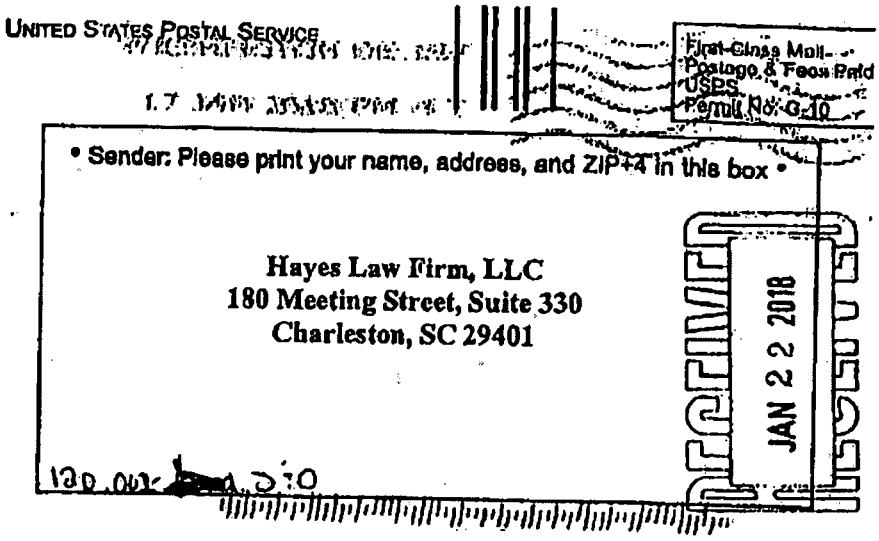

UNITED STATES POSTAL SERVICE
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10
• Sender: Please print your name, address, and ZIP+4 in this box •
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
RECEIVED
JAN 22 2018

EXHIBIT B

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	
Plaintiffs,	**ENTRY OF DEFAULT AGAINST WHEELOCK STREET REAL ESTATE LAND FUND, L.P. AND REFERRAL TO SPECIAL REFEREE**
vs.	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	

FILED
2018 JUN -7 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

This matter comes before the Court upon motion of the Plaintiffs for execution of an Entry of Default against Defendant Wheelock Street Real Estate Fund, L.P. arising out of a construction defects action brought by the Plaintiffs. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiffs also seek referral of the matter to a Special Referee.

It appears that Defendant Wheelock Street Real Estate Fund, L.P. are in default on the Complaint filed by Plaintiffs as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiffs.

IT IS THEREFORE ORDERED that default be entered against Defendant Wheelock Street Real Estate Fund, L.P. in favor of the Plaintiffs Gary Keisler, et al.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the

Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

May 22, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5245
	)	
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
	)	**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE**
Plaintiffs,	)	**AND MOTION FOR ENTRY OF DEFAULT AND**
vs.	)	**REFERRAL**
	)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	)	

EXHIBIT
4

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Real Estate Land Fund, L.P. by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.

Tyler E. Cloud, Esquire
Attorney for the Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC

Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

AFFIDAVIT OF SERVICE

FILED
2018 MAY 11 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Real Estate Fund, L.P. with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on the following page]

HAYES LAW FIRM, LLC

John C. Hayes, IV
Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~. May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Capital, LLC d/b/a John Wieland Homes and
Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X William Lolley ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☑ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 5967

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

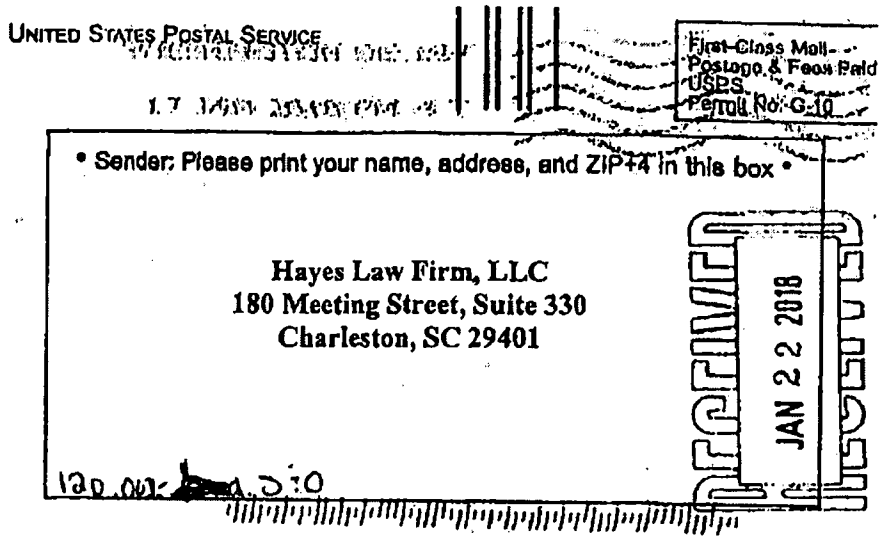

UNITED STATES POSTAL SERVICE
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10
• Sender: Please print your name, address, and ZIP+4 in this box •
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
RECEIVED
JAN 22 2018

EXHIBIT C

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

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Corporation Service Company
Registered Agent for Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X William Lolley ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☑ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 5967

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

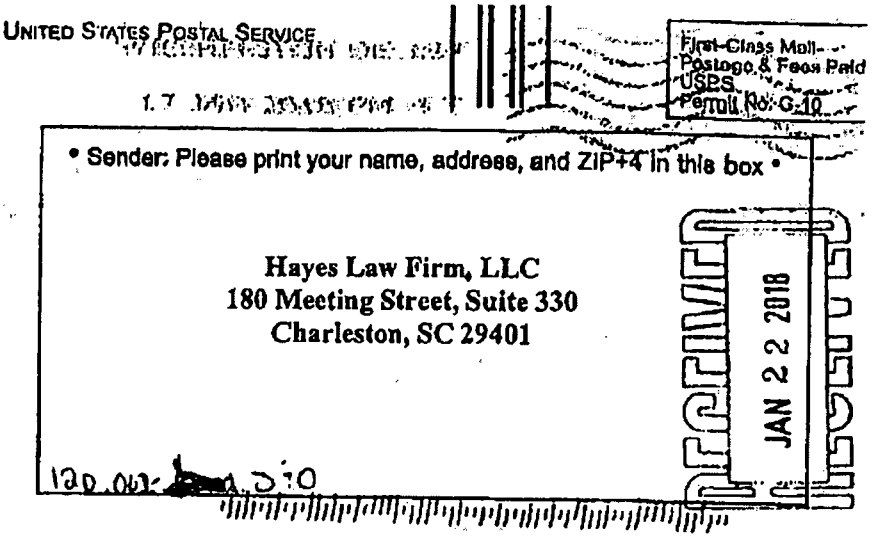

UNITED STATES POSTAL SERVICE
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10
• Sender: Please print your name, address, and ZIP+4 in this box •
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
RECEIVED
JAN 22 2018

EXHIBIT D

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50,

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

AFFIDAVIT OF CHERYL D. SHOUN, ESQUIRE

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSC, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. AC Construction, Corp. Third-Party Defendant.	)

I, Cheryl D. Shoun, Esq., being first duly sworn, depose and say:

1. I am over the age of eighteen (18), I am competent to make this Affidavit, and I have personal knowledge of the matters set forth herein.

2. Nexsen Pruet was the previous counsel for Defendant, Wheelock Street Capital, LLC ("WSC") in this lawsuit; I along with Marvin Infinger, formerly of this firm, undertook the primary tasks of this representation.

3. Nexsen Pruet also was counsel for many of the Wheelock entities in other state and federal lawsuits, including Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. et al. (Charleston County case

no. 2013-CP-10-3326); Madison at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, LLC et al. (C/A No.: 2:15-cv-04120-DCN); and Waverly at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, et al. (C/A No.: 2:16-cv-02973-DCN) (the "earlier actions").

4. John C. Hayes, IV ("Hayes") and I. Keith McCarty ("McCarty")—Plaintiff's counsel in this lawsuit—were either counsel for plaintiffs, or otherwise aware of, involved or joined for discovery purposes, in the earlier actions. Hayes and McCarty communicated with me in the earlier actions numerous times regarding my clients and were aware I represented them.

5. Plaintiff never served me with its original Summons or Complaint in this action.

6. I am informed and believe Plaintiff served WSREF with an Amended Summons, but no Amended Complaint, on or around January 22, 2018.

7. I am further informed and believe that Plaintiff first served WSC and the other Wheelock-affiliated defendants with both an Amended Summons and Amended Complaint on May 21, 2018. The Amended Summons stated that WSC needed to file an Answer within 30 days.

8. In the months leading up to the June 7, 2018 entry of default, Plaintiff's counsel and I had been engaged in discussions relative to reaching an agreement as to a date of service that would be applicable to all affiliated parties, following which Nexsen Pruet would accept service for WSC. During this time Plaintiff's counsel did not inform me of any potential default or their intention to file for entry of default. A copy of email correspondence from February 16, 2018 to April 26, 2018 is attached hereto as Exhibit A.

9. Without providing notice to me and, upon information and belief, without notice to WSC, Plaintiff filed a Motion for Entry of Default on or around May 11, 2018 prior to the expiration of WSC's 30-day answer deadline on June 21, 2018.

10.

11. The Motion for Entry of Default and supporting affidavits state that they were directed to Marvin Infinger and me, as counsel for WSC, but Plaintiff's counsel never sent me notice or a copy of these materials and never otherwise informed me of their filing for entry of default.

12. WSC timely filed an Answer to Plaintiff's Amended Complaint on June 20, 2018.

13. Upon learning of Plaintiff's Motion for Entry of Default, I contacted Plaintiff's counsel to explain why default should not have been entered and that the entry of default should be removed. A copy of correspondence I sent to Plaintiff's counsel is attached hereto as Exhibit B.

14. On behalf of WSC, we understood that the default, which had been entered on an initial pleading following service of an amended pleading which we timely answered, was not legally effective.

FURTHER AFFIANT SAYETH NOT.

Cheryl D. Shoun

Cheryl D. Shoun
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401
(843) 720-1762 (phone)
(843) 414-8238 (fax)

Subscribed and sworn before
me this 11th day of April, 2019.

Marian R Parish
Notary Public for South Carolina
My Commission Expires: 3/8/22

EXHIBIT A

February 16, 2018 Email to Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Friday, February 16, 2018 3:53 PM
To: jhayes@hayeslaw.org; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D.; Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Gentlemen:

I hoped to have the opportunity to call this week, in order to have the chance to actually speak with you. Unfortunately, my schedule did not agree.

I think you are aware that Marvin and I will be representing the "Wheelock" entities in this case. We understand that on January 18, 2018, you forwarded the Amended Complaint to the agent of service for WS JWH LLC. Subsequently, on January 22, 2018, the Amended Summons was forwarded to the agent for service. The Amended Summons was also sent to the agent for service for various Wheelock entities, but it was not accomplanied by the Amended Complaint, nor did they receive the orignlnal Summons or Complaint.

Would you please clarify service – specifically, what was sent to the agent of service for each Wheelock entity and on what date. In fact, in so doing, it may be helpful for everyone involved to clarify which Defendants have been served, what has been served on each, and the dates of service.

Thanks very much, and we look forward to hearing from you, hopefully very early next week.

Cheryl

Cheryl D. Shoun
Nexsen Pruet, LLC
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CShoun@nexsenpruet.com
www.nexsenpruet.com

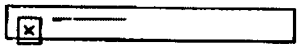
March 5-8, 2018 Emails with Plaintiff's Counsel

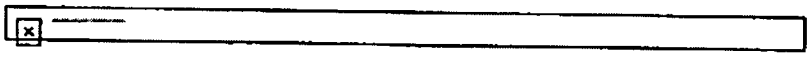
Carney, Tiffiney

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, March 08, 2018 11:58 AM
To: John Hayes
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D.; Trevino, Marilyn J.
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Got it! I'm sorry to have to reschedule.

Cheryl D. Shoun
Nexsen Pruet, LLC
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CShoun@nexsenpruet.com
www.nexsenpruet.com





From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Thursday, March 8, 2018 11:57 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Cc: ikeithmccarty@gmail.com; Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

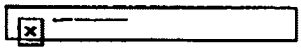
Just try me tomorrow at work

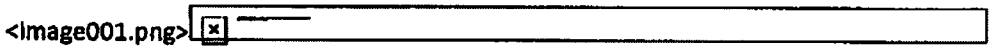
John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 8, 2018, at 11:44 AM, Shoun, Cheryl D. <CShoun@nexsenpruet.com> wrote:

> John: I am in a meeting that is going to run much longer than I anticipated. Do you have free time tomorrow?
>
> Thank you,
> Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
www.nexsenpruet.com





From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 11:44 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

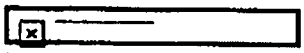
Tomorrow noon would work best if that is okay with you.

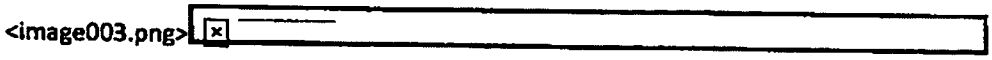
John C. Hayes, IV
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
jhayes@hayeslaw.org

From: "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
Date: Wednesday, March 7, 2018 at 10:12 AM
To: John Hayes <jhayes@hayeslaw.org>, Keith McCarty <ikeithmccarty@gmail.com>
Cc: "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
Subject: RE: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Sure—I'll give you a call this afternoon. Would 3:30 or so work with your schedule?

Cheryl D. Shoun
Nexsen Pruet, LLC
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Charleston, SC 29401
PO Box 486 (29402)
T: 843.720.1762, F: 843.414.8238
CShoun@nexsenpruet.com
www.nexsenpruet.com





From: John Hayes [mailto:jhayes@hayeslaw.org]
Sent: Wednesday, March 7, 2018 10:01 AM
To: Shoun, Cheryl D. <CShoun@nexsenpruet.com>; ikeithmccarty@gmail.com
Cc: Infinger, Marvin D. <MInfinger@nexsenpruet.com>
Subject: Re: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.

John Hayes
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
843.805.7003 (Office)
843.573.7388 (Fax)
Jhayes@hayeslaw.org

On Mar 6, 2018, at 10:57 AM, John Hayes <jhayes@hayeslaw.org> wrote:

> Cheryl, hope you are well. We can certainly work towards an earlier resolution with Wheelock in OHP but we will need back up documentation on the subcontractors involved to get to a comfortable place to discuss cutting out Wheelock. We expect the estimate shortly. How soon do you think you could provide us with the subcontractor information?
>
> Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.
>
> John C. Hayes, IV
> Hayes Law Firm, LLC
> 180 Meeting Street, Suite 330
> Charleston, SC 29401
> 843.805.7003 (Office)
> jhayes@hayeslaw.org
>
> **From:** "Shoun, Cheryl D." <CShoun@nexsenpruet.com>
> **Date:** Monday, March 5, 2018 at 4:23 PM
> **To:** Keith McCarty <ikeithmccarty@gmail.com>
> **Cc:** John Hayes <jhayes@hayeslaw.org>, "Infinger, Marvin D." <MInfinger@nexsenpruet.com>
> **Subject:** One Hamlin Place [IWOV-NPCHAR1.FID1048707]
>
> Hi Keith: Thank you again for speaking with me last Friday concerning our representation of various Wheelock entities in the referenced action.
>
> As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming. In that regard, we discussed our willingness to accept service of those amended pleadings on

behalf of the entities we represent in exchange for an agreement that all of the entities will have an additional 60 days from the date of service in order to respond. Frankly, my clients prefer to direct immediate attention and energy on attempts to resolve Waverly and One Hamlin Place. Although, as you indicated in our conversation, it is very early to address resolution of One Hamlin as you do not yet have any damage estimate.

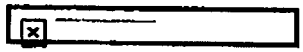
Additionally, because One Hamlin Place is different for the Wheelock entities than either Waverly or Madison, we have to reach out to various individuals in an effort to gather any relevant documentation as to construction. It appears that may take a significant amount of time.

If you and John are so kind to agree as to a period of 60 days following acceptable of service by us of the fourth amended pleadings, we will be glad to prepare a proposed consent order to be submitted to the court.

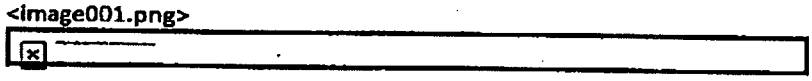
Thank you again, and I look forward to hearing from you.

Cheryl

Cheryl D. Shoun
Nexsen Pruet, LLC
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CShoun@nexsenpruet.com
www.nexsenpruet.com



<image001.png>



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April 26, 2018 Email with Plaintiff's Counsel

From: Shoun, Cheryl D. <CShoun@nexsenpruet.com>
Sent: Thursday, April 26, 2018 1:40 PM
To: jhayes@hayeslaw.org
Cc: Trevino, Marilyn J.
Subject: One Hamlin Place [IWOV-NPCHAR1.FID1048707]

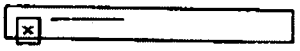
Hey John: Thanks very much for the call.

I am going to reach out to my client this afternoon. Before doing so, I would love to get copies of the green cards you have relative to service in January, 2018. Would you mind asking Jenna (or someone) to forward those cards to Marilyn. That way I can have everything in front of me when I call today.

I am copying Marilyn on this, though I am sure Jenna knows how to find her.

Thanks so much,
Cheryl

Cheryl D. Shoun
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CShoun@nexsenpruet.com
www.nexsenpruet.com



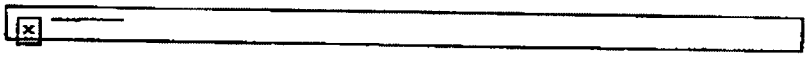


EXHIBIT B

NEXSEN|PRUET

Cheryl D. Shoun
Special Counsel
Admitted in SC

July 3, 2018

John C. Hayes, IV, Esq.
Hayes Law Firm
180 Meeting Street
Suite 330
Charleston, SC 29401

Keith McCarty, Esq.
McCarty Law firm
P.O. Box 30055
Charleston, SC 29417

RE: *One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245 and *Keisler, et al. v. JWHNC, et al.*, 2017-CP-1005246

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

John and Keith:

I am reaching out once again in an effort to resolve the issues surrounding the June 7-8 Entries of Default against certain Wheelock defendants in the referenced cases. While not exhaustive, the reasons for this request with respect to each action are reiterated below:

***One Hamlin Place Townhome Association Inc. v. JWHNC, et al.*, 2017-CP-10-05245**

- Entry of Default against Wheelock Street Investment Management, I, LLC, Wheelock Street Investment Management II, LLC, and Wheelock Street Investment Management V, LLC:
    - These entities *are not named in the lawsuit.* That alone justifies the removal of the June 7, 2018 Entry of Default against them.
- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, LP ("WSREF"):

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Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1762
F 843.414.8238
E CShoun@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

- Neither WSC nor WSREF received the original Summons or Complaint in this case.
- WSC and WSREF were served with an Amended Summons on or around January 22, 2018. *See* Ex. 1-2.
- Under SCRP 4(d), the "summons and complaint must be served together." WSC and WSREF were not served with the Amended Summons *and* Amended Complaint until May 21, 2018. This was the first proper service of any summons and complaint on WSC and WSREF.
- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.
- In the cover letter to these amended papers, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." *See* Exs. 3-4, at 1. The Amended Summons likewise sets forth 30 days for a response.
- You moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired*, despite our conversations that had been ongoing since February.
- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.
- For all these reasons (though there are more), the June 7-8, 2018 Entries of Default against WSC should be removed.

- Entry of Default against Wheelock Street Investment Management, LLC ("WSIM"):
  - WSIM was served with a Summons and Complaint on or around January 12, 2018.
  - WSIM was served with an Amended Summons on or around January 22, 2018. Ex. 5

- That Amended Summons prompted me to reach out to you about the missing Amended Complaint and the service issues related to the other Wheelock defendants. *See* Ex. 6 (My email of Feb. 16, 2018 email to you both).

- During our subsequent conversations, you indicated that you would be serving a *Fourth Amended Complaint* on the Wheelock defendants. *See* Ex. 7 (March 3, 2018 email). ("As we discussed, we have encountered some issues in piecing together the service of the pleadings on the various Wheelock entities. I understand, however, there is a Fourth Amended Summons and Fourth Amended Complaint forthcoming.").

- Given the service issues, I agreed to accept service on behalf of all the Wheelock defendants in exchange for an extension of time to answer the *forthcoming* amended pleadings. *Id.*

- You initially agreed but changed your mind for reasons of which I was and remain uncertain. *Id.* (March 6, 2018 email from John to me) ("Yes, we consent to 60 days if you will consent to acceptance of service and we will send over this week. Thank you and look forward to working with you.); *id.* (March 7, 2018 email from John to me) ("Actually, before we agree to anything let's have a chat. I am available late afternoon or tomorrow.").

- By late April, I asked you to send to me any green cards related to the purported January service of the Wheelock defendants. Ex. 8., to which I received no response, but you instead served WSIM with an Amended Summons and Amended Complaint on May 21, 2018, without any notice to me.

- When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSIM, making the prior pleading moot and any response thereto unnecessary.

- In the cover letter to the amended papers, you stated that WSIM had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Ex. 9, at 1. And, again, the Amended Summons indicates a response is due within 30 days.

- Once again, you moved for Entry of Default without notice to me or my client almost two weeks *before the 30 days expired.*

- WSIM timely answered the Amended Complaint on June 20, 2018.

- For these reasons (though there are more), the June 7, 2018 Entry of Default against WSIM should be removed.

***Keisler, et al. v. JWHNC*, et al., 2017-CP-1005246**

- Entries of Default against Wheelock Street Capital, LLC ("WSC") and Wheelock Street Real Estate Fund, L.P. ("WSREF"):

  - Neither WSC nor WSREF received the original Summons or Complaint in this case.

  - WSC and WSREF were served with the Amended Summons and Amended Complaint on May 21, 2018.

  - When compared to the original Complaint, the Amended Complaint adds new factual allegations and new legal claims against WSC and WSREF, making the prior pleadings moot and any responses thereto unnecessary.

  - Identical to your cover letters in *One Hamlin*, you stated that WSC and WSREF had "thirty (30) days from the date of service in which to respond to this Amended Complaint." Exs. 10-11, at 1. Again, please refer to what I believe is intended to be the Amended Summons, but instead labelled Amended Verified Complaint, which provides for a response due within 30 days.

  - Once again, you moved for Entries of Default without notice to me or my client almost two weeks *before the 30 days expired.*

  - Moreover, the Motions for the Entries of Default against WSC and WSREF are facially deficient.

    - The first Motion and Entry of Default against WSC, dated June 7, 2018, relies on an Affidavit of Service and mail return receipt for the service of a different party.

- The second Motion and Entry of Default against WSC, dated June 8, 2018, was based on the same incorrect mail return receipt.

- Similarly, the Motion and Entry of Default against WSREF, dated June 7, 2018, relies on a mail return receipt for the service of a different party.

- WSC and WSREF timely answered the Amended Complaint on June 20, 2018.

- For these reasons (though there are more), the June 7, 2018 and June 8, 2018 Entries of Default against WSC and WSREF should be removed.

I will be more than happy to meet with you to discuss these defaults and the relevant exhibits, if necessary. It seems, however, that the foregoing, along with the documents referenced is adequate to secure the removal of the defaults and any additional documents resulting therefrom.

I hope to hear with you upon your receipt of this correspondence.

Sincerely,

Cheryl

Cheryl D. Shoun, Esq.

cc: Brian D. Duffy, Esq.
Mark E. Tully, Esq.

EXHIBIT E

HAYES LAW FIRM, LLC

John C. Hayes, IV
180 Meeting Street – Suite 330
Charleston, South Carolina 29401
Tel: (843) 805-7003
Email: jhayes@hayeslaw.org

May 16, 2018

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED/
RESTRICTED DELIVERY:
Corporation Service Company
Registered Agent for Wheelock Street Capital, LLC
d/b/a John Wieland Homes and Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

Re: *Gary Keisler, Individually and as Class Representative, et al. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.*
Case No.: 2017-CP-10-5246
HLF File No.: 120.002

Dear Sir or Madam:

Enclosed herewith for service upon you, as Registered Agent for Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc., please find a filed copy of *Plaintiffs' Amended Summons and Complaint* with regard to the above-referenced matter.

Please note that you have thirty (30) days from the date of service in which to respond to this Amended Complaint. Your prompt attention and Answer are greatly appreciated.

Should you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

HAYES LAW FIRM, LLC

Jena M. Lingle
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Registered Agent for
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May 16, 2018

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED/
RESTRICTED DELIVERY:
Corporation Service Company
Registered Agent for Wheelock Street Real Estate Fund, LP
251 Little Falls Dr.
Wilmington, DE 19808

Re: *Gary Keisler, Individually and as Class Representative, et al. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.*
Case No.: 2017-CP-10-5246
HLF File No.: 120.002

Dear Sir or Madam:

Enclosed herewith for service upon you, as Registered Agent for Wheelock Street Real Estate Fund, LP, please find a filed copy of *Plaintiffs' Amended Summons and Complaint* with regard to the above-referenced matter.

Please note that you have thirty (30) days from the date of service in which to respond to this Amended Complaint. Your prompt attention and Answer are greatly appreciated.

Should you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

HAYES LAW FIRM, LLC

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Wilmington, DE 19808



CASE NO: 2017-CP-10-5246

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION FOR EXPEDITED HEARING AND TO DECIDE MOTIONS TO VACATE ORDER OF REFERRALS TO SPECIAL REFEREE AND MOTIONS TO VACATE DEFAULTS** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

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FILED
2019 JUN 27 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT

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Janice V. Person

JUNE 27, 2019

EXHIBIT N

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO: 2017-CP-10-5246
)
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO WHEELOCK DEFENDANTS' MOTION FOR EXPEDITED HEARING

FILED
2019 JUN 21 PM 4:58
CHARLESTON
CLERK OF COURT
BY

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

NOW COME the Plaintiffs, Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50) (hereinafter referred to as "Plaintiffs"), by and through their undersigned counsel, and hereby submit their Supplemental Memorandum in Opposition to Defendants' Motion for an Expedited Hearing.

BRIEF SUMMARY

- The Court divested itself of jurisdiction to hear Defendants' arguments.
- Defendants did not go into default by mistake of counsel.
- Defendants waited eight months to make this Motion.
- All of the matters argued by Defendants can be made before the Special Referee (with the benefit of witness testimony), in which Defendants may be successful, and they have the ability to appeal if they are not.
- This is the second or third time Defendants have attempted to circumvent the Special Referee.
- Defendants have filed these exact motions with the Special Referee, were scheduled with him at one point, and they were postponed in an attempt to mediate the case.
- To hold otherwise would negate the use of a special referee and defendants, in this and other matters, would try to circumvent court orders referring a case to a special referee.

ARGUMENT

The only motion that was before the Court on June 11, 2019 was Defendants' Motion for an Expedited Hearing. The Court requested that parties brief the issue as to whether it is able to "take back" jurisdiction of matters that have been referred to a special referee by court order, to determine whether the Court even has authority to hear Defendants' Motion for Expedited

Hearing. In their Supplemental Memorandum, Defendants inappropriately argue the merits of the underlying motions that they are moving to be expedited. These arguments must be made before the Special Referee.

There is no authority that would allow the Court to take back jurisdiction from the Special Referee to hear Defendants' Motion for an Expedited Hearing.

I. Plaintiffs Did Not Engage in Extrinsic Fraud and Properly Obtained Entries of Default and Orders of Reference.

In their Supplemental Memorandum, Defendants allege that Plaintiffs engaged in extrinsic fraud in obtaining Entries of Default and Orders of Referral to Special Referee, and that Rule 60 allows the Court to vacate orders when extrinsic fraud exists.

"Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action ... " *Chewing v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 2003.

Here, no extrinsic fraud exists because the Plaintiffs properly obtained Entries of Default and Orders of Reference upon Defendants' failure to timely answer the pleadings. Defendants insinuate that the fact that the Orders were entered into *ex parte* is fraudulent in some way. Plaintiffs dispute the assertion that they were entered into *ex parte*. However, the Supreme Court of South Carolina has held that the consent of a defaulting party is not required before the circuit court may refer the case to a special referee, **even if the defaulting defendant has made an appearance in the case**. *Roche v. Young Bros.*, Inc. of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998) (emphasis added). "To hold otherwise would mean that a defaulting party could acquire the right to veto the circuit court's reference authority by making some kind of appearance in the case.

This would be an incongruous result." *Id.* at 82-83. In *Roche*, the motion and subsequent order of reference were done *ex parte*. *Id.* at 79. Plaintiffs properly moved for the entries of default and orders of reference and were not required to notify Defendants of their intentions to move for default and to refer the case to a special referee when they failed to timely answer the pleadings.[1]

Plaintiffs did not omit or misrepresent any fact to the Court upon moving for entries of default. Defendants' claim that the pleading upon which the entry of default was granted was a nullity at the time that Judge Harrington executed the Orders because Plaintiffs had already amended the pleadings is patently false. Defendants failed to answer the Amended Complaint, which was filed on January 16, 2018. The Second Amended Complaint was not filed until January 30, 2019. Plaintiffs moved for entries of default on May 14, 2018. Judge Harrington had access to all of the filings in this case and was able to see whether or not there was another complaint filed. Plaintiffs did not misrepresent or omit any information. For these reasons, no extrinsic fraud exists.

A defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. *Howard v. Holiday Inns Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978). Defendants have not been deprived of their opportunity to be heard. By failing to timely answer the Complaint, they chose not to present their case or deny the allegations set forth in Plaintiffs' Complaint. Defendants are also not deprived of their opportunity to make a motion to vacate the default under Rule 60, as the Orders of Reference specifically states that the special referee has

[1] Defendants cite to *Davis v. Davis*, 236 S.C. 277, 113 S.E.2d 819 (1960) as authority for vacating the Orders of Reference. In *Davis*, the Court vacated a default judgment of divorce and order of reference on the ground that the divorce suit was fatally irregular for lack of notice to one of the spouses. This ruling arose from a divorce suit in which there was a *pro se* litigant who had answered the divorce pleadings, but was not provided notice of the motion for order of reference and default judgment. In the present case, the Defendants failed to timely answer, and the South Carolina Supreme Court has stated in *Roche* that defaulting parties' consent is not required for a referral.

jurisdiction to hear those motions. In fact, Defendants have filed Motions to Vacate with the Special Referee.

Because no extrinsic fraud exists on the part of Plaintiffs in obtaining Entries of Default and the Orders off Reference, and because Defendants have not been deprived of having the opportunity to be heard or try their case, the Court may not vacate the Orders of Referral under Rule 60. Defendants are attempting to circumvent the Court's Order of Referral with unsubstantiated allegations of fraud. [2]

II. Only the Special Referee Has Jurisdiction to Hear the Arguments Raised by Defendants.

"When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action[.]" S.C. Code Ann. § 14-11-85. Consistently with this statute, Rule 53(c), SCRCP, provides that, once a case has been referred, "the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter."

"When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers." *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 74-75, 773 S.E.2d 607, 616 (Ct. App. 2015) (quoting *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993)). "Once an action is referred, the master possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter." *Normandy Corp. v. S.C. Dept. of Transp.*, 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009).

[2] It is worth noting that the Defendants have alleged that counsel for Plaintiffs engaged in fraud, which is an extremely serious accusation, without any evidence except for a self-serving affidavit written by the attorney who was defense counsel at the time of the default.

The Orders explicitly give the Special Referee jurisdiction over Defendant's Motions, noting that he has jurisdiction over "all matters arising from or reasonably related to such action," including, but not limited to, "jurisdiction over any motions or actions to set aside Entry of Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b)." This is precisely what Defendants seek to do with their motions. Further, the Referral to Special Referee explicitly states, "**any and all hearings** shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County." (emphasis added).

Defendants may challenge the Entries of Default and Orders of Reference, but the proper jurisdiction is before the Special Referee, not the Circuit Court. If extrinsic fraud has actually been committed as Defendants allege, the Special Referee can properly decide that issue after taking testimony and hearing arguments. *See Wachovia Bank of South Carolina v. Player,* 341 S.C. 424, 535 S.E.2d 128 (2000) (finding that the order of reference "gives the master jurisdiction over the case and all matters arising from it [including the Defendant's Rule 60(b) Motion] until the master has performed all duties assigned to him.").

In their Supplemental Memorandum, Defendants incorrectly argue that Rule 53(b) SCRCP directs the return of matters from special referees upon the filing of a jury demand. However, Rule 38(d) provides: "A demand for trial by jury made as herein provided may not be withdrawn with the consent of the parties, **except where an opposing party is in default under Rule 55(a).**" (emphasis added).

Defendants did not cite any authority in their Supplemental Memorandum that would allow the Court to strip jurisdiction away from the Special Referee and confer it back to the Circuit Court. The majority of the case law that Defendants cite to is not South Carolina law or related federal

law, nor is it persuasive or on point.[3] Accordingly, these matters have been properly referred to the Special Referee, and the Defendants have the ability to make their underlying arguments before him, including challenging his jurisdiction. Further, S.C. Code § 14-11-100 allows the masters and special referees to take testimony.

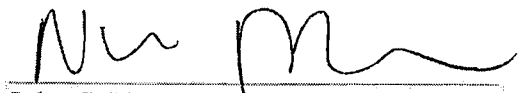
For the foregoing reasons, the Court should uphold its Orders of Reference to the Special Referee in this matter. To hold otherwise would mean that a defaulting party could acquire the right to veto the circuit court's reference authority by making unsubstantiated accusations of fraud and/or moving for a jury trial.

[Signature Page to Follow]

[3] For example, Defendants cite to *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957), in which the circuit court judge improperly referred the entire case and pending trial to the master without consent of any of the parties because of the court's "congested calendar". The facts of this case are completely inapplicable to the present case.

Respectfully Submitted,

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June 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class)
Representative, John Does (1-50) and)
Jane Does (1-50),)
) **CERTIFICATE OF SERVICE**
Plaintiff,)
)
vs.)
)
John Wieland Homes and)
Neighborhoods of the Carolinas, Inc. as)
successor by statutory merger to John)
Wieland Homes and Neighborhoods of)
South Carolina, Inc.; John Wieland)
Homes of Charleston, Inc.; John)
Wieland Homes, Inc. n/k/a John)
Wieland Homes and Neighborhoods of)
South Carolina; Builder Support)
Services of the Carolinas, Inc.;)
Wheelock Street Capital, LLC d/b/a)
John Wieland Homes and)
Neighborhoods, Inc.; Wheelock Street)
Real Estate Fund, LP; Wheelock Street)
Investment Management, LLC; RP)
Falcon Properties, LLC; Residential)
Partners, LLC; Middlesex Holdings,)
LLC; WS JWH, LLC; JWC Phoenix,)
LLC; Bridgemill Land, LLC;)
Annisquam Development, LLC; JW)
Land Investment, LLC; JWC Guilford,)
LLC; OOTB, LLC; JW Realty)
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Parker; Robert Parker; Jack Wieland;)
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Construction, Inc. a/k/a JMC)
Construction, LLC; John Does (20-50);)
and Jane Does (41-50); AC)
Construction, Inc.; Scott Parker,)
individually; Builders FirstSource –)
Southeast Group, LLC; Muhler LLC)
a/k/a The Muhler Company, Inc.; YKK)

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2019 JUN 21 PM 4:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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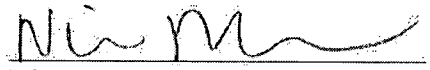
Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

The undersigned hereby certifies that on the 21st day of June 2019, a true and correct copy of the attached *Plaintiffs' Supplemental Memorandum in Opposition to Wheelock Defendants' Motion for Expedited Hearing* was served upon all parties and/or their respective counsel of record by placing the same in the U.S. Mail and/or email with sufficient postage affixed and addressed as follows:

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Hayes Law Firm, LLC



Nina E. Meola

EXHIBIT O

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-05246

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50)

PLAINTIFF(S)

John Wieland Homes & Neighborhoods of The Carolinas, Inc., Et. Al.

DEFENDANT(S)

Submitted by: The Court	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED
2019 JUL 11 AM 11:23
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After reviewing all submissions of counsel, this Court hereby denies Defendant Wheelock's (Collectively all Wheelock Defendants) Motion for an Expedited Hearing. Defendant Wheelock's Motion for Recusal of the Special Referee shall be decided by the Special Referee. If the Special Referee shall grant such Recusal request, then the case shall be sent back to the Circuit Court for a determination of Defendant Wheelock's outstanding Motions. If the Special Referee declines to grant such recusal, then Wheelock's outstanding Motions shall be decided by the Special Referee as authorized by the Order of Reference.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

D. Craig Brown — 2160 — 7-1-19

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

EXHIBIT P

THE STATE OF SOUTH CAROLINA
In The SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Craig D. Brown, Circuit Court Judge

Case No. 2017-CP-10-05246

WHEELOCK STREET REAL ESTATE FUND, LP AND WHEELOCK STREET CAPITAL, LLC — Appellants,

v.

GARY KEISLER, INDIVIDUALLY AND AS CLASS REPRESENTATIVE, JOHN DOES (1-50) AND JANE DOES (1-50). — Respondents.

NOTICE OF APPEAL

Wheelock Street Real Estate Fund, LP and Wheelock Street Capital, LLC (collectively, "the Wheelock Entities") appeal the judgment of the Honorable Craig D. Brown dated July 1, 2019.[1] Appellants received written notice of entry of this judgment on July 11, 2019. Appellants also appeal the prior orders of the circuit court entered June 7, 2018. Copies of the subject orders are attached hereto.

(Signature on following page)

---

[1] The order is immediately appealable because it affects a substantial right of Appellants. *See* S.C. Code Ann. § 14-3-330. The Wheelock Entities are proper parties to the case, having timely responded to an Amended Complaint, and have due process rights to defend the case in court on the merits.

Brian C. Duffy
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044
Attorneys for Appellants

July 24, 2019

ATTACHMENT 1

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-10-05246

Gary Kelsler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50)

PLAINTIFF(S)

John Wieland Homes & Neighborhoods of The Carolinas, Inc., Et. Al.

DEFENDANT(S)

Submitted by: The Court	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration; subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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2019 JUL 11 AM 11:23
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After reviewing all submissions of counsel, this Court hereby denies Defendant Wheelock's (Collectively all Wheelock Defendants) Motion for an Expedited Hearing. Defendant Wheelock's Motion for Recusal of the Special Referee shall be decided by the Special Referee. If the Special Referee shall grant such Recusal request, then the case shall be sent back to the Circuit Court for a determination of Defendant Wheelock's outstanding Motions. If the Special Referee declines to grant such recusal, then Wheelock's outstanding Motions shall be decided by the Special Referee as authorized by the Order of Reference.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2160 Judge Code	7-1-19 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ATTACHMENT 2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO: 2017-CP-10-5246
)
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),
)
Plaintiffs,
vs.

ENTRY OF DEFAULT AGAINST WHEELOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

184

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANTS WHEELOCK STREET CAPITAL, LLC D/B/A JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

This matter comes before the Court upon motion of the Plaintiffs for execution of an Entry of Default against Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. arising out of a construction defects action brought by the Plaintiffs. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiffs also seek referral of the matter to a Special Referee.

It appears that Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. are in default on the Complaint filed by Plaintiffs as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiffs.

IT IS THEREFORE ORDERED that default be entered against Defendants Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods Inc. in favor of the Plaintiffs Gary Keisler, et al.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

3 & 4

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

June 4, 2018

4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5246
	)	
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
	)	**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE**
Plaintiffs,	)	**AND MOTION FOR ENTRY OF DEFAULT AND**
vs.	)	**REFERRAL**
	)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	)	

EXHIBIT
A

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET INVESTMENT MANAGEMENT, LLC

PERSONALLY APPEARED before me, John C. Hayes, IV, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiffs in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendant Wheelock Street Investment Management, LLC, by certified mail, return receipt requested on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.

Tyler E. Cloud, Esquire
Attorney for the Plaintiffs

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COME THE PLAINTIFFS, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC

Tyler E. Cloud, Esquire
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiffs

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
Plaintiff,	)	
vs.	)	**AFFIDAVIT OF SERVICE**
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Inc.; Wheelock Street Real Estate Fund)
II, LP; Wheelock Street Real Estate Fund)
V, LP; WSREF, NRT, LLC; JW Homes, LLC;)
JWH RPIV, LLC; RP Falcon Land, LLC;)
Wieland Realty, LLC; RP Falcon Realty,)
LLC; Residential Partners II, LLC;)
Residential Partners III, LLC; Residential)
Partners IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine Builders,)
LLC; Jose Alfredo Sandoval; Chad Larsen)
d/b/a Chad Larsen Co.; Ivan Jose Paiz)
d/b/a Jose Construction; William B.)
Angel; East Coast Wall Systems, Inc.;)
Tracyinne Construction a/k/a T&C)
Construction, LLC; Frankcisco and)
Andrea DaCosta d/b/a AAA Coastline,)
Inc.; Jack R. Clark d/b/a Jack Clark)
Construction, LLC; Alex Welch; Tracy)
McCuiston d/b/a Mastercraft Interior)
and Exterior; Universal Forest Products)
Eastern Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc..; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony Kirksey;)
Polly S. Clark d/b/a Glenn Clark)
Construction; Benjamin Mora a/k/a)
Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel L.)
Rogers d/b/a Rogers Roofing Co., Inc.)
n/k/a Dan Rogers Roofing, LLC; William)
C. Mulhern d/b/a Bill's Painting; Mark)
A. McFarland d/b/a In the Wind, Inc.;)
Harbor Master, Inc.; Chad Hood; Kinco)
Ltd. a/k/a Kinco, Inc.; Atrium)
Companies, Inc. d/b/a Atrium Windows)
and Doors, Inc. a/k/a HR Windows; The)
Contractor Yard, Inc.; New Construction)
Drywall Hanger, LLC f/k/a New)
Construction Drywall Hanger, Inc.; Doug)

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Investment Management, LLC with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on following page]

HAYES LAW FIRM, LLC

John C. Hayes, IV
Tyler E. Cloud
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org
tcloud@hayeslaw.org

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Tel: 843-793-1272
ikeithmccarty@gmail.com

ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~. May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Investment Management, LLC
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X William Lolley ☐ Agent ☐ Address

B. Received by (Printed Name) | C. Date of Deliv

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7011 3500 0000 4260 6438

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

* Sender: Please print your name, address, and ZIP+4 in this box *

Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

RECEIVED
JAN 22 2018

120.002.616

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	
Plaintiffs,	**ENTRY OF DEFAULT AGAINST WHEELOCK STREET REAL ESTATE LAND FUND, L.P. AND REFERRAL TO SPECIAL REFEREE**
vs.	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	

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2018 JUN -7 PM 2:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

1 of 4

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

This matter comes before the Court upon motion of the Plaintiffs for execution of an Entry of Default against Defendant Wheelock Street Real Estate Fund, L.P. arising out of a construction defects action brought by the Plaintiffs. Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure the Plaintiffs also seek referral of the matter to a Special Referee.

It appears that Defendant Wheelock Street Real Estate Fund, L.P. are in default on the Complaint filed by Plaintiffs as evidenced by the Affidavit of Default filed herewith as "Exhibit A" by counsel for the Plaintiffs.

IT IS THEREFORE ORDERED that default be entered against Defendant Wheelock Street Real Estate Fund, L.P. in favor of the Plaintiffs Gary Keisler, et al.. The Court will set a hearing as to the amount of damages upon the request of the Plaintiff.

IT IS FURTHER ORDERED that this action is referred to the Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP, and all matters arising from or reasonably related to such action. The Special Referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary acts incident to this action. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment, necessary to enforce the judgment, and motions or actions to set aside Entry of Default or Default Judgment pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

Any and all hearings shall be held in the office of Daniel S. Slotchiver, Esquire, Special Referee for Charleston County, 44 State St., Charleston, South Carolina, and all Orders of the

Special Referee shall be filed with the Clerk of Court for Charleston County.

IT IS SO ORDERED!

Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina

May 22, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5245
	)	
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),	)	
	)	**AFFIDAVIT OF TYLER E. CLOUD, ESQUIRE**
Plaintiffs,	)	**AND MOTION FOR ENTRY OF DEFAULT AND**
vs.	)	**REFERRAL**
	)	
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC;	)	

EXHIBIT
4

Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard

Ditullio a/k/a RDT Contracting, LLC;)
Valencia Medina;)
)
Defendants.)

TO: CHERYL D. SHOUN AND MARVIN D. INFINGER, ATTORNEYS FOR DEFENDANT WHEELOCK STREET REAL ESTATE LAND FUND, L.P.

PERSONALLY APPEARED before me, Tyler E. Cloud, Esq., who being duly sworn deposes and says that he is the attorney for the Plaintiff in the above-captioned action; that pursuant to the previously filed Affidavits of Service, the Summons and Complaint were duly served upon the Defendants Wheelock Street Real Estate Land Fund, L.P. by certified mail, return receipt requested, on January 12, 2017 at 251 Little Falls Drive, Wilmington, Delaware; that more than thirty days have lapsed since service and no Answer, Motion, or Notice of Appearance has been made therein; and that said Defendants are now in default. Further, Defendants are not a member of the Armed Services of the United States as contemplated under the Soldiers and Sailors Relief Act.

FURTHER AFFIANT SAYETH NOT.

Tyler E. Cloud, Esquire
Attorney for the Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of May, 2018.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/16/20

NOW COMES THE PLAINTIFF, by and through their undersigned counsel, who would at this time, based on the affidavit of default contained herein, respectfully move before this honorable Clerk of Court for Entry of Default and Referral to Daniel S. Slotchiver, Esquire, who has consented to serve as Special Referee, to take testimony and direct entry of final judgment in this action under Rule 53, SCRCP.

Respectfully submitted,

HAYES LAW FIRM, LLC

Tyler E. Cloud
John C. Hayes, IV, Esquire
180 Meeting Street, Suite 330
Charleston, SC 29401
843-805-7003 office
843-573-7388 fax

and

I. Keith McCarty, Esquire
McCARTY LAW FIRM, LLC
Post Office Box 30055
Charleston, SC 29417
Phone: 843-793-1272
ikeithmccarty@gmail.com

Attorneys for the Plaintiff

May 14, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiff,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A),

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

AFFIDAVIT OF SERVICE

FILED
2018 MAY 11 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc..; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; Doug

Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;	)
Defendants.	)

I, TYLER E. CLOUD, the undersigned, of the Hayes Law Firm, LLC, attorneys for the Plaintiffs, do hereby certify that I have served Corporation Service Company, SC Registered Agent for Defendant, Wheelock Street Real Estate Fund, L.P. with a copy of the Summons and Complaint by Certified Mail, Return Receipt Requested, Restricted Delivery as evidenced by the attached Certified Mail Receipt received January 22, 2018.

[Signature on the following page]

HAYES LAW FIRM, LLC

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and

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ATTORNEYS FOR PLAINTIFFS

May 11, 2018
Charleston, South Carolina

SWORN to before me this 11th
day of ~~April 2018~~. May 2018.

Notary Public for South Carolina
My Commission Expires: 9/16/20

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company
Registered Agent for Wheelock Street
Capital, LLC d/b/a John Wieland Homes and
Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X William Lolley ☐ Agent ☐ Address

B. Received by (Printed Name) | C. Date of Deliv

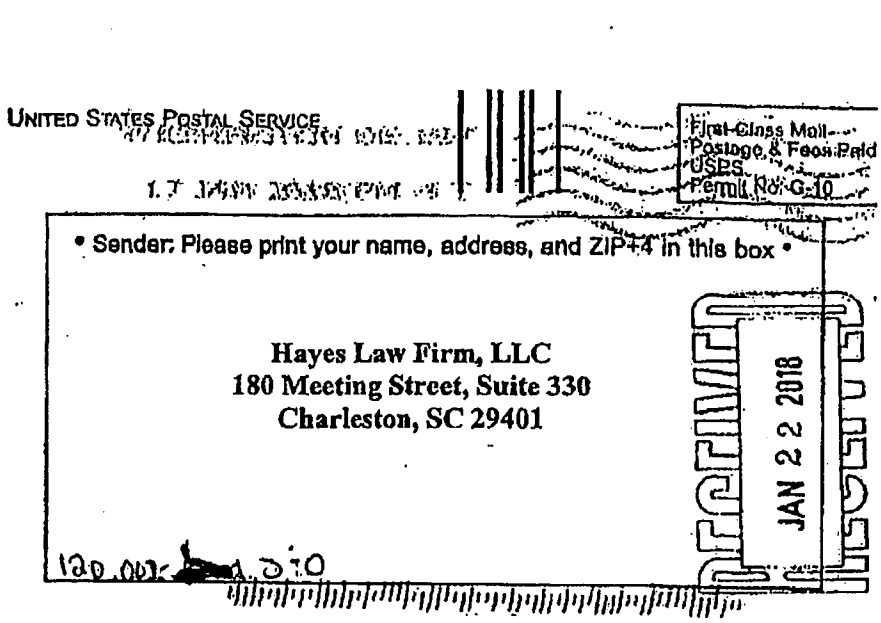
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☑ Yes

2. Article Number
(Transfer from service label) 7011 3500 0000 4260 5967

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1


UNITED STATES POSTAL SERVICE
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10
• Sender: Please print your name, address, and ZIP+4 in this box •
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
RECEIVED
JAN 22 2018

PROOF OF SERVICE

I, the undersigned Paralegal for the law offices of Duffy & Young LLC, attorneys for Wheelock Street Real Estate Fund, LP and Wheelock Street Capital, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by Untied States Mail, postage prepaid and/or via email, to the following addresses:

Pleadings:

NOTICE OF APPEAL

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Janice V. Prosen
Janice V. Prosen
Paralegal

July 25, 2019

EXHIBIT Q

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs.

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (45-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

SECOND AMENDED VERIFIED COMPLAINT
(Jury Trial Demanded)

FILED
2019 JAN 30 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(U.S.A), Inc.; Wheelock Street Real)
Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT,)
LLC; JW Homes, LLC; JWH RPIV,)
LLC; RP Falcon Land, LLC; Wieland)
Realty, LLC; RP Falcon Realty, LLC;)
Residential Partners II, LLC; Residential)
Partners III, LLC; Residential Partners)
IV, LLC; Paul M. Vasquez;)
Neighborhood Management Associates,)
Inc.; Billie and Antonio Arias d/b/a)
Antonio Arias Framing Construction;)
Tru-Don Contracting, Inc.; Fine)
Builders, LLC; Jose Alfredo Sandoval;)
Chad Larsen d/b/a Chad Larsen Co.;)
Ivan Jose Paiz d/b/a Jose Construction;)
William B. Angel; East Coast Wall)
Systems, Inc.; Tracyinne Construction)
a/k/a T&C Construction, LLC;)
Frankcisco and Andrea DaCosta d/b/a)
AAA Coastline, Inc.; Jack R. Clark d/b/a)
Jack Clark Construction, LLC; Alex)
Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern)
Division, Inc.; Gonzalo Guerrero; A-)
Marc, Inc..; Emmanuel Kehagis d/b/a)
Creative Construction; Anthony)
Kirksey; Polly S. Clark d/b/a Glenn)
Clark Construction; Benjamin Mora)
a/k/a Benjamin L. Mora d/b/a Mora)
Construction f/k/a Mora's Construction)
and Benjamin Mora Construction, LLC)
n/k/a Mora Construction, LLC; Daniel)
L. Rogers d/b/a Rogers Roofing Co.,)
Inc. n/k/a Dan Rogers Roofing, LLC;)
William C. Mulhern d/b/a Bill's)
Painting; Mark A. McFarland d/b/a In)
the Wind, Inc.; Harbor Master, Inc.;)
Chad Hood; Kinco Ltd. a/k/a Kinco,)
Inc.; Atrium Companies, Inc. d/b/a)
Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard,)
Inc.; New Construction Drywall Hanger,)
LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC;

Defendants.

The Plaintiff, Gary Keisler as Class Representative, and the above-named Plaintiffs (hereinafter collectively referred to as "Plaintiffs"), individually and as a class of similarly situated owners of townhome units in a residential townhome community named One Hamlin Place Townhomes complaining of the above-mentioned Defendants, allege and state as follows:

1. Plaintiff, Gary Keisler, is a citizen and resident of Charleston County, South Carolina, who at all times relevant hereto lives in a residential community known as One Hamlin Place Townhomes, located in Mount Pleasant, South Carolina, Plaintiff Gary Keisler further alleges and states that he is bringing this action pursuant to Rule 23, SCRCP, as representing a class composed of each and every unit owner in the One Hamlin Place Townhome Association, Inc., and that:

a) The class is so numerous that joinder of all members is impracticable;

b) There are questions of law and fact common to the class;

c) The claims of the Plaintiff, Gary Keisler, are typical of the claims of the class;

d) The Plaintiff, Gary Keisler, will fairly and adequately protect the interest of the class; and

e) The amount in controversy exceeds One Hundred Dollars ($100.00) for each member of the class.

2. The individual Plaintiffs are citizens and residents of Charleston County, South Carolina, who at all times relevant hereto live in a residential community known as One Hamlin Place Townhomes, located in Mount Pleasant, South Carolina.

3. Plaintiffs who are the original purchasers of their respective townhome units in One Hamlin Place Townhomes, and shall hereinafter be referred to collectively as "Original Purchasers".

4. One Hamlin Place Townhomes (hereinafter collectively referred to "the property" or "One Hamlin") is a section of the residential community, Hamlin Plantation, located in Mount Pleasant, South Carolina and, upon information and belief, was owned, developed, marketed and constructed by the Defendants.

5. Defendants John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina, Inc.; AC Construction, Inc.; Annisquam Development, LLC; Jorge Medina and JMC Construction, Inc.; Muhler, LLC a/k/a The Muhler Company, Inc.; A-Marc, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Neighborhood Management Associates, Inc.; Tru-Don Contracting, Inc.; Fine Builders, LLC; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc.; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.; J & R Construction, LLC; and Cohen's Drywall Company, LLC are, upon information and belief, corporations organized and

existing under the laws of the State of South Carolina and are authorized to conduct business in this state. Scott Parker; Paul M. Vasquez; Valencia Medina; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larson Co.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Gonzalo Guerrero; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; William C. Mulhern d/b/a Bill's Painting; Chad Hood; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez d/b/a GR Painting; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Latitude Construction Services, LLC; and Richard Ditullio a/k/a RDT Contracting, LLC are, upon information and belief, contractors licensed in the State of South Carolina.

6. Defendants Bridgemill Land, LLC; Builder Support Services of the Carolinas, Inc.; Builders FirstSource – Southeast, LLC; John Wieland Homes and Neighborhoods of the Carolinas, Inc.; John Wieland Homes and Neighborhoods of Charleston, Inc.; JW Homes, LLC; JW Land Investment, LLC; JWC Guilford, LLC; JWC Phoenix, LLC; JWH RPIV, LLC; Middlesex Holdings, LLC; OOTB, LLC; Residential Partners, LLC; RP Falcon Properties, LLC; RP Falcon Realty, LLC; RP Falcon Land, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management, LLC; Wheelock Street Real Estate Fund, LP; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; Wieland Realty, LLC; WS JWH, LLC; WSREF NRT, LLC; and YKK (U.S.A.), Inc.; East Coast Drywall Systems, Inc.; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Kinco Ltd. a/k/a Kinco, Inc.; The Contractor Yard, Inc.; All American Roofing and Construction, LLC; and Leor Construction LLC, upon information and belief, are foreign corporations that transact business in the State of

South Carolina. John Wieland, Sue Wieland, Lindsey Parker, Jack Wieland, and Robert Parker are, upon information and belief, residents of foreign states and transact business in South Carolina.

7. Upon assuming the roles as stated below, the Defendants assumed the duties thereof to develop, construct, and market the property and sell parcels thereof to the general public.

8. Furthermore, in assuming the roles stated below, the Defendants undertook to make certain that this Community was developed and constituted in a workmanlike fashion according to industry standards meeting all applicable codes, guidelines, restrictions, of any and all state, county, and municipal authorities.

9. That pursuant to this marketing scheme, the Defendants extensively advertised to the general public and represented to the general public that *inter alia*, the property and homes built would be of the highest quality, with substantial amenities.

10. This Court has jurisdiction over the parties and subject matter hereto.

11. The construction of One Hamlin was performed by one or more of the Defendants. The Defendants represented they were competent, knowledgeable and experienced in performing such construction work as to properly build One Hamlin according to the normal standards of good and workmanlike practice in the construction field.

12. Construction defects in the One Hamlin community have recently been discovered. A recent inspection of the subject Townhomes resulted in the discovery of major problems and deficiencies including but not limited to the following:

(a) Lack of proper flashing;

(b) Lack of proper roofing installation;

(c) Water damage along porches;

(d) Water and moisture intrusion damage resulting from defects including but not limited to the photographs attached as Exhibits 1-16;

(e) Improper flashing installation

(f) Numerous other construction defects that have caused consequential damages to the buildings and require repair.

13. Defendant John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc. (hereinafter referred to as "Wieland SC") was a foreign corporation organized and existing under the laws of the State of Georgia and, at all times relevant hereto, was authorized to and did conduct business in the State of South Carolina, County of Charleston for the purpose of planning, developing, marketing, owning, maintaining, leasing, selling, and constructing the townhomes in a manner for sale to the public. It is currently known as Builder Support Services of the Carolinas, Inc.

14. Defendant John Wieland Homes of Charleston, Inc., upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia and was authorized to conduct business in this state for the purpose of planning, developing, marketing, owning, maintaining, leasing, sale, and constructing the townhomes in a manner for sale to the public. It is currently known as Builder Support Services of the Carolinas, Inc.

15. Defendant John Wieland Homes, Inc., n/k/a John Wieland Homes and Neighborhoods of South Carolina, Inc., upon information and belief, was a corporation organized and existing under the laws of the State of South Carolina and was authorized to conduct business in this state, and had a principal place of business in Charleston County

Charleston for the purpose of planning, developing, marketing, owning, maintaining, leasing, sale, and constructing the townhomes in a manner for sale to the public.

16. Defendants John Wieland Homes and Neighborhoods of the Carolinas, Inc., John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., and John Wieland Homes, Inc. (hereinafter referred to as the "Old Wieland Entities") developed, marketed and sold homes in South Carolina and upon information and belief sold all major assets to entities listed below in an attempt to conceal, delay, and frustrate their creditors' attempts to satisfy the Old Wieland Entities' liabilities.

17. Defendant Builder Support Services of the Carolinas, Inc., upon information and belief, is a foreign corporation organized and existing under the laws of the State of Georgia and is authorized to conduct business in this state. It was formerly known as John Wieland Homes and Neighborhoods, Inc.

18. Defendant Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc. is a foreign corporation organized and existing under the laws of the State of Delaware which describes its business as that of real estate investments and is authorized to conduct business in this state. It is a joint venture formed in November 2012 with the Wieland Defendants where John Wieland Homes and Neighborhoods, Inc. sold to Wheelock Street Capital.

19. Defendant Wheelock Street Real Estate Fund, LP is a limited partnership between Wheelock Street Capital, LLC and other entities organized and existing under the laws of the State of Delaware which transacts business in the State of South Carolina.

20. Defendant Wheelock Street Investment Management, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

21. Defendant RP Falcon Properties, LLC, formerly known as JW Homes, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in South Carolina.

22. Defendant Residential Partners, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

23. Defendant Middlesex Holdings, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Georgia, which transacts business in South Carolina.

24. Defendant WS JWH, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in South Carolina.

25. Defendant JWC Phoenix, LLC, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in South Carolina.

26. Defendant Bridgemill Land, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacts business in South Carolina.

27. Defendant Annisquam Development, LLC, upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina.

28. Defendant JW Land Investment, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Delaware, which transacted business in South Carolina. It is currently known as RP Falcon Land, LLC.

29. Defendant JWC Guilford, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacted business in South Carolina.

30. Defendant OOTB, LLC, upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacted business in South Carolina.

31. Defendant Wieland Realty Associates, Inc., also known as JW Realty Associates, Inc., upon information and belief, was a foreign corporation organized and existing under the laws of the State of Georgia, which transacted business in South Carolina.

32. Defendant Wheelock Street Real Estate Fund II, LP, previously identified as Jane Doe 30, is a limited partnership organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

33. Defendant Wheelock Street Real Estate Fund V, LP, previously identified as Jane Doe 31, is a limited partnership organized and existing under the laws of the State of Delaware which transacts business in the State of South Carolina.

34. Defendant WSREF NRT, LLC, previously identified as Jane Doe 32, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

35. Defendant JW Homes, LLC, previously identified as Jane Doe 33, upon information and belief, was a foreign corporation organized and existing under the laws of the

State of Delaware, which transacted business in the State of South Carolina. It is currently known as RP Falcon Properties, LLC.

36. Defendant JWH RPIV, LLC previously identified as Jane Doe 34, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

37. Defendant RP Falcon Land, LLC f/k/a JW Land Investment, LLC, previously identified as Jane Doe 35, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

38. Defendant Wieland Realty, LLC a/k/a RP Falcon Realty, LLC, previously identified as Jane Doe 36, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

39. Defendant RP Falcon Realty, LLC f/k/a Wieland Realty, LLC previously identified as Jane Doe 37, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

40. Defendant Residential Partners II, LLC previously identified as Jane Doe 38, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

41. Defendant Residential Partners III, LLC previously identified as Jane Doe 39, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

42. Defendant Residential Partners IV, LLC previously identified as Jane Doe 40, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Delaware, which transacts business in the State of South Carolina.

43. Defendants Builder's Support Services of the Carolinas, Inc., Wheelock Street Capital, LLC, Wheelock Street Real Estate Fund I, II, and V, LP, Wheelock Street Investment Management, LLC, RP Falcon Properties, LLC, Residential Partners I, II, III, and IV, LLC, Middlesex Holdings, LLC, WS JWH, LLC, JWC Phoenix, LLC, Bridgemill Land, LLC, Annisquam Development, LLC, JW Land Investment, LLC, JWC Guilford, LLC, OOTB, LLC, Wieland Realty Associates, Inc., WSREF NRT, LLC, JWH RPIV, LLC, RP Falcon Land, LLC, and Wieland Realty, LLC a/k/a Falcon Realty, LLC (hereinafter referred to as "Wieland Group"), upon information and belief were all organized in such a manner where there is or are:

(a) a substantial relationship between the transferors and transferees of assets;

(b) a retaining of benefits of the transfers for the Old Wieland entities;

(c) secrecy and concealment of terms and negotiations;

(d) circumstances leading to the conclusion that the intent was to delay and hinder creditors from obtaining satisfaction of liabilities;

(e) evidence that the Wieland Group are mere successors in interest and a continuation of the Old Wieland Entities; and

(f) evidence that the entities were operated in such a manner where distinctions between the entities are blurred and should be amalgamated for purposes of judgment.

44. Defendant John Wieland, upon information and belief, is an individual with his primary place of domicile in the State of Georgia. Wieland was the founder, owner, controller, and public face of the above Wieland Entities.

45. Defendant Sue Wieland is the wife of Defendant John Wieland. Upon information and belief, Sue Wieland's place of domicile is in the State of Georgia.

46. Defendants Lindsey Parker and Jack Wieland are the daughter and son of John and Sue Wieland, and Defendant Robert Parker is the son-in-law of John and Sue Wieland. Upon information and belief, Jack Wieland's place of domicile is in the State of Georgia; Robert and Lindsey Parker's place of domicile is in Massachusetts.

47. Defendants John Wieland, Sue Wieland, Jack Wieland, Robert and Lindsey Parker (hereinafter referred to as "Wieland Family") all owned and controlled the Old Wieland Entities. Also, upon information and belief, the Wieland Family own and control the Wieland Group.

48. The Wieland Entities and Wieland Family held, owned, controlled, and/or held additional real estate inventory in additional single purpose entities (SPE) (hereinafter referred to as "Wieland SPE affiliates").

49. The Wieland SPE affiliates were publicly owned and controlled in the names of Sue Wieland and/or Robert Parker.

50. The use of Wieland SPE affiliates and Wieland Group was for the purpose of hindering the creditors of the Old Wieland Entities.

51. Wieland and Robert Parker spearheaded the Wieland Family's negotiation and consummation of the asset sale to Defendant Residential Partners which, upon information and belief, is owned and controlled by the Wieland Family.

52. Defendant Jorge Medina, individually and d/b/a JMC Construction, LLC a/k/a JMC Construction, Inc. (hereinafter referred to as "JMC"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, upon information and belief, JMC performed siding, cornice, trim and roofing labor.

53. Upon information and belief, John Does 20-50 and Jane Does 41-50 are individuals or entities organized pursuant to the laws of the State of South Carolina or other states. At all times relevant herein, John Does 20-50 and Jane Does 41-50 were engaged in the business of selling, constructing homes, renovating, supplying products materials and/or services to that end in Charleston, South Carolina.

54. Defendant AC Construction, Inc. previously identified as Jane Doe 1, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, AC Construction, Inc. performed roofing and framing work at the subject property, in Charleston County, South Carolina.

55. Defendant Scott Parker (hereinafter referred to as "Parker") previously identified as John Doe 1, upon information and belief, is a General Contractor licensed in the State of South Carolina. Also, upon information and belief, Parker worked as a neighborhood manager for John Wieland Homes and Neighborhoods.

56. Defendant Builders FirstSource – Southeast Group, LLC previously identified as Jane Doe 2, upon information and belief, is a limited liability company organized and existing under the laws of the State of Delaware, which transacts business in South Carolina and supplied framing and roofing materials.

57. Defendant Muhler LLC a/k/a The Muhler Company, Inc. previously identified as Jane Doe 3, upon information and belief, is a domestic corporation organized and existing under the laws of the State of South Carolina and produced, supplied, and installed windows at One Hamlin Place.

58. YKK (U.S.A.), Inc. previously identified as Jane Doe 4 is a foreign corporation organized and existing under the laws of the State of New York, which transacts business in South Carolina and produced, supplied, and installed windows at One Hamlin Place.

59. Defendant Paul M. Vasquez (hereinafter referred to as "Vasquez") previously identified as John Doe 2, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Vasquez supplied, sold, and installed windows and doors, together with all associated and related waterproofings and flashings, and other work at the subject property.

60. Defendant Neighborhood Management Associates, Inc. previously identified as Jane Doe 5, upon information and belief, is a corporation organized and existing under the laws of the State of Georgia. Also, upon information and belief, Neighborhood Management Associates served as the property management company for One Hamlin Place.

61. Defendants Billie and Antonio Arias d/b/a Antonio Arias Framing Construction (hereinafter referred to as "Arias") previously identified as John Doe 3, upon information and belief, are contractors licensed in the state of South Carolina. Also, upon information and belief, Arias performed framing and related labor at One Hamlin Place.

62. Defendant Tru-Don Contracting, Inc. (hereinafter referred to as "Tru-Don") previously identified as Jane Doe 6, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, upon information and belief, Tru-Don performed roofing and related framing work at One Hamlin Place.

63. Defendant Fine Builders, LLC previously identified as Jane Doe 7 (hereinafter referred to as "Fine"), upon information and belief, is a limited liability company organized and

existing under the laws of the State of South Carolina. Also, upon information and belief, Fine performed framing and related labor on townhomes at One Hamlin Place.

64. Defendant Jose Alfredo Sandoval (hereinafter referred to as "Sandoval") previously identified as John Doe 4, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Sandoval performed framing and related labor on townhomes at One Hamlin Place.

65. Defendant Chad Larsen d/b/a Chad Larsen Co. (hereinafter referred to as "Larsen") previously identified as John Doe 5, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Larson performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

66. Defendant Ivan Jose Paiz d/b/a Jose Construction (hereinafter referred to as "Jose") previously identified as John Doe 6, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Jose performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

67. Defendant William B. Angel (hereinafter referred to as "Angel") previously identified as John Doe 7, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Angel performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

68. Defendant East Coast Wall Systems, Inc. (hereinafter referred to as "East Coast") previously identified as Jane Doe 8, upon information and belief, is a corporation organized and existing under the laws of the State of North Carolina. Also, under information and belief, East Coast performed framing, sheetrock, and fireproofing labor on townhomes at One Hamlin Place.

69. Defendant Tracyinne Construction a/k/a T&C Construction, LLC (hereinafter referred to as "T&C") previously identified as Jane Doe 9, upon information and belief is a limited liability company organized and existing under the laws of the State of South Carolina. Also, under information and belief, T&C performed framing labor on townhomes at One Hamlin Place.

70. Defendants Frankcisco and Andrea Dacosta individually and d/b/a AAA Coastline, Inc. (hereinafter referred to as "AAA") previously identified as John Doe 8 and Jane Does 10-11, respectively, upon information and belief, are licensed contractors and operating and existing as a corporation under the laws of the State of South Carolina. Also, upon information and belief, AAA performed framing and related labor on townhomes at One Hamlin Place.

71. Defendant Jack R. Clark individually d/b/a Jack Clark Construction LLC (hereinafter referred to as "Clark") previously identified as John Doe 9, upon information and belief is a licensed South Carolina contractor operating and existing as a limited liability company under the laws of the State of South Carolina. Also, upon information and belief, Clark performed framing and related labor on townhomes at One Hamlin Place.

72. Defendant Alex Welch (hereinafter referred to as "Welch") previously identified as John Doe 10, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Welch performed framing and related labor on townhomes at One Hamlin Place.

73. Defendant Tracy McCuiston d/b/a Mastercraft Interior and Exterior (hereinafter referred to as "Mastercraft") previously identified as John Doe 11, upon information and belief,

is a contractor licensed in the State of South Carolina. Also, upon information and belief, Mastercraft performed framing and related labor on townhomes at One Hamlin Place.

74. Defendant Universal Forest Products (hereinafter referred to as "Universal") previously identified as Jane Doe 12, upon information and belief, is a corporation organized and existing under the laws of the State of Minnesota. Also, upon information and belief, Universal performed framing and related labor on townhomes at One Hamlin Place.

75. Defendant Gonzalo Guerrero (hereinafter referred to as "Guerrero") previously identified as John Doe 12, upon information and belief, is a contractor licensed in the State of South Carolina. Also, under information and belief, Guerrero performed framing, sheetrock, fireproofing, siding, trim, and related flashing and caulking labor on townhomes at One Hamlin Place.

76. Defendant A-Marc, Inc. (hereinafter referred to as "A-Marc") previously identified as Jane Doe 13, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, upon information and belief, A-Marc performed framing, sheetrock, fireproofing, and all related labor on townhomes at One Hamlin Place.

77. Defendant Emmanuel Kehagis d/b/a Creative Construction (hereinafter referred to as "Creative") previously identified as John Doe 13, upon information and belief is a contractor licensed in the State of South Carolina. Also, upon information and belief, Creative performed framing and related labor on townhomes at One Hamlin Place.

78. Defendant Anthony Kirksey (hereinafter referred to as "Kirksey") previously identified as John Doe 14, upon information and belief, is a contractor licensed in the State of

South Carolina. Also, upon information and belief, Kirksey performed framing and related labor on townhomes at One Hamlin Place.

79. Defendant Polly S. Clark d/b/a Glenn Clark Construction (hereinafter referred to as "Clark") previously identified as Jane Doe 14, upon information and belief is a contractor licensed in the State of South Carolina. Also, upon information and belief, Clark performed framing and related labor on townhomes at One Hamlin Place.

80. Defendant Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC (hereinafter referred to as "Mora") previously identified as Jane Doe 15, upon information and belief is a contractor licensed in the State of South Carolina operating and existing as a South Carolina corporation. Also, upon information and belief, Mora performed roofing, masonry, and related flashing and caulking labor on townhomes at One Hamlin Place.

81. Defendant Daniel L. Rogers d/b/a Dan Rogers Roofing, LLC (hereinafter referred to as "Rogers") previously identified as Jane Doe 16, upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina. Also, upon information and belief, Rogers performed roofing and related flashing and caulking labor on townhomes at One Hamlin Place.

82. Defendant William C. Mulhern d/b/a Bill's Painting (hereinafter referred to as "Mulhern") previously identified as Jane Doe 17, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Mulhern performed sheetrock, fireproofing, painting, sealant installation, and related labor on townhomes at One Hamlin Place.

83. Defendant Mark A. McFarland individually and d/b/a In the Wind, Inc. (hereinafter referred to as "In the Wind") previously identified as John Doe 15 and Jane Doe 18, respectively, upon information and belief, is a contractor licensed in the State of South Carolina and operating and existing as a South Carolina corporation. Also, upon information and belief, In the Wind performed window and door installation and related flashing and caulking labor on townhomes at One Hamlin Place.

84. Defendant Harbor Master, Inc. previously identified as Jane Doe 19, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, under information and belief, Harbor Master, Inc. performed window and door installation and related flashing and caulking labor on townhomes at One Hamlin Place.

85. Defendant Chad Hood (hereinafter referred to as "Hood") previously identified as John Doe 16, upon information and belief, is a contractor licensed in the State of South Carolina. Also, upon information and belief, Hood performed window and door installation and related flashing and caulking labor on townhomes at One Hamlin Place.

86. Defendant Kinco Ltd. a/k/a Kinco Inc. (hereinafter referred to as "Kinco") previously identified as Jane Doe 20, upon information and belief, is a Florida corporation organized and existing under the laws of the State of Florida. Also, under information and belief, Kinco manufactured, supplied, retailed, and installed windows and doors together with related flashing and caulking on townhomes at One Hamlin Place.

87. Defendant Atrium Companies, Inc. d/b/a Atrium Windows and Doors a/k/a HR Windows previously identified as Jane Doe 21 (hereinafter referred to as "Atrium"), upon information and belief, is a corporation organized and existing under the laws of the State of Delaware. Also, under information and belief, Atrium manufactured, supplied, retailed, and

installed windows and doors together with related flashing and caulking on townhomes at One Hamlin Place.

88. Defendant The Contractor Yard, Inc. (hereinafter referred to as "Contractor Yard") previously identified as Jane Doe 22, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina. Also, under information and belief, Contractor Yard manufactured, supplied, retailed, and installed windows and doors together with related flashing and caulking on townhomes at One Hamlin Place.

89. Defendant New Construction Drywall Hanger, LLC (hereinafter referred to as "Drywall Hanger") previously identified as Jane Doe 23, upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina. Also, under information and belief, Drywall Hanger performed framing, drywall, sheetrock, fireproofing, and related labor.

90. Defendant Doug Pilcher (hereinafter referred to as "Pilcher") previously identified as John Doe 17, upon information and belief, is a contractor licensed in the State of South Carolina. Upon information and belief, Pilcher worked as a builder for John Wieland Homes and Neighborhoods at One Hamlin Place.

91. Defendant Michael Cassidy (hereinafter referred to as "Cassidy") previously identified as John Doe 18, upon information and belief, is a contractor licensed in the State of South Carolina. Upon information and belief, Cassidy worked as a quality manager for John Wieland Homes and Neighborhoods at One Hamlin Place.

92. Defendant DBC Construction Services, LLC (hereinafter referred to as "DBC") previously identified as Jane Doe 24, upon information and belief is a South Carolina limited liability company organized and existing under the law of the State of South Carolina. Also,

upon information and belief, DBC performed roofing and all related waterproofing and flashing work on townhomes at One Hamlin Place.

93. Defendant Gerardo Rosette Sanchez, doing business as GR Painting (hereinafter referred to as "GR") previously identified as Jane Doe 25, upon information and belief is a contractor licensed to do business in South Carolina. Also, upon information and belief, GR performed exterior painting services and all related waterproofing, caulking, and flashing work on townhomes at One Hamlin Plantation.

94. Defendant Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC previously identified as Jane Doe 26 (hereinafter referred to as J. Mora), upon information and belief is a South Carolina limited liability company organized and existing under the law of the State of South Carolina. Also, upon information and belief, J. Mora performed brick masonry and foundation work along with all related waterproofing, caulking, and flashing on townhomes at One Hamlin Place.

95. Defendant Juan Luis Sanchez a/k/a Sanchez Brothers Painting previously identified as Jane Doe 27, upon information and belief, is a contractor licensed to do business in South Carolina.

96. Defendant Latitude Construction Services, LLC (hereinafter referred to as "Latitude") previously identified as Jane Doe 28, upon information and belief is a South Carolina limited liability company organized and existing under the law of the State of South Carolina. Also, upon information and belief, Latitude performed porch and balcony waterproofing along with all related flashing and caulking on townhomes at One Hamlin Place.

97. Defendant Richard Ditullio a/k/a RDT Contracting, LLC (hereinafter referred to as "RDT") previously identified as Jane Doe 29, upon information and belief is a contractor

licensed to do business in South Carolina and operates as a South Carolina limited liability company organized and existing under the laws of the State of South Carolina. Also, under information and belief, RDT performed roofing and all related waterproofing, flashing, and caulking labor.

98. Defendant Valencia Medina, individually previously identified as John Doe 19, upon information and belief, is an agent of JMC Construction, LLC a/k/a JMC Construction, Inc. Also, upon information and belief, Valencia Medina by and through JMC performed framing, siding, cornice, trim and roofing labor.

99. Defendant J & R Construction, LLC a/k/a JJ&R Construction, LLC, previously identified as Jane Doe 41, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina, and provided materials and performed work on the subject residences.

100. Defendant Cohen's Drywall Company, LLC, previously identified as Jane Doe 42, upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina, and provided materials and performed work on the subject residences.

101. Defendant All American Roofing and Construction, LLC, previously identified as Jane Doe 43, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Georgia, which transacts business in the State of South Carolina, and provided materials and performed work on the subject residences.

102. Defendant Leor Construction LLC, previously identified as Jane Doe 44, upon information and belief, is a foreign corporation organized and existing under the laws of the State of Florida, which transacts business in the State of South Carolina, and provided materials and performed work on the subject residences.

103. Upon information and belief, the Wieland Defendants were, in various capacities, individually and collectively engaged in the planning and developing of the Project, and contracted with various entities for the design and construction of the Project.

104. Upon information and belief, one or more of the Wieland Defendants were merged into one or more of the John Wieland Homes and Neighborhoods of South Carolina, Inc. and John Wieland Homes and Neighborhoods, Inc. with the intent to carry on the business of the Wieland Defendants in connection with the Project.

105. Wheelock Street Capital, LLC (hereinafter referred to as Wheelock) d/b/a John Wieland Homes and Neighborhoods, Inc., is a joint venture with the Wieland Defendants formed in November 2012.

106. Upon information and belief, the ownership of the Project was maintained uninterrupted by the Wieland Defendants during and following the aforementioned merger activities, resulting in ownership and/or control of the Project by the resulting merged entity (the resulting merged entity, including all of the affiliated, subsidiary, or other merged component entities, shall hereinafter be referred to collectively as the "Developer Defendants" and/or "Wieland Defendants").

107. The original developers, John Wieland Homes and Neighborhoods of the Carolinas, Inc. as Successor by Statutory Merger to John Wieland Homes and Neighborhoods of South Carolina, Inc., John Wieland Homes of Charleston, Inc., John Wieland Homes, Inc., and Builder Support Services of the Carolinas, Inc., and JW Homes, LLC shall hereinafter be referred to collectively as the "Original Developer Defendants".

108. The Developer Defendants are all Variable Interest Entities of (as defined by the Financial Accounting Standards Board, among other institutions and authorities) subsidiaries of,

parents of, partners of, associates of, agents of, affiliated with, joint venturers, servants, instrumentalities and/or alter ego entities of each other and are responsible to the Plaintiffs herein for the condition of the Project and the damages set forth herein below.

109. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities, during the development of the Project and immediately after sale of the townhomes to members of the public, sought and established a special relationship with the purchasers of the townhomes, and the Developer Defendants, at various times during and after the construction of the townhomes, breached their fiduciary duties to the purchasers in that the Developer Defendants owed dual and conflicting loyalties to themselves, to the Contractor Defendants as set forth below, to the purchasers of the townhomes, to the Association established in the Master Deed for the construction of the Project, and to the Plaintiffs.

110. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities had irreconcilable conflicts of interest by virtue of the dual and conflicting loyalties they owed to themselves and to the purchasers and/or tenants of the Project along with the Association established in the Master Deed for the townhomes and the Plaintiffs, all of whose interests were diverse and adverse, one to the other and, as such, the Developer Defendants did not act in good faith or in a manner they could reasonably believe to be in or not opposed to the best interests of the purchasers and/or tenants of the Project along with the Association established in the Master Deed for the townhomes and the Plaintiffs.

111. The Developer Defendants, along with and through their directors, officers, employees, agents, assignees, and subservient and affiliated entities, all participated in self-

dealing by promoting their own interests through sacrificing the interests of the purchasers of the Project.

112. In connection with the Project, the Developer Defendants all became and/or acted as subsidiaries, parents, partners, associates, agents, affiliate, co-joint venturers, servants, instrumentalities and/or alter ego entities of each other and are responsible to the Plaintiffs herein for the condition of the Project and the damages set forth herein.

113. The Developer Defendants conducted business in connection with the Project by and through the use and control of subservient entities, and all of these entities in fact manifested no separate interest of their own, and demonstrated an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between any members of that group of corporations, shareholders, officers, agents, partners, employees, and assets.

114. The Defendants listed above, including Paul Vasquez; Muhler; YKK; Neighborhood Management Associates, Inc.; Antonio Arias Framing; Jorge Medina and Valencia Media d/b/a JMC Construction; Tru-Don Contracting, Inc; Fine Builders, LLC; Jose Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Paiz d/b/a Jose Construction; William Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuistan d/b/a Master Craft Interior and Exterior; Universal Forest Products Eastern Division Inc. a/k/a UFP Eastern Division Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly Clark d/b/a Glenn Clark Construction; Benjamin Mora; Daniel L. Rogers d/b/a Dan Rogers Roofing LLC; William C. Mulhern d/b/a Bill's Painting; Harbor Master, Inc.; Chad Hood; Kinco Ltd. d/b/a Kinco, Inc.; Atrium Companies Inc. d/b/a Atrium Windows and Doors a/k/a HR

Windows; Contractor Yard, Inc.; New Construction Drywall Hanger, LLC; DBC Construction Services, LLC; Gerardo Rosette Sanchez d/b/a GR Painting; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Latitude Construction Services, LLC; and Richard Ditullio a/k/a RDT Contracting, LLC (hereinafter referred to collectively as the "Contractor Defendants") provided labor, materials, goods, and services in connection with the construction of the One Hamlin Place Project as contractors, subcontractors, consultants, or independent contractors, or which manufactured, fabricated, and/or otherwise provided construction and building materials, equipment and goods for use in connection with the construction of the Project; and these entities provided labor, materials, goods, and services associated with the original construction of the Project, and the work of each of these defendants was deficient and defective and resulted in damages to the Plaintiffs as set forth below.

115. All Defendants were instrumental in carrying out duties and actions relating to the construction of the Project, and each of these defendants had independent duties under South Carolina law to perform their duties in a good and workmanlike manner and in accordance with applicable building codes and accepted building practices.

JURISDICTION

116. Personal jurisdiction is vested and exists in the Court of Common Pleas, County of Charleston, State of South Carolina, and venue is proper in the County of Charleston, State of South Carolina, by virtue of, among other things, the fact that the property which is the subject matter of the Complaint is located in Mt. Pleasant, South Carolina, and the great majority of the activities relating to the Project and the claims herein occurred in this jurisdiction.

WIELAND TRANSACTIONAL BACKGROUND

117. Defendants negotiated a transfer of substantially all assets owned and/or controlled by the Wieland Entities and the Wieland Family to new entities that were jointly owned by Wheelock and the Wieland Family. Ultimately, Wheelock and the Wieland Family reaped a windfall by selling the assets to a third party.

118. It is clear that the Defendants employed a sophisticated scheme to first "launder" and then sell the assets of the John Wieland Homebuilding Enterprises. While the discrete steps of the scheme are less clear, Plaintiffs will set out the currently known facts.

(The 2009 Transactions)

119. The siphoning of valuable assets began as early as 2009. Defendant Robert Parker orchestrated a December 30, 2009 transaction by which 128+ acres in the Bridgemill subdivision (Lancaster County, South Carolina) were sold by John Wieland Homes and Neighborhoods of the Carolinas, Inc. to OOTB, a company run by William Mitchell, a one-time member of Wieland's board of directors. The Defendants' intention was for OOTB to hold the land and eventually sell it back to the evolving Wieland entities.

120. OOTB reportedly paid Two-Million Dollars ($2,000,000.00) for the Bridgemill land. A year later, in December of 2010, OOTB sold the 128 acres to Annisquam for One-Dollar ($1.00). Annisquam is controlled by John Wieland's immediate family. Next, Annisquam transferred to JW Homes a portion of the 128+ acres it had purchased for One-Dollar ($1.00). The affidavit of consideration for that transfer valued the property at over Seven-Million Five-Hundred and Fifty-Four Thousand Dollars ($7,554,000.00).

121. In a nutshell, the Annisquam/OOTB transaction involved the first *KNOWN* diversion of assets from John Wieland Homes and Neighborhoods of the Carolinas, Inc. to the Wieland Family personally, with the assets ultimately being re-routed into Wheelock.

122. OOTB and Annisquam were created to facilitate the Wieland Family's scheme to remove assets from the reach of creditors.

(The 2012 Transactions)

123. In the fall of 2012, several new corporate entities were created. Residential Partners was formed, or caused to be formed, by Wheelock. JW Homes was formed, or caused to be formed, by Wheelock and/or Residential Partners.

124. JW Land, JWC Phoenix, Middlesex, JWC Guilford were also created in the fall of 2012.

125. Defendants Robert and Lindsey Parker are the sole members and owners of Middlesex.

126. Middlesex is the majority owner of JWC Phoenix.

127. The balance of JWC Phoenix is owned by Defendant Jack Wieland.

128. JWC Phoenix owns a minority interest in Residential Partners.

129. On or about November 15, 2012, the Old Wieland Entities and the Wieland Family transferred the John Wieland Homebuilding Enterprise to an amalgamation of JW Homes, Residential Partners, Wheelock and others. This transfer included the assets, business, intellectual property, goodwill, management, employees, intellectual property rights contracts, real estate inventory, and substantially all of the ongoing business assets of the Old Wieland Entities and affiliates.

130. Wieland and Robert Parker spearheaded the Wieland Family's negotiation and consummation of the 2012 Transactions.

131. The 2012 Transactions resulted in a joint venture, or *de facto* merger. They involved the Defendants successfully convincing Bank of America, a major lender to the Wieland Entities, to accept less than it was owed, essentially a short sale.

132. The 2012 Transactions represented the sale of substantially all of the homebuilding assets and related intellectual property of the Old Wieland Entities to a new joint venture, a partnership between the Wieland Family and Wheelock.

133. This new partnership carried forward the John Wieland Homes brand and deployed significant new capital resources to drive growth of one of the industry's most well-known names. Included in the transactions were approximately 300 homes and over 5,000 lots in high quality neighborhoods across the Southeast.

134. Defendant John Wieland served as the new company's chairman, directing strategy and providing leadership, vision and support for the new joint venture.

135. The Wieland Family retained their equity and profit interests and substantial control by swapping indirect interests in the pre-November 15, 2012 John Wieland Homebuilding Enterprise for indirect interests (and disproportionately large profit interests) in the post-November 15, 2012 John Wieland Homebuilding Enterprise.

136. JW Homes was the operating company for the new partnerships after the 2012 Transactions. There was no visible difference for the public to see between Builders Support and Residential Partners. JW Homes advertised, as the purchaser of the John Wieland Homebuilding Enterprise, that the business had 40 years of existence. JW Homes, part of Wheelock, presented itself as the entity responsible for Waverly. JW Homes, as part of Wheelock, took over the home

construction business of the Wieland entity that built Waverly. When Residential Partners/JW Homes bought Builders Supply, nothing about the operation changed.

137. The Defendants functioned as an integrated whole, transferring assets from the Wieland operating entities to newly formed entities at unfairly low prices.

(The Operation of the Enterprise after the 2012 Transactions)

138. After the 2012 Transactions, the John Wieland Homebuilding Enterprise continued unabated, selling approximately 500 residences per year at an average sales price of approximately $450,000.00 per residence, resulting in average annual sales of approximately $22.5 million or better. Upon information and belief, this yielded profits before taxes and interest of approximately $4.0 million per year or more.

139. The operation of the Wieland Homebuilding Enterprise remained virtually unchanged.

140. The new entities, which remained under substantial control by the Wieland Family, advertised and promoted their forty years of homebuilding experience, even though all the new entities were created in the fall of 2012. On its website, JW Homes claims to have been founded in 1970.

141. JW Homes was in fact a continuation of, and a successor to, the entities that operated the John Wieland Homebuilding Enterprise prior to November 15, 2012:

a. JW Homes operated the John Wieland Homebuilding Enterprise under the "John Wieland" tradename;

b. JW Homes continued the John Wieland Homebuilding Enterprise with substantially the same employees;

c. JW Homes continued the John Wieland Homebuilding Enterprise with substantially the same management personnel;

d. JW Homes continued Wieland Homebuilding Enterprise with one or more

of the same Board members and/or executive personnel;

e. JW Homes occupied the same corporate office as the Wieland Entities did prior to the 2012 Transactions;

f. JW Homes maintained the same telephone numbers as the Wieland did prior to the 2012 Transactions;

g. JW Homes maintained the same internet and email domain ("jwhomes.com") as the Wieland did prior to the 2012 Transactions;

h. JW Homes continued to market itself utilizing the reputation, awards, experience, and history of Wieland and the Wieland Entities;

i. JW Homes continued to use John Wieland's mantra "enduring core values, known as EPIC: Excellence, Passion, Presentation, Integrity, Completeness".

j. JW Homes continued the John Wieland Homebuilding Enterprise in the same locations in which Wieland previously operated;

k. JW Homes possessed the corporate records of the Old Wieland entities; and

l. Residential Partners and JW Homes expressly assumed most of the warranty obligations of the Wieland Entities.

142. The Wieland Family continued to avail itself of the benefits of the Wieland Homebuilding Enterprise while concealing its continued participation from the public, Plaintiffs included.

143. The Wieland Entities were subsumed by JW Homes, Wheelock, and Residential Partners at the time of the 2012 Transactions.

144. Upon information and belief, The Old Wieland Entities have defended over one hundred (100) lawsuits claiming defective construction in Charleston County and many more elsewhere.

145. Defendants knew of the Wieland Entities' long history of defective construction.

(Effect on One Hamlin Place Owners)

146. Defendants knowingly and willfully stripped the Wieland Entities of assets and left Wieland with no assets available to compensate their prior clients for defectively constructed homes and/or to rectify the defects.

147. The Wieland-Wheelock interests diverted the key assets out of the Wieland operating companies, including their goodwill, leaving behind judgment-proof corporate shells to be "responsible" for Wieland's defective construction.

148. These corporate entity manipulations, calculated to divert value to Wieland's owners while leaving behind judgment-proof entities, occurred at a time when the Defendants were acutely aware that their construction activities in Charleston were grossly deficient.

149. Plaintiffs have been deprived of recourse and repair monies for their defective homes.

150. Plaintiffs have further had to endure substandard and potentially dangerous living conditions, delays in repairs, and loss of the value of their equity in their homes.

151. For most class members, these townhomes constitute their most significant asset, currently and in retirement, and the impairment of this asset and lack of repair funds causes the Plaintiff class financial stress.

152. Plaintiffs are incurring increased expenses for temporary repairs while the permanent resolution is delayed by Defendants' activities.

153. The Association's reserves are being depleted by the foregoing, and Plaintiff class members are facing higher regime fees and/or future assessments as a result.

FACTUAL BACKGROUND

154. Plaintiffs repeat and re-allege each and every allegation of this Complaint as if fully set forth herein verbatim.

155. Plaintiffs are informed and believe that the Developer Defendants engaged contractors to construct the Project including 105 properties, and related facilities and amenities, collectively known as One Hamlin Place Townhomes, which were thereafter substantially completed, and contained various buildings. The Developer Defendants, by and through various instrumentalities and alter-egos and other Defendants were the original developers of the Project and/or are liable for the actions of the original Developer of the project.

156. The Developer Defendants created and controlled numerous and various entities including, but not limited to, the John Wieland Homes and Neighborhoods of South Carolina, Inc., Builder Support Services of the Carolinas, and Wieland Defendants set forth hereinabove, for the sole purpose of the construction, development, purchase of property, sale of property, leasing of townhomes, and other activities solely relating to development and leasing of the townhomes that were known as One Hamlin Place Townhomes. The Developer Defendants created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities were merely a facade for the operations of the Developer Defendants to achieve their financial goals and to perpetrate the activities more particularly described herein. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the Developer Defendants and the sham entities, shareholders, officers, agents, partners, employees, assets, and each of them.

157. By way of example, the Wieland Defendants included entities which were created to perform single purpose functions in order to effectuate the sole will of the Developer Defendants in purchasing, developing, leasing, and/or selling the homes. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, the Developer Defendants and the Individual Developer Defendants actively and directly participated in the development, purchase, sale, management, leasing, and/or operations of the Project, and in fact put the same into the stream of commerce.

158. The sham entities established by the Developer Defendants were and are characterized by one or more of the following: (1) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) insolvency; (5) lacking proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of the dominant shareholders, members, associates, and affiliates. Upon information and belief, each shared the same mailing address, their business was conducted on the letter head of the Developer Defendants, the Developer Defendants directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or the Developer Defendants directly contracted for the sham entities in the name of the Developer Defendants.

159. The Developer Defendants directed and oversaw those listed as Defendants herein and contractors including the Contractor Defendants herein who performed insufficient, shoddy, negligent work which failed to comply with applicable building codes and industry standards, all of which has contributed to and resulted in the premature deterioration and/or failure of the structures and building systems in the Project.

160. The Developer Defendants created and controlled numerous and various of the Defendant entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of units, and other activities solely relating to the Project which is the subject of this action.

161. There would exist a broad element of injustice and fundamental unfairness of the acts of the Developer Defendants, and each of them individually, were not regarded as the acts of one another.

162. The Defendants began the process of constructing the townhomes by engaging and directing the actions of the various contractors and/or subcontractors named as Defendants herein, and participated in the negligent, deficient, and shoddy workmanship which ignored and/or covered up design and construction defects then in existence and, thereafter, placed the units into the stream of commerce for sale, which they did sell to the general public and, in particular, to the current owners who are members of the Association.

163. The Developer Defendants, by and through their instrumentalities and alter-ego entities, controlled and operated the Association and its Board of Directors prior to turning over control of the One Hamlin Association. During this period, the Developer Defendants attempted to carry out construction prior to, during and after the time they offered and sold said townhome units. This work was attempted to be performed by contractors engaged by the Developer Defendants for the purpose of expediting the sales process and was calculated for the purpose of, or through careless, reckless, negligent and grossly negligent conduct by the Developer Defendants, resulting in the concealing, fabricating, patching, hiding, and/or cloaking of the deficiencies and damage known, both actually and constructively, to the Developer Defendants and/or their affiliates, subservient entities, agents, and assigns.

164. At the time the units were offered for sale and placed into the stream of commerce by the Developer Defendants, the units contained numerous defects and/or property damage which has been recently and is currently being discovered by Plaintiffs, all as a direct and proximate result of an investigation initiated by Plaintiffs, as a direct and proximate result of defects and deficiencies heretofore hidden and concealed through the acts and omissions of the Developer Defendants.

165. The Developer Defendants and the Contractor Defendants, and each and every other above-captioned Defendant knew or should have known of the existence of the said building defects and deficiencies and property damage, which were latent and unknown to the Plaintiffs.

166. These latent building defects have, unbeknownst to Plaintiffs, regularly resulted in water intrusion into the buildings and property damage and continue to do so through the date of this filing.

167. The latent building defects and property damage have regularly resulted in the deterioration and failure of the structures and building systems, along with the attendant resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

168. The Plaintiffs suffered damages when the Developer Defendants put these units into the stream of commerce and continue to be damaged through the date of this filing.

169. The Developer Defendants failed to make a sufficient inquiry into the conditions of the Project in order to establish adequate financial reserves for maintenance and repair of the Project, and instead provided inaccurate and misleading information to third-parties in the research and establishment of the reserve figures, and thereby provided inaccurate and

misleading reserve requirements and related information to the general public, prospective purchasers, and to the Plaintiffs, both before and after tendering control of the Association and the common elements to the homeowners, all resulting in damages to the Plaintiffs and in violation of South Carolina law, the Master Deed, and the By-laws.

170. The Developer Defendants controlled and managed the Association and its Board of Directors through the use of its subservient entities prior to the tender of the control over the Association to the unit owners; and the Developer Defendants negligently failed to provide sufficient and reasonable information and resources for the proper management and maintenance of the Project; and in fact negligently provided insufficient, inaccurate, and misleading information and prevented the use of financial and other resources required for the proper management and maintenance of the Project, all of which resulted in continued and exacerbated damages to the Project and suffered by the Plaintiffs.

171. The Developer Defendants were engaged in a joint venture, partnership, or other legal or de facto relationship with each other.

172. The Developer Defendants caused, directed, participated in, or acted in willful, reckless, heedless, negligent and grossly negligent disregard of their collective and respective acts and omissions in the planning, development, design, construction, management and sale of the units in the Project, all as more fully described herein.

173. The Developer Defendants represented to the public over the internet and through various publications and other media that they, by and through their various affiliates, entities, venturers, and agents referenced herein, were qualified, experienced, and would in fact be directing, managing, and otherwise facilitating the construction and selling of the units, and these representations were relied upon by the Plaintiffs.

174. Prior to and until transferring control of the One Hamlin Association to the unit owners and a newly elected Board of Directors comprised of unit owners, the Developer Defendants, through their subservient and affiliated entities, employees, and agents, had a duty to serve as Board members and to conduct the business of the One Hamlin Association, had authority and control over, and in fact controlled and directed the One Hamlin Association Board of Directors and dictated all of the Board's activities.

175. In conjunction therewith, the Developer Defendants in their capacity as Board members and otherwise, in a negligent manner, carelessly, willfully, wantonly, and with reckless disregard for the rights of the Plaintiffs, participated in, acquiesced in and caused the wrongful acts and omissions described herein.

176. These collective and respective wrongful acts and omissions of the Developer Defendants and such other Defendants as set forth in the causes of action below, represent unfair trade practices and have resulted in substantial deterioration and/or failure of structures and building systems, building deficiencies, actual, incidental, special and consequential damages and loss of use. Remedying the above wrongful acts will result in actual, incidental, consequential, and special damages including loss of use to the Plaintiffs and its members, and entitle Plaintiffs and its members to punitive damages and attorney's fees. Further, these wrongful acts and omissions have directly and proximately caused substantial diminution in value, both pre- and post-repair.

177. The acts and omissions of the Defendants were contrary to the duties they owed, individually and collectively, to the Plaintiffs and actually caused damages to the Plaintiffs including, but not limited to, damages which did not result from the acts and omissions of other

defendants and including, but not limited to, damages other than damages which resulted in physical injury or damage to tangible real and personal property in connection with this Project.

FOR A FIRST CAUSE OF ACTION
Violation of the S.C. Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.*
(Against All Defendants, Except by Original Purchasers Against Original Developers)

178. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

179. Plaintiffs and the Defendants are "persons" within the meaning of S.C. Code § 39-5-10(a).

180. The Defendants, by developing, marketing and constructing the subject Residences, were engaged in commerce within the meaning of S.C. Code § 39-5-10(b).

181. The Defendants' actions, described hereinabove, constitute unfair and deceptive practices within the meaning of S.C. Code § 39-5-20(a).

182. The Defendants' acts are capable of repetition, and, upon information and belief, have been repeated.

183. The Defendants' conduct affects the public interest of South Carolina.

184. The Defendants knew, or reasonably should have known, that their conduct violated the Unfair Trade Practices Act.

185. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, Plaintiffs have suffered an ascertainable loss of money and property.

186. Plaintiffs are entitled to recover its actual damages, which amount should be trebled, together with interest and attorney's fees.

FOR A SECOND CAUSE OF ACTION
Breach of Implied Warranty
(Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

187. Plaintiffs repeat and re-allege each and every allegation of this Complaint as if fully set forth herein verbatim.

188. The design, construction, development and sale of the units by these Defendants contained as a matter of law implied warranties of good faith and fair dealing, fitness for use merchantability, habitability, and workmanship with respect to construction, which warranties were not effectively disclaimed under South Carolina law.

189. The Developer Defendants, whether named or unnamed on the Deeds of Transfer, through their acts and/or omissions, have breached the aforesaid implied warranties, which directly, actually, and proximately caused and resulted in damage which the Plaintiffs have suffered and continues to suffer in an amount to be determined by the trier of fact.

190. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRD CAUSE OF ACTION
Breach of implied Warranty of Fitness of Habitability
(Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

191. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

192. That the Defendants impliedly warranted as a matter of law that the subject Residences which they built were habitable and fit for their intended uses.

193. That this implied warranty was breached by the Defendants and the work was performed in a manner below ordinary workmanship and the subject Residences were neither habitable nor fit for their intended use causing damage to Plaintiffs.

FOR A FOURTH CAUSE OF ACTION
Breach of Implied Warranty of Fitness for Particular Purpose
(Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

194. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

195. The Defendants had the duty to develop, market and construct the subject Residences according to industry standards and in a good and workmanlike manner, and an implied warranty of fitness attached to the sales of these homes.

196. At the time of the sale of the subject Residences to the Plaintiffs, the Defendants had reason to know if any or all parts of the construction of the subject residences were not completed according to industry standards and in a good workmanship manner.

197. The Defendants, at the time of the sale of the subject Residences to the Plaintiffs, had reason to know that the Plaintiffs were relying on the skill and/or judgment of the Defendants to properly construct the homes and adjacent facilities according to industry standards and in a good and workmanlike manner. Plaintiffs, in fact, relied on the Defendants' skill and judgment.

198. The Defendants did not properly construct the subject homes and facilities according to industry standards and in a good and workmanlike manner, causing major defects to One Hamlin Place Townhomes.

199. As a result of the Defendants' breach of its implied warranties, Plaintiffs have suffered physical damages.

FOR A FIFTH CAUSE OF ACTION
Breach of Implied Warranties as to the Project's Development and Construction (Against Developer Defendants and Contractor Defendants, Except by Original Purchasers Against Original Developers)

200. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

201. These Defendants engaged in conduct during the period of development and construction of the Project which gave rise to duties and implied warranties to the public including, but not limited to, tenants, purchasers and other users of the Project, in that by their conduct these Defendants placed the Project, which constitutes defective, deleterious, and dangerous property, into the stream of commerce.

202. The placement of the Project into the stream of commerce by these Defendants, contained as a matter of law implied warranties of fitness, merchantability, workmanship and habitability, which warranties were not effectively disclaimed pursuant to South Carolina law.

203. As a direct and proximate result of the breaches of the above-described implied warranties by these Defendants, their affiliates, associates, sham entities, and/or joint venturers, whether named or unnamed on any documents transferring interest in the Project, the Plaintiffs have suffered and will continue to suffer damages, injuries and other losses.

204. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SIXTH CAUSE OF ACTION
Negligence, Professional Negligence, and Gross Negligence
(Against All Defendants, Except by Original Purchasers Against Original Developers)

205. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

206. Defendants, and each of them, owed a duty to Plaintiffs to act in a manner compliant with the reasonable standard of care, good faith, and fair dealing recognized under South Carolina law, and Defendants violated this duty to the Plaintiffs and were negligent, professionally negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars:

a) in failing to properly design, construct, develop and repair the townhomes;

b) in failing to comply with the applicable Building Codes of the County of Charleston, the City of Mount Pleasant and the State of South Carolina;

c) in failing to comply with the applicable Fire and Safety Codes of the County and of Charleston, the City of Mount Pleasant and the State of South Carolina;

d) in failing to properly design and construct the structural elements and the foundation and other elements of the Project to permit the existence of an adequate and sufficient program for the treatment, extermination, eradication, colony control, and/or termite control of any kind on the Project in accordance with industry standards, due care, and applicable law prior to the sale of the units;

e) e) in failing to establish and maintain a sufficient program for the treatment, extermination, eradication, colony control, and/or termite control of any kind on the Project in accordance with industry standards, due care, and applicable law prior to the sale of the units;

f) in failing to properly supervise the project developer entities and individuals, project architects and engineers, as well as contractors, subcontractors, suppliers and/or agents or employees of any of them in connection with the planning, development, design and construction of the townhomes offered for sale to the public;

g) in manufacturing, fabricating, preparing for the incorporation into a residential building, reviewing, approving, procuring, and incorporating into the

construction of this project such items which were defective, deficient, inferior, inadequate, unsafe, dangerous, inappropriate for the use intended, noncompliant with approved design or design intent, non-compliant with applicable codes and standards in the industry, and otherwise improper for use in the project including, but not limited to, HVAC systems, mechanical systems, plumbing systems, drainage systems, and sewer line systems without appropriate clean-out piping and/or other issues; electrical systems and equipment, interior and exterior drywall and other substrate and sheathing material, windows, insulation, roofing, waterproofing systems, and other building materials and supplies, finishes, and other items relating to the construction and ultimate use of this residential project;

h) in designing, constructing, marketing, selling, units and/or property with defective windows;

i) in designing, constructing, marketing, selling, units and/or properly with inadequate flashing;

j) in designing, constructing, marketing, selling, units and/or property with inadequate roofs;

k) in designing, constructing, marketing, selling, units and/or property with inadequate water barriers;

l) in designing, constructing, marketing, selling, units and/or property with without weather proof building envelopes and exteriors;

m) in designing, constructing, marketing, selling, units and/or property which were defective, deficient, inadequate, unsafe, dangerous, or otherwise non-compliant with codes and standards;

n) in placing defective and inferior construction into the stream of commerce;

o) in placing defective and inferior manufactured systems, equipment, building materials and other products into the stream of commerce.

p) in failing to permit and facilitate a proper evaluation of the condition of the Project prior to and during the process of offering units and other property for the use and sale to the general public and, further, to obstruct and/or hinder efforts to conduct a proper evaluation of the Project by intended purchasers or users;

q) in misrepresenting the condition of the units, common elements, garages and other property to prospective and actual purchasers and other users, and in making representations in negligent and/or intentional disregard of whether these representations were false or inaccurate;

r) in failing to undertake sufficient actions to develop a plan for repairs and otherwise failing to make adequate repairs to conditions at the project which were unsafe, dangerous, or otherwise not in compliance with applicable building codes or other authorities or standards of care;

s) in negligently and/or intentionally covering up deficiencies prior to construction of the units and other property for sale or use by the general public;

t) in failing to determine accurate information required, failing to disclose the absence of such information, as well as negligently and/or intentionally providing misleading and inaccurate information regarding the proper level of financial capitalization and reserve funding required for the operations, maintenance, and repairs required by the One Hamlin Association for the Project and individual unit owners;

u) in tendering common elements and other property to Plaintiffs in a deficient condition;

v) in failing to act as reasonable persons would in circumstances then and there prevailing and in such other failures as will be shown during discovery and at trial.

207. Said failures above-described, as well as the Defendants' gross negligence, willfulness, and reckless disregard for the rights of Plaintiffs and others, have actually and proximately caused damages to Plaintiffs, and the Defendants are liable to the Plaintiffs in an amount of actual, incidental, consequential, special, and punitive damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A SEVENTH CAUSE OF ACTION
Negligent Misrepresentation
(Against All Defendants, Except by Original Purchasers Against Original Developers)

208. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein verbatim.

209. These reports and representations were actually published and presented for information to the general public by these Defendants, and these representations were actually received by, and relied upon by, the prospective and actual purchasers of the townhomes at the Project.

210. At the time of the sale of the homes and the turnover of control of the One Hamlin Place Townhome Association from the Developer Defendants to the unit owners, Plaintiffs were not aware of the falsity of the representations or the lack of investigation and lack of candor by these Defendants in connection with the reports.

211. Plaintiffs subsequently determined that the representations made by these Defendants were false and that these Defendants failed to exercise due care, not only in failing to discover defects in the project, but also in failing to communicate information about the true condition of the Project. As a result of its justifiable reliance on the representations, reports, and other documents presented by these Defendants, Plaintiffs and their members have assumed control over the Project and/or purchased units, and have thereby suffered pecuniary losses in an amount to be determined by the trier of fact.

212. As a direct and proximate result of its justifiable reliance on numerous false representations made by these Defendants in connection with the Project, Plaintiffs have suffered, and these Defendants are liable to the Plaintiffs for, actual, incidental, consequential, and special damages, all in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR AN EIGHTH CAUSE OF ACTION
Breach of Contract
(Against All Defendants, Except by Original Purchasers Against Original Developers)

213. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as fully set forth herein verbatim.

214. That the Defendants entered into a contract with the homeowners and/or predecessors-in-title, whereby the Defendants were to construct the subject homes and facilities to industry standards and in a good workmanlike proper manner.

215. The Defendants did not honor their obligations under the agreement with the Plaintiffs and/or their predecessors-in-title in that they failed to construct subject Residences according to industry standards and in a good, workmanlike proper manner causing major defects to the homes.

216. That the Defendants are in breach of the parties' contracts.

217. That as a result of the Defendants' breach of contract, the Plaintiffs have suffered and will continue to suffer and are entitled to recover monetary damages caused by the defective construction by the Defendants and for loss of use and diminution in value of the subject Residences.

FOR A NINTH CAUSE OF ACTION
Breach of Fiduciary Duty as to the Developer/Owner Defendant
(Against All Defendants, Except by Original Purchasers Against Original Developers)

218. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

219. The Developer/Owner Defendants had a fiduciary duty and duty of loyalty and good faith dealing to transfer One Hamlin Place Townhomes to the control of the Plaintiffs in a state of good repair. Defendants, having transferred elements with the defects and deficiencies

set forth above, in the alternative is required to provide the Plaintiffs with the funds necessary to bring the elements up to standard of reasonably good repair and condition.

220. Defendants breached their fiduciary duty and duty of loyalty and good faith dealing by transferring the elements in a substandard and deficient condition without the funds necessary to bring them up to standards of good repair and condition.

221. As a direct and proximate result and consequence of the Defendants' actions, Plaintiffs have suffered damages in the amount equal to the extraordinary repair, maintenance and reconstruction costs required and expended, and to be required and expended, over the expected life of the buildings and other improvements, loss of use and diminution in value.

FOR A TENTH CAUSE OF ACTION
Alter Ego Liability and Piercing the Corporate Veil
(Against Developer Defendants, Except by Original Purchasers Against Original Developers)

222. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

223. The Developer Defendants, by and through various instrumentalities and alter-egos and each other were the original developers of the Project, and the Defendants combined and joined together through various instrumentalities and alter egos to facilitate to process of building the townhome units in or about 2006-2007.

224. The Defendants created and controlled numerous and various entities including, but not limited to, the Wieland Defendants and Builder Support Services, Inc. set forth hereinabove, for the sole purpose of the construction, development, purchase of property, sale of property, leasing of townhomes, and other activities solely relating to development and sale of the townhomes that are known as the One Hamlin Place Townhomes. The Defendants created and controlled numerous and various entities including, but not limited to, Wieland, for the sole

purpose of the building and sale of the townhomes at the Project. These Defendants created and controlled these sham entities for the sole purpose of enabling it to transact a portion of its business under an alternate corporate guise and to avoid claims such as those set forth herein. These entities, and each of them, were merely a facade for the operations of these Defendants to achieve their financial goals and to perpetrate the activities more particularly described herein. The subservient entities in fact manifested no separate interest of their own and that there was an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between these Defendants and the sham corporations, shareholders, officers, agents, partners, employees, assets, and each of them.

225. These Defendants created entities which were created to perform single purpose functions in order to effectuate the sole will of these Defendants in purchasing, developing, leasing, and/or selling the units. Despite the creation of these sham entities and despite the sham entities appearing in name only on some contracts, letters, deeds, and/or other documents, these Defendants actively and directly participated in the development, purchase, sale, management, leasing, and/or operations of the Project, and in fact put the same into the stream of commerce.

226. These Defendants created and controlled numerous and various of the Defendant entities for the sole purpose of the planning, development, design, construction, management, purchase, sale of units, and other activities solely relating to the Project which is the subject of this action.

227. The sham entities established by these Defendants were and are characterized by one or more of the following: (1) being undercapitalized; (2) failing to observe corporate formalities; (3) failing to pay dividends; (4) insolvency; (5) lacking proper records; (6) siphoning of funds by its members and/or affiliates; and (7) was used as a mere facade for the operation of

the dominant shareholders, members, associates, and affiliates. Upon information and belief, each shared the same mailing address, their business was conducted on the letter head of these Defendants, these Defendants directly received payment and disbursed payment for obligations relating to the sham entities, the sham entities had no shareholders and/or officers of their own, no separation of accounting and bookkeeping functions, and/or these Defendants directly contracted for the sham entities in the name of these Defendants.

228. These Defendants directed and oversaw the Contractor Defendants herein who performed insufficient, shoddy, negligent work which failed to comply with applicable building codes and industry standards, all of which has contributed to and resulted in the premature deterioration and/or failure of the structures and building systems in the Project.

229. There would exist a broad element of injustice and fundamental unfairness if the acts of these Defendants, and each of them individually, were not regarded as the acts of one another.

230. At the time the units were offered for sale and placed into the stream of commerce by these Defendants, the units contained numerous defects and/or property damage which has been recently and is currently being discovered by Plaintiffs, all as a direct and proximate result of an investigation initiated by Plaintiffs, as a direct and proximate result of defects and deficiencies heretofore hidden and concealed through the acts and omissions of these Defendants.

231. All Defendants knew or should have known of the existence of the said building defects and deficiencies and property damage, which were latent and unknown to the Plaintiffs.

232. These latent building defects have, unbeknownst to Plaintiffs, regularly resulted in water intrusion into the buildings and property damage and continue to do so through the date of this filing.

233. The latent building defects and property damage have regularly resulted in the deterioration and failure of the structures and building systems, along with the attendant resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

234. The Plaintiffs suffered damages and injuries when these Defendants put these units into the stream of commerce and continue to be damaged and injured through the date of this filing.

235. As a direct and proximate result thereof, these Defendants are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR AN ELEVENTH CAUSE OF ACTION
Violation of the Residential Property Condition Disclosure Act
(Against Developer Defendants, Except by Original Purchasers Against Original Developers)

236. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

237. These Defendants were engaged in a joint venture, partnership, or some other form of business venture or association including, but not limited to, the formation of a Limited Liability Company, in connection with the development and construction of the One Hamlin Place Townhomes.

238. The Developer Defendants did so place the townhome units into the stream of commerce for sale to the general public and to the members of the One Hamlin Association in particular.

239. At all times relevant to this cause of action the Developer Defendants were "owners" as that term is used within S.C. Code Ann. § 27-50-10 *et seq.*, referred to as the "South Carolina Residential Property Condition Disclosure Act" (referred to in the remainder of this cause of action as the "Act").

240. The Developer Defendants failed to furnish to the purchasers of the townhome units a written disclosure statement in conformity and compliance with S.C. Code Ann. § 27-50-40.

241. These Defendants failed to inform the sellers of the units of their obligations under the Act and had reasonable cause to suspect that the information, if any, supplied by the sellers to the individual purchasers was inherently false, incomplete, and misleading.

242. Upon information and belief, notwithstanding the above-described failures of these Defendants, and each of them, knowingly violated and/or failed to perform the duties described in § 27-50-40.

243. The nature of the defects that were undisclosed in violation of § 27-50-40, prevented and/or limited any inspection performed by the Plaintiffs to uncover or discover the said defects.

244. As a direct and proximate result of these Defendants' violations of their respective and collective duty to furnish written disclosure to the purchasers as required by§ 27-50-10, *et seq.*, the Plaintiffs have suffered, and these Defendants are liable to the Plaintiffs for actual, incidental, consequential, and special damages, along with costs, interest, and attorney's fees

pursuant to the remedies set forth in the Act, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A TWELFTH CAUSE OF ACTION
Strict Liability
(Against Developer Defendants, Except by Original Purchasers Against Original Developers)

245. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

246. Each and every townhome unit sold by these Defendants was a product within the meaning of S.C. Code Section 15-73-10, *et seq.*

247. These Defendants are and were engaged in the business of selling the aforesaid townhome units which are within the meaning of S.C. Code Section 15-73-10, *et seq.*

248. The aforesaid townhome units/products were expected to, and in fact did, reach the Plaintiffs herein as Users or Consumers without substantial change in condition in which it was sold within the meaning of Section B of S.C. Code 15-73-10, *et seq.*

249. The townhome units/products which were sold by these Defendants were at the time of sale in a defective condition, unreasonably dangerous to Plaintiffs as Users or Consumers or to the Plaintiffs' property and, as such, these Defendants are strictly liable to Plaintiffs as Users or Consumers herein for the physical harm and damage proximately caused thereby.

250. As a direct and proximate result thereof, Plaintiffs as Users or Consumers have suffered, and these Defendants are liable to the Plaintiffs for actual, incidental, consequential, special and punitive damages, all in an amount to be determined by the trier of fact, and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other

waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A THIRTEENTH CAUSE OF ACTION
Individual Liability as to the Developer Defendants
(Except by Original Purchasers Against Original Developers)

251. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if more fully set forth herein.

252. As a direct and proximate cause and result of the acts and omissions of these Defendants as aforesaid, Plaintiffs have been damaged, and these Defendants are liable to the Plaintiffs for actual, incidental, consequential, and special damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

FOR A FOURTEENTH CAUSE OF ACTION
Amalgamation Liability as to John Wieland Homes and Neighborhoods of the Carolinas, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; John Wieland Homes of Charleston, Inc.; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; and Residential Partners IV, LLC
(Except by Original Purchasers Against Original Developers)

253. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

254. These Defendants have operated in such a manner that the distinctions between the entities and their activities have become blurred.

255. There is excessive interrelationship between the entities and their activities; a sharing of management and employees and other public assets; and an absence of delineation between the entities such that the public is unable to tell where one entity's activities stop and the next entity's activities start.

256. Upon information and belief, these Defendants have been set up as different legal entities so to protect fraud, exercise bad faith, justify wrong, and defeat public policy.

257. Upon information and belief, there is evidence that the blurred legal distinctions of these separate entities have resulted in bad faith, abuse, fraud, wrongdoing, and injustice.

258. Treating these Defendants as separate entities will perpetuate an injustice on Plaintiffs and allow Defendants to unjustly enrich themselves by untoward means.

259. The above listed entities should be amalgamated for purposes of any judgment in this action and viewed as a single business enterprise.

FOR A FIFTEENTH CAUSE OF ACTION
Civil Conspiracy as to All Defendants
(Except by Original Purchasers Against Original Developers)

260. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

261. Defendants have conspired and acted in concert and in combination in the above acts with the intent to injure Plaintiffs for Defendants' gain and benefit.

262. Defendants' above-described acts have caused Plaintiffs the above-described special damages.

263. Plaintiffs are entitled to an award of damages in an amount to be determined by the trier of fact.

264. If it is shown that Defendants' actions were committed maliciously, wantonly, and/or with reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages against Defendants.

FOR A SIXTEENTH CAUSE OF ACTION
Fraudulent Conveyance as to All Defendants
(Except by Original Purchasers Against Original Developers)

265. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

266. While on notice of Plaintiffs' potential claims, Defendants engaged in a pattern and practice of transferring assets in an effort to defraud his creditors.

267. The Wieland Family sold all of the Old Wieland Entities' assets, thus depriving the Old Wieland Entities of available resources to satisfy its debtors' claims, including Plaintiffs'.

268. The transfers of the Old Wieland Entities' assets were made for inadequate consideration to the Old Wieland Entities.

269. Defendants knew, or should have known, that creditors, including Plaintiffs, had potential claims against the Old Wieland Entities at the time of the transfers.

270. The transfers were made with an actual or constructive intent to defraud creditors.

271. The transfers of the Old Wieland Entities' assets are void because they were intended to delay, hinder, or defraud Plaintiffs of a just and lawful debt.

272. Plaintiffs are entitled to have the John Wieland Homebuilding Enterprise, or the proceeds thereof, made subject to Plaintiffs' claims, or be awarded judgment thereon.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

a) Enter judgment in favor of the Plaintiffs and against all Defendants, jointly and severally, in an amount to be determined for actual, incidental, consequential, special, and punitive damages;

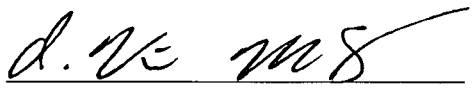
b) Find that the Defendants have engaged in unfair trade practices and knowingly did so thereby entitling Plaintiffs to treble damages;

c) Award attorneys' fees and costs to the Plaintiffs; and

d) Award such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

MCCARTY LAW FIRM, PC



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ATTORNEYS FOR PLAINTIFFS

January 10, 2019
Charleston, South Carolina

EXHIBIT R

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS NINTH
COUNTY OF CHARLESTON) JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246

FILED
2019 MAR -4 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

WHEELOCK DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall)

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC.	)
Defendants.	)

COMES NOW Defendants RP Falcon Properties, LLC (formerly known as JW Homes, LLC); RP Falcon Land, LLC (formerly known as JW Land Investment, LLC); RP Falcon Realty, LLC (formerly known as Wieland Realty, LLC); Residential Partners, LLC; JWH RPIV, LLC; WSREF NRT, LLC; WS JWH, LLC; Wheelock Street Capital, LLC; Wheelock Street Investment Management, LLC; Wheelock Street Real Estate Fund, LP; Wheelock Street Real Estate Fund II, LP; and Wheelock Street Real Estate Fund V, LP (collectively, "Wheelock Defendants"), by and through the undersigned counsel, answers and otherwise responds to the Second Amended Complaint filed by Plaintiffs Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50) ("Plaintiffs").

Wheelock Defendants' responses are made without waiving, and expressly reserving, all rights Wheelock Defendants have to file dispositive motions addressed to some or all of the claims asserted in the Amended Complaint. Except as expressly admitted herein, each and every allegation in the Amended Complaint is denied. With respect to the numbered paragraphs of the Amended Complaint, Wheelock Defendants respond as follows:

1. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 1, including the allegations in subsections (a)-(e), and therefore deny the same.

2. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 2 and therefore deny the same.

3. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 3 and therefore deny the same.

4. In response to Paragraph 4, Wheelock Defendants admit that the property is a section of Hamlin Plantation, located in Mount Pleasant, South Carolina. Wheelock Defendants otherwise deny the allegations in Paragraph 4.

5. To the extent that the allegations in the first sentence of Paragraph 5 are directed at other parties, no response is required. The second sentence of Paragraph 5 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in the second sentence of Paragraph 5 and therefore deny the same.

6. To the extent that the allegations in the first sentence of Paragraph 6 are directed at Wheelock Defendants, Wheelock Defendants deny the allegations in the first sentence of Paragraph 6. To the extent that the allegations in the first sentence of Paragraph 6 are directed at other parties, no response is required. The second sentence of Paragraph 6 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in the second sentence of Paragraph 6 and therefore deny the same.

7. Wheelock Defendants deny the allegations in Paragraph 7.

8. Wheelock Defendants deny the allegations in Paragraph 8.

9. Wheelock Defendants deny the allegations in Paragraph 9.

10. Paragraph 10 contains conclusions of law, and thus no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 10.

11. Wheelock Defendants admit, upon information and belief, the allegations in the first sentence of Paragraph 11. Wheelock Defendants deny the allegations in the second sentence of Paragraph 11.

12. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 12, including the allegations in subsections (a)-(f), and therefore deny the same.

13. Paragraph 13 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 13 and therefore deny the same.

14. Paragraph 14 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 14 and therefore deny the same.

15. Paragraph 15 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 15 and therefore deny the same.

16. Paragraph 16 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 16 and therefore deny the same.

17. Paragraph 17 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 17 and therefore deny the same.

18. In response to the first sentence of Paragraph 18, Wheelock Defendants admit that Wheelock Street Capital, LLC is organized and existing under the laws of the State of Delaware and is involved in real estate investments. Wheelock Defendants otherwise deny the allegations in the first sentence of Paragraph 18. Wheelock Defendants also deny the allegations in the second sentence of Paragraph 18.

19. In response to Paragraph 19, Wheelock Defendants admit that Wheelock Street Real Estate Fund, LP is a limited partnership. Wheelock Defendants otherwise deny the allegations in Paragraph 19.

20. In response to Paragraph 20, Wheelock Defendants admit that Wheelock Street Investment Management, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 20.

21. In response to Paragraph 21, Wheelock Defendants admit that RP Falcon Properties, LLC was formerly known as JW Homes, LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 21.

22. In response to Paragraph 22, Wheelock Defendants admit that Residential Partners, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants deny the remaining allegations in Paragraph 22.

23. Paragraph 23 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 23 and therefore deny the same.

24. In response to Paragraph 24, Wheelock Defendants admit that WS JWH, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 24.

25. Paragraph 25 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 25 and therefore deny the same.

26. Paragraph 26 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 26 and therefore deny the same.

27. Paragraph 27 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 27 and therefore deny the same.

28. In response to Paragraph 28, Wheelock Defendants admit that RP Falcon Land, LLC was formerly known as JW Land Investment, LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 28.

29. Paragraph 29 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 29 and therefore deny the same.

30. Paragraph 30 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 30 and therefore deny the same.

31. Paragraph 31 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 31 and therefore deny the same.

32. In response to Paragraph 32, Wheelock Defendants admit that Wheelock Street Real Estate Fund II, LP is a limited partnership and is organized and existing under the laws of the State

of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 32.

33. In response to Paragraph 33, Wheelock Defendants admit that Wheelock Street Real Estate Fund V, LP is a limited partnership and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 33.

34. In response to Paragraph 34, Wheelock Defendants admit that WSREF NRT, LLC is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 34.

35. Wheelock Defendants admit the allegations in Paragraph 35.

36. In response to Paragraph 36, Wheelock Defendants admit that JWH RPIV, LLC is a foreign corporation and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 36.

37. In response to Paragraph 37, Wheelock Defendants admit that RP Falcon Land, LLC was formerly known as JW Land Investment LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 37.

38. Wheelock Defendants deny the allegations in Paragraph 38.

39. In response to Paragraph 39, Wheelock Defendants admit that RP Falcon Realty, LLC was formerly known as Wieland Realty, LLC and is organized and existing under the laws of the State of Delaware. Wheelock Defendants otherwise deny the allegations in Paragraph 39.

40. Paragraph 40 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants admit or deny the allegations in Paragraph 40 and therefore deny the same.

41. Paragraph 41 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny

the allegations in Paragraph 41 and therefore deny the same.

42. Paragraph 42 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 42 and therefore deny the same.

43. Wheelock Defendants deny the allegations in Paragraph 43, including subsections (a)-(f) of Paragraph 43.

44. Paragraph 44 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 44 and therefore deny the same.

45. Paragraph 45 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 45 and therefore deny the same.

46. Paragraph 46 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 46 and therefore deny the same

47. Paragraph 47 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 47 and therefore deny the same

48. Paragraph 48 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 48 and therefore deny the same

49. Paragraph 49 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny

the allegations in Paragraph 49 and therefore deny the same.

50. Paragraph 50 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 50 and therefore deny the same.

51. In response to Paragraph 51, Wheelock Defendants state that Robert Parker was involved in the negotiation of the 2012 sale of assets of John Wieland Homes and Neighborhoods of the Carolinas, Inc. and John Wieland Homes and Neighborhoods, Inc. to Residential Partners, LLC. Wheelock Defendants otherwise deny the allegations in Paragraph 51.

52. Paragraph 52 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 52 and therefore deny the same.

53. Paragraph 53 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 53 and therefore deny the same.

54. Paragraph 54 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 54 and therefore deny the same.

55. Paragraph 55 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 55 and therefore deny the same.

56. Paragraph 56 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 56 and therefore deny the same.

57. Paragraph 57 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 57 and therefore deny the same.

58. Paragraph 58 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 58 and therefore deny the same.

59. Paragraph 59 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 59 and therefore deny the same.

60. Paragraph 60 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 60 and therefore deny the same.

61. Paragraph 61 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 61 and therefore deny the same.

62. Paragraph 62 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 62 and therefore deny the same.

63. Paragraph 63 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 63 and therefore deny the same.

64. Paragraph 64 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny

the allegations in Paragraph 64 and therefore deny the same.

65. Paragraph 65 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 65 and therefore deny the same.

66. Paragraph 66 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 66 and therefore deny the same.

67. Paragraph 67 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 67 and therefore deny the same.

68. Paragraph 68 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 68 and therefore deny the same.

69. Paragraph 69 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 69 and therefore deny the same.

70. Paragraph 70 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 70 and therefore deny the same.

71. Paragraph 71 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 71 and therefore deny the same.

72. Paragraph 72 is directed at another party, and thus no response is required. To the

extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 72 and therefore deny the same.

73. Paragraph 73 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 73 and therefore deny the same.

74. Paragraph 74 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 74 and therefore deny the same.

75. Paragraph 75 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 75 and therefore deny the same.

76. Paragraph 76 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 76 and therefore deny the same.

77. Paragraph 77 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 77 and therefore deny the same.

78. Paragraph 78 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 78 and therefore deny the same.

79. Paragraph 79 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 79 and therefore deny the same.

80. Paragraph 80 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 80 and therefore deny the same.

81. Paragraph 81 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 81 and therefore deny the same.

82. Paragraph 82 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 82 and therefore deny the same.

83. Paragraph 83 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 83 and therefore deny the same.

84. Paragraph 84 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 84 and therefore deny the same.

85. Paragraph 85 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 85 and therefore deny the same.

86. Paragraph 86 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 86 and therefore deny the same.

87. Paragraph 87 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny

the allegations in Paragraph 87 and therefore deny the same.

88. Paragraph 88 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 88 and therefore deny the same.

89. Paragraph 89 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 89 and therefore deny the same.

90. Paragraph 90 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 90 and therefore deny the same.

91. Paragraph 91 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 91 and therefore deny the same.

92. Paragraph 92 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 92 and therefore deny the same.

93. Paragraph 93 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 93 and therefore deny the same.

94. Paragraph 94 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 94 and therefore deny the same.

95. Paragraph 95 is directed at another party, and thus no response is required. To the

extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 95 and therefore deny the same.

96. Paragraph 96 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 96 and therefore deny the same.

97. Paragraph 97 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 97 and therefore deny the same.

98. Paragraph 98 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 98 and therefore deny the same.

99. Paragraph 99 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 99 and therefore deny the same.

100. Paragraph 100 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 100 and therefore deny the same.

101. Paragraph 101 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 101 and therefore deny the same.

102. Paragraph 102 is directed at another party, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 102 and therefore deny the same.

103. Wheelock Defendants deny the allegations in Paragraph 103.

104. Wheelock Defendants deny the allegations in Paragraph 104.

105. Wheelock Defendants deny the allegations in Paragraph 105.

106. Wheelock Defendants deny the allegations in Paragraph 106.

107. Wheelock Defendants deny the allegations in Paragraph 107.

108. Wheelock Defendants deny the allegations in Paragraph 108.

109. Wheelock Defendants deny the allegations in Paragraph 109.

110. Wheelock Defendants deny the allegations in Paragraph 110.

111. Wheelock Defendants deny the allegations in Paragraph 111.

112. Wheelock Defendants deny the allegations in Paragraph 112.

113. Wheelock Defendants deny the allegations in Paragraph 113.

114. Paragraph 114 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 114 and therefore deny the same.

115. Wheelock Defendants deny the allegations in Paragraph 115.

116. Paragraph 116 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 116.

117. Wheelock Defendants deny the allegations in Paragraph 117.

118. Wheelock Defendants deny the allegations in Paragraph 118.

119. Wheelock Defendants deny the allegations in Paragraph 119.

120. Paragraph 120 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 120 and therefore deny the same.

121. Paragraph 121 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 121 and therefore deny the same.

122. Paragraph 122 is directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 122 and therefore deny the same.

123. In response to Paragraph 123, Wheelock Defendants admit that Residential Partners, LLC and JW Homes, LLC were formed in the Fall of 2012. Wheelock otherwise denies the allegations in Paragraph 123.

124. In response to Paragraph 124, Wheelock Defendants admits that JW Land Investment, LLC was formed in the Fall of 2012. The remaining allegations in Paragraph 124 are directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 124 and therefore deny the same.

125. Paragraph 125 directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 125 and therefore deny the same.

126. Paragraph 126 directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 126 and therefore deny the same.

127. Paragraph 127 directed at other parties, and thus no response is required. To the extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 127 and therefore deny the same

128. Wheelock Defendants admit the allegations in Paragraph 128.

129. Wheelock Defendants deny the allegations in Paragraph 129.

130. In response to Paragraph 130, Wheelock Defendants state that Robert Parker was involved in the negotiation of the 2012 sale of assets of John Wieland Homes and Neighborhoods of the Carolinas, Inc. and John Wieland Homes and Neighborhoods, Inc. to Residential Partners, LLC. Wheelock Defendants otherwise deny the allegations in Paragraph 130.

131. Wheelock Defendants deny the allegations in Paragraph 131.

132. Wheelock Defendants deny the allegations in Paragraph 132.

133. Wheelock Defendants deny the allegations in Paragraph 133.

134. Wheelock Defendants deny the allegations in Paragraph 134.

135. Wheelock Defendants deny the allegations in Paragraph 135

136. Wheelock Defendants deny the allegations in Paragraph 136.

137. Wheelock Defendants deny the allegations in Paragraph 137.

138. Wheelock Defendants deny the allegations in Paragraph 138.

139. Wheelock Defendants deny the allegations in Paragraph 139.

140. Wheelock Defendants deny the allegations in the first sentence of Paragraph 140. In response to the second sentence of Paragraph 140, Wheelock Defendants state the website of JW Homes, LLC speaks for itself and denies any mischaracterization of the contents of that website.

141. Wheelock Defendants deny the allegations in Paragraph 141, including the allegations in subsections (a)-(l).

142. Wheelock Defendants deny the allegations in Paragraph 142.

143. Wheelock Defendants deny the allegations in Paragraph 143.

144. Paragraph 144 directed at other parties, and thus no response is required. To the

extent a response is necessary, Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 144 and therefore deny the same.

145. Wheelock Defendants deny the allegations in Paragraph 145.

146. Wheelock Defendants deny the allegations in Paragraph 146.

147. Wheelock Defendants deny the allegations in Paragraph 147.

148. Wheelock Defendants deny the allegations in Paragraph 148.

149. Wheelock Defendants deny the allegations in Paragraph 149.

150. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 150 and therefore deny the same.

151. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 151 and therefore deny the same.

152. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 152 and therefore deny the same.

153. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 153 and therefore deny the same.

154. In response to Paragraph 154, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

155. In response to the first sentence of Paragraph 155, Wheelock Defendants lack sufficient information to admit or deny the allegations related to the information provided to Plaintiffs or their beliefs and therefore deny the same. Wheelock Defendants deny the remaining allegations in the first sentence of Paragraph 155. Wheelock Defendants also deny the allegations in the second sentence of Paragraph 155.

156. Wheelock Defendants deny the allegations in Paragraph 156.

157. Wheelock Defendants deny the allegations in Paragraph 157.

158. Wheelock Defendants deny the allegations in Paragraph 158.

159. Wheelock Defendants deny the allegations in Paragraph 159.

160. Wheelock Defendants deny the allegations in Paragraph 160.

161. Wheelock Defendants deny the allegations in Paragraph 161.

162. Wheelock Defendants deny the allegations in Paragraph 162.

163. Wheelock Defendants deny the allegations in Paragraph 163.

164. Wheelock Defendants deny the allegations in Paragraph 164.

165. Wheelock Defendants deny the allegations in Paragraph 165.

166. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 166 and therefore deny the same.

167. Wheelock Defendants lack sufficient information to admit or deny the allegations in Paragraph 167 and therefore deny the same.

168. Wheelock Defendants deny the allegations in Paragraph 168.

169. Wheelock Defendants deny the allegations in Paragraph 169.

170. Wheelock Defendants deny the allegations in Paragraph 170.

171. Wheelock Defendants deny the allegations in Paragraph 171.

172. Wheelock Defendants deny the allegations in Paragraph 172.

173. Wheelock Defendants deny the allegations in Paragraph 173.

174. Wheelock Defendants deny the allegations in Paragraph 174.

175. Wheelock Defendants deny the allegations in Paragraph 175.

176. Wheelock Defendants deny the allegations in Paragraph 176.

177. Wheelock Defendants deny the allegations in Paragraph 177.

178. In response to Paragraph 178, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

179. Paragraph 179 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 179.

180. Wheelock Defendants deny the allegations in Paragraph 180.

181. Wheelock Defendants deny the allegations in Paragraph 181.

182. Wheelock Defendants deny the allegations in Paragraph 182.

183. Wheelock Defendants deny the allegations in Paragraph 183.

184. Wheelock Defendants deny the allegations in Paragraph 184.

185. Wheelock Defendants deny the allegations in Paragraph 185.

186. Wheelock Defendants deny the allegations in Paragraph 186.

187. In response to Paragraph 187, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

188. Wheelock Defendants deny the allegations in Paragraph 188.

189. Wheelock Defendants deny the allegations in Paragraph 189.

190. Wheelock Defendants deny the allegations in Paragraph 190.

191. In response to Paragraph 191, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

192. Wheelock Defendants deny the allegations in Paragraph 192.

193. Wheelock Defendants deny the allegations in Paragraph 193.

194. In response to Paragraph 194, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

195. Wheelock Defendants deny the allegations in Paragraph 195.

196. Wheelock Defendants deny the allegations in Paragraph 196.

197. Wheelock Defendants deny the allegations in Paragraph 197.

198. Wheelock Defendants deny the allegations in Paragraph 198.

199. Wheelock Defendants deny the allegations in Paragraph 199.

200. In response to Paragraph 200, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

201. Wheelock Defendants deny the allegations in Paragraph 201.

202. Wheelock Defendants deny the allegations in Paragraph 202.

203. Wheelock Defendants deny the allegations in Paragraph 203.

204. Wheelock Defendants deny the allegations in Paragraph 204.

205. In response to Paragraph 205, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

206. Wheelock Defendants deny the allegations in Paragraph 206, including subsections (a)-(v) of Paragraph 206.

207. Wheelock Defendants deny the allegations in Paragraph 207.

208. In response to Paragraph 208, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

209. Wheelock Defendants deny the allegations in Paragraph 209.

210. Wheelock Defendants deny the allegations in Paragraph 210.

211. Wheelock Defendants deny the allegations in Paragraph 211.

212. Wheelock Defendants deny the allegations in Paragraph 212.

213. In response to Paragraph 213, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

214. Wheelock Defendants deny the allegations in Paragraph 214.

215. Wheelock Defendants deny the allegations in Paragraph 215.

216. Wheelock Defendants deny the allegations in Paragraph 216.

217. Wheelock Defendants deny the allegations in Paragraph 217.

218. In response to Paragraph 218, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

219. Wheelock Defendants deny the allegations in Paragraph 219.

220. Wheelock Defendants deny the allegations in Paragraph 220.

221. Wheelock Defendants deny the allegations in Paragraph 221.

222. In response to Paragraph 222, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

223. Wheelock Defendants deny the allegations in Paragraph 223.

224. Wheelock Defendants deny the allegations in Paragraph 224.

225. Wheelock Defendants deny the allegations in Paragraph 225.

226. Wheelock Defendants deny the allegations in Paragraph 226.

227. Wheelock Defendants deny the allegations in Paragraph 227.

228. Wheelock Defendants deny the allegations in Paragraph 228.

229. Wheelock Defendants deny the allegations in Paragraph 229.

230. Wheelock Defendants deny the allegations in Paragraph 230.

231. Wheelock Defendants deny the allegations in Paragraph 231.

232. Wheelock Defendants deny the allegations in Paragraph 232.

233. Wheelock Defendants deny the allegations in Paragraph 233.

234. Wheelock Defendants deny the allegations in Paragraph 234.

235. Wheelock Defendants deny the allegations in Paragraph 235.

236. In response to Paragraph 236, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

237. Wheelock Defendants deny the allegations in Paragraph 237.

238. Wheelock Defendants deny the allegations in Paragraph 238.

239. Paragraph 239 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 239.

240. Wheelock Defendants deny the allegations in Paragraph 240.

241. Wheelock Defendants deny the allegations in Paragraph 241.

242. Wheelock Defendants deny the allegations in Paragraph 242.

243. Wheelock Defendants deny the allegations in Paragraph 243.

244. Wheelock Defendants deny the allegations in Paragraph 244.

245. In response to Paragraph 245, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

246. Paragraph 246 contains conclusions of law to which no response is required. To the extent a response is necessary, Wheelock Defendants deny the allegations in Paragraph 246.

247. Wheelock Defendants deny the allegations in Paragraph 247.

248. Wheelock Defendants deny the allegations in Paragraph 248.

249. Wheelock Defendants deny the allegations in Paragraph 249.

250. Wheelock Defendants deny the allegations in Paragraph 250.

251. In response to Paragraph 251, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

252. Wheelock Defendants deny the allegations in Paragraph 252.

253. In response to Paragraph 253, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

254. Wheelock Defendants deny the allegations in Paragraph 254.

255. Wheelock Defendants deny the allegations in Paragraph 255.

256. Wheelock Defendants deny the allegations in Paragraph 256.

257. Wheelock Defendants deny the allegations in Paragraph 257.

258. Wheelock Defendants deny the allegations in Paragraph 258.

259. Wheelock Defendants deny the allegations in Paragraph 259.

260. In response to Paragraph 260, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

261. Wheelock Defendants deny the allegations in Paragraph 261.

262. Wheelock Defendants deny the allegations in Paragraph 262.

263. Wheelock Defendants deny the allegations in Paragraph 263.

264. Wheelock Defendants deny the allegations in Paragraph 264.

265. In response to Paragraph 265, Wheelock Defendants repeat, re-allege, and incorporate by reference the preceding paragraphs as if fully set forth herein verbatim.

266. Wheelock Defendants deny the allegations in Paragraph 266.

267. Wheelock Defendants deny the allegations in Paragraph 267.

268. Wheelock Defendants deny the allegations in Paragraph 268.

269. Wheelock Defendants deny the allegations in Paragraph 269.

270. Wheelock Defendants deny the allegations in Paragraph 270.

271. Wheelock Defendants deny the allegations in Paragraph 271.

272. Wheelock Defendants deny the allegations in Paragraph 272 and the allegations in the

following "WHEREFORE" paragraph, including subsections (a)-(d) of that paragraph.

ADDITIONAL DEFENSES

First Additional Defense

Plaintiffs' Second Amended Complaint should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action and failure to satisfy adequate pleading requirements for each Defendant.

Second Additional Defense

Plaintiffs' Second Amended Complaint should be dismissed for lack of personal jurisdiction under Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

Third Additional Defense

Plaintiffs' "causes of action" are not causes of action, but rather alleged remedies, equitable in nature, and should be determined by this Court alone and placed on a non-jury roster.

Fourth Additional Defense

Plaintiffs' action as a whole, and each cause of action individually, is barred by the applicable statutes of limitations and/or repose under South Carolina, Delaware, and/or Georgia law and/or federal law, as well as other state and federal statutes of limitations and/or repose.

Fifth Additional Defense

Plaintiffs have failed to plead their claims with the requisite specificity under Rules 8(a) and/or 9(b) of the South Carolina Rules of Civil Procedure, South Carolina, Georgia and/or Delaware law.

Sixth Additional Defense

Plaintiffs' cause of action for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), S.C. Code Ann. §§ 39-5-10 *et seq.*, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state a claim upon which relief can be

granted because the SCUTPA plainly states that such a claim may not be maintained in a representative capacity. S.C. Code Ann. § 39-5-140(a).

Seventh Additional Defense

Plaintiffs' claims are barred or limited because they knew, should have known, or had reason to know the facts and circumstances on which their claim(s) are based. As a consequence, they are subject to the defenses of waiver, estoppel, laches, acquiescence, and similar concepts; their claims are barred by notice and knowledge; and their requests for relief are inequitable and so barred or limited by equitable doctrines, including unclean hands.

Eighth Additional Defense

Plaintiffs' claims are barred by their own contributory and/or comparative negligence and/or recklessness for their failure to properly maintain the subject properties and to mitigate any damages to those properties.

Ninth Additional Defense

Plaintiffs failed to mitigate their damages, if any, regardless of their contributory and/or comparative negligence and/or recklessness.

Tenth Additional Defense

Plaintiffs' claims are barred because their damages are the result of acts and omissions of other entities, over which Wheelock Defendants have or had no control.

Eleventh Additional Defense

Plaintiffs' claims are barred because they failed to make a claim within any applicable warranty period.

Twelfth Additional Defense

Wheelock Defendants made no warranties of any kind, express or implied, or any representations of any nature whatsoever to Plaintiffs. If such warranties were made, whether express or implied, which Wheelock Defendants specifically denies, then Plaintiffs' claims are barred because (a) they failed to give notice of any breach thereof, and/or (b) Plaintiffs did not rely on any warranties allegedly made by Wheelock Defendants.

Thirteenth Additional Defense

Plaintiffs' claim for punitive damages is barred because such an award would violate Wheelock Defendants' due process, equal protection, and other rights under the United States Constitution.

Fourteenth Additional Defense

Plaintiffs' claims are barred by the doctrine of corporate immunity and/or business judgment rule.

Fifteenth Additional Defense

Plaintiffs' claims are barred or should be dismissed by the doctrine of spoliation of evidence, as the Plaintiffs spoiled evidence and repaired alleged deficiencies without notice to Wheelock Defendants and without giving Wheelock Fund opportunity to observe the alleged deficiencies.

Sixteenth Additional Defense

Plaintiffs' claims are barred and/or should be stayed or dismissed because Plaintiffs failed to comply with the South Carolina Notice and Opportunity to Cure Non-Residential Construction Defects Act, South Carolina Code § 40-11-510, *et. seq.*

Seventeenth Additional Defense

Plaintiffs' claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, South Carolina Code § 40-59-810-860 (1976 as amended).

Eighteenth Additional Defense

Plaintiffs' claims are barred by the economic loss rule.

Nineteenth Additional Defense

Plaintiffs' and potential class action Plaintiffs' claims are barred to the extent that they are improperly joined as one cause of action.

Twentieth Additional Defense

Plaintiffs' claims are barred because they have been settled, released, compromised, and/or waived.

Twenty-First Additional Defense

Plaintiffs lack standing to assert the claims in their Amended Complaint.

Twenty-Second Additional Defense

Plaintiffs' claims are barred because there is no privity between Plaintiffs and Wheelock Defendants, and otherwise no fiduciary or special relationship between Plaintiffs and Wheelock Defendants.

Twenty-Third Additional Defense

Plaintiffs' claims are barred because they assumed the risk and/or accepted all portions of any alleged damages.

Twenty-Fourth Additional Defense

Plaintiffs' claims should be barred or, in the alternative, stayed pending a resolution of this dispute by arbitration to the extent such arbitration is required by the contract documents to which Plaintiffs are a party.

Twenty-Fifth Additional Defense

Wheelock Defendants are entitled to a right of setoff based on the settlement contributions of any other party to this action.

Twenty-Sixth Additional Defense

Wheelock Defendants reserve and do not waive the right to raise claims against any party and/or third parties, including, without limitation, those for indemnity and/or contribution.

Twenty-Seventh Additional Defense

Plaintiffs' Amended Complaint should be dismissed for insufficiency of process under Rule 12(b)(4) of South Carolina Rules of Civil Procedure and Rule 12(b)(5) for insufficiency of service of process.

Twenty-Eighth Additional Defense

Wheelock Defendants incorporate all applicable defenses asserted by other Defendants that are not otherwise specifically set forth in this set of Additional Defenses.

Wheelock Defendants hereby give notice that they intend to rely upon such and further defenses as may become available or apparent during discovery proceedings in this case and hereby reserves its right to amend its Answer and assert such defenses.

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint herein, Wheelock Defendants pray for relief and request that the Court dismiss Plaintiffs' Second Amended Complaint with prejudice, enter judgment in Wheelock Defendants' favor on all counts, and award such costs, expenses, and fees to Wheelock Defendants as this Court deems equitable, just, and proper.

Brian C. Duffy
Blake A. McKie
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044
Fax: (843) 720-2047
bduffy@duffyandyoung.com
bmckie@duffyandyoung.com

Attorneys for Defendant Wheelock Street Real Estate Fund, LP

March 4, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **WHEELOCK DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** has been served upon each of the parties to this action via email and/or by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

I. Keith McCarty, Esquire
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ikeithmccarty@gmail.com

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Nina E. Meola, Esquire
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cmcnair@lmlawllp.com
Attorneys for Fine Builders, LLC

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Attorneys for Wieland Defendants and Scott Parker, Doug Pilcher and Michael Cassidy and Neighborhood Management Associates, Inc.

FILED
2019 MAR -4 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT

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Mary S. Willis, Esquire
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mwillis@ycrlaw.com
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Paige Chamberlain Ornduff, Esquire
Gallivan White & Boyd, PD
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pcornduff@gwblawfirm.com
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Donna O. Tillis, Esquire
Nelson Mullins Riley & Scarborough LLP
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Myrtle Beach, SC 29577
Bob.calamari@nelsonmullins.com
Donna.tillis@nelsonmullins.com
Attorneys for YKK (U.S.A.) Inc.

DUFFY & YOUNG, LLC

MARCH 4, 2019

EXHIBIT S

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),)
)
Plaintiffs,)
)
vs.)
)
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

MOTION TO AMEND
PLAINTIFF'S AMENDED COMPLAINT

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2018 MAY -7 PM 2:41
CHARLESTON CO. CLERK OF COURT

Real Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT, LLC;)
JW Homes, LLC; JWH RPIV, LLC; RP)
Falcon Land, LLC; Wieland Realty, LLC; RP)
Falcon Realty, LLC; Residential Partners)
II, LLC; Residential Partners III, LLC;)
Residential Partners IV, LLC; Paul M.)
Vasquez; Neighborhood Management)
Associates, Inc.; Billie and Antonio Arias)
d/b/a Antonio Arias Framing)
Construction; Tru-Don Contracting, Inc.;)
Fine Builders, LLC; Jose Alfredo)
Sandoval; Chad Larsen d/b/a Chad)
Larsen Co.; Ivan Jose Paiz d/b/a Jose)
Construction; William B. Angel; East)
Coast Wall Systems, Inc.; Tracyinne)
Construction a/k/a T&C Construction,)
LLC; Frankcisco and Andrea DaCosta)
d/b/a AAA Coastline, Inc.; Jack R. Clark)
d/b/a Jack Clark Construction, LLC; Alex)
Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern Division,)
Inc.; Gonzalo Guerrero; A-Marc, Inc..;)
Emmanuel Kehagis d/b/a Creative)
Construction; Anthony Kirksey; Polly S.)
Clark d/b/a Glenn Clark Construction;)
Benjamin Mora a/k/a Benjamin L. Mora)
d/b/a Mora Construction f/k/a Mora's)
Construction and Benjamin Mora)
Construction, LLC n/k/a Mora)
Construction, LLC; Daniel L. Rogers d/b/a)
Rogers Roofing Co., Inc. n/k/a Dan)
Rogers Roofing, LLC; William C. Mulhern)
d/b/a Bill's Painting; Mark A. McFarland)
d/b/a In the Wind, Inc.; Harbor Master,)
Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco,)
Inc.; Atrium Companies, Inc. d/b/a)
Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard, Inc.;)
New Construction Drywall Hanger, LLC)
f/k/a New Construction Drywall Hanger,)
Inc.; Doug Pilcher; and Michael Cassidy;)

DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;

Defendants.

COME NOW the Plaintiffs, by and through undersigned counsel, and move before this Honorable Court, for an Order to Amend Plaintiffs' Amended Summons and Complaint pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure.

The basis for this Motion is the need to add additional parties and conform the pleadings to the evidence in this case. The Motion does not prejudice any parties. Plaintiffs may supplement the Motion with a proposed Second Amended Summons and Complaint.

For the above-stated reasons, Plaintiffs respectfully request this Honorable Court issue an Order amending the subject Complaint pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure.

[Signature Page to Follow]

Respectfully Submitted,

HAYES LAW FIRM, LLC

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180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: (843) 805-7003
jhayes@hayeslaw.org

and

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ATTORNEYS FOR PLAINTIFFS

May 7, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),)
)
Plaintiffs,)
)
vs.)
)
John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource – Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK (U.S.A), Inc.; Wheelock Street)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5246

CERTIFICATE OF SERVICE

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2018 MAY -7 PM 2:41
CLERK OF COURT

Real Estate Fund II, LP; Wheelock Street)
Real Estate Fund V, LP; WSREF, NRT, LLC;)
JW Homes, LLC; JWH RPIV, LLC; RP)
Falcon Land, LLC; Wieland Realty, LLC; RP)
Falcon Realty, LLC; Residential Partners)
II, LLC; Residential Partners III, LLC;)
Residential Partners IV, LLC; Paul M.)
Vasquez; Neighborhood Management)
Associates, Inc.; Billie and Antonio Arias)
d/b/a Antonio Arias Framing)
Construction; Tru-Don Contracting, Inc.;)
Fine Builders, LLC; Jose Alfredo)
Sandoval; Chad Larsen d/b/a Chad)
Larsen Co.; Ivan Jose Paiz d/b/a Jose)
Construction; William B. Angel; East)
Coast Wall Systems, Inc.; Tracyinne)
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d/b/a AAA Coastline, Inc.; Jack R. Clark)
d/b/a Jack Clark Construction, LLC; Alex)
Welch; Tracy McCuiston d/b/a)
Mastercraft Interior and Exterior;)
Universal Forest Products Eastern)
Division, Inc. a/k/a UFP Eastern Division,)
Inc.; Gonzalo Guerrero; A-Marc, Inc..;)
Emmanuel Kehagis d/b/a Creative)
Construction; Anthony Kirksey; Polly S.)
Clark d/b/a Glenn Clark Construction;)
Benjamin Mora a/k/a Benjamin L. Mora)
d/b/a Mora Construction f/k/a Mora's)
Construction and Benjamin Mora)
Construction, LLC n/k/a Mora)
Construction, LLC; Daniel L. Rogers d/b/a)
Rogers Roofing Co., Inc. n/k/a Dan)
Rogers Roofing, LLC; William C. Mulhern)
d/b/a Bill's Painting; Mark A. McFarland)
d/b/a In the Wind, Inc.; Harbor Master,)
Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco,)
Inc.; Atrium Companies, Inc. d/b/a)
Atrium Windows and Doors, Inc. a/k/a)
HR Windows; The Contractor Yard, Inc.;)
New Construction Drywall Hanger, LLC)
f/k/a New Construction Drywall Hanger,)
Inc.; Doug Pilcher; and Michael Cassidy;)

DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina;

Defendants.

The undersigned hereby certifies that on the 7 day of May 2018, a true and correct copy of the forgoing *Plaintiffs' Motion to Amend* was served upon all parties and/or their respective counsel of record by placing the same in the U.S. Mail and/or email with sufficient postage affixed and addressed as follows:

Andrew E. Haselden Howser, Newman & Besley, LLC 215 East Bay Street, Suite 303 Charleston, SC 29401 ahaselden@hnblaw.com and Theodore L. Manos Robertson Hollingsworth Manos & Rahn, LLC 550 King Street, Suite 300 Charleston, SC 29403 tlm@roblaw.net ***Attorneys for John Wieland Homes and Neighborhoods of the Carolinas, Inc., as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.***	L. Dean Best Best Honeycutt, P.A. 8 Sawgrass Rd., A Charleston, SC 29412 dean@besthoneycutt.com ***Attorney for A-Marc, Inc.***
Kevin W. Mims Luzuriaga Mims, LLP 50 Immigration Street, Suite 200 Charleston, SC 29403 kmims@lmlawllp.com ***Attorney for Fine Builders, LLC***	Jay Jones Paige C. Ornduff Gallivan, White & Boyd, P.A. 40 Calhoun Street, Suite 315 Charleston, SC 29401 jjones@gwblawfirm.com pcornduff@gwblawfirm.com ***Attorneys for The Muhler Company, Inc.***

Andrew N. Cole Collins & Lacy, P.C. Post Office Box 12487 Columbia, SC 29211 acole@collinsandlacy.com ***Attorney for Jeorge Medina a/k/a JMC Construction, LLC a/k/a JMC Construction, Inc.***	Claude T. Prevost, III Kelsey J. Brudvig Collins & Lacy, PC 1330 Lady Street, 6th Floor (29201) PO Box 12487 Columbia, SC 29211 cprevost@collinsandlacy.com kbrudvig@collinsandlacy.com ***Attorneys for Chad Larsen***
Stephen P. Hughes Howell, Gibson & Hughes, P.A. Post Office Box 40 Beaufort, SC 29901-0040 sphughes@hghpa.com ***Attorney for Builders FirstSource Southeast Group, LLC***	Stephen L. Brown Mary S. Willis Young Clement Rivers, LLP P.O. Box 993 Charleston, SC 29401 sbrown@ycrlaw.com mwillis@ycrlaw.com ***Attorneys for New Construction Drywall Hanger, LLC f/k/a New Construction Drywall Hanger, Inc.***
Donna O. Tillis Robert C. Calamari Nelson Mullins Riley & Scarborough, LLP 3751 Robert M. Grissom Parkway, Suite 300 Myrtle Beach, SC 29577-3165 Donna.tillis@nelsonmullins.com Bob.calamari@nelsonmullins.com ***Attorneys for YKK (U.S.A.) Inc.***	

HAYES LAW FIRM, LLC

Jena M. Lingle
Paralegal to John C. Hayes, IV

EXHIBIT T

HAYES LAW FIRM, LLC

John C. Hayes, IV
180 Meeting Street – Suite 330
Charleston, South Carolina 29401
Tel: (843) 805-7003
Email: jhayes@hayeslaw.org

May 16, 2018

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED/
RESTRICTED DELIVERY:
Corporation Service Company
Registered Agent for Wheelock Street Real Estate Fund, LP
251 Little Falls Dr.
Wilmington, DE 19808

Re: *Gary Keisler, Individually and as Class Representative, et al. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.*
Case No.: 2017-CP-10-5246
HLF File No.: 120.002

Dear Sir or Madam:

Enclosed herewith for service upon you, as Registered Agent for Wheelock Street Real Estate Fund, LP, please find a filed copy of *Plaintiffs' Amended Summons and Complaint* with regard to the above-referenced matter.

Please note that you have thirty (30) days from the date of service in which to respond to this Amended Complaint. Your prompt attention and Answer are greatly appreciated.

Should you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

HAYES LAW FIRM, LLC

Jena Lingle
Paralegal to John C. Hayes, IV

/jml
Enclosures

HAYES LAW FIRM, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401

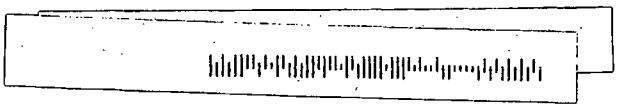
CERTIFIED MAIL®



7018 0360 0000 5888 6240



Corporation Service Company
Registered Agent for
Wheelock Street Real Estate Fund, LP
251 Little Falls Dr.
Wilmington, DE 19808



HAYES LAW FIRM, LLC

John C. Hayes, IV
180 Meeting Street – Suite 330
Charleston, South Carolina 29401
Tel: (843) 805-7003
Email: jhayes@hayeslaw.org

May 16, 2018

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED/
RESTRICTED DELIVERY:
Corporation Service Company
Registered Agent for Wheelock Street Capital, LLC
d/b/a John Wieland Homes and Neighborhoods, Inc.
251 Little Falls Dr.
Wilmington, DE 19808

Re: *Gary Keisler, Individually and as Class Representative, et al. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al.*
Case No.: 2017-CP-10-5246
HLF File No.: 120.002

Dear Sir or Madam:

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Please note that you have thirty (30) days from the date of service in which to respond to this Amended Complaint. Your prompt attention and Answer are greatly appreciated.

Should you have any questions or concerns, please do not hesitate to contact us.

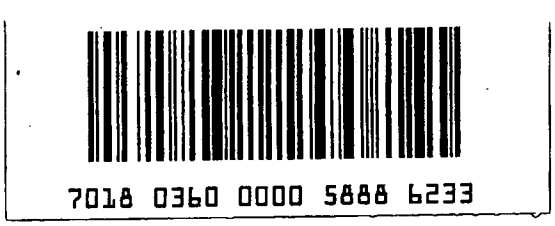
Very truly yours,

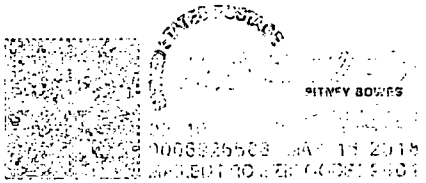
HAYES LAW FIRM, LLC

Jena M. Lingle
Paralegal to John C. Hayes, IV

/jml
Enclosures

HAYES LAW FIRM, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401





Corporation Service Company
Registered Agent for
Wheelock Street Capital, LLC
251 Little Falls Dr.
Wilmington, DE 19808

EXHIBIT U

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO: 2017-CP-10-5246
Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50),

Plaintiffs,

vs;

John Wieland Homes and Neighborhoods of the Carolinas, Inc. as successor by statutory merger to John Wieland Homes and Neighborhoods of South Carolina, Inc.; John Wieland Homes of Charleston, Inc.; John Wieland Homes, Inc. n/k/a John Wieland Homes and Neighborhoods of South Carolina; Builder Support Services of the Carolinas, Inc.; Wheelock Street Capital, LLC d/b/a John Wieland Homes and Neighborhoods, Inc.; Wheelock Street Real Estate Fund, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; Residential Partners, LLC; Middlesex Holdings, LLC; WS JWH, LLC; JWC Phoenix, LLC; Bridgemill Land, LLC; Annisquam Development, LLC; JW Land Investment, LLC; JWC Guilford, LLC; OOTB, LLC; JW Realty Associates, Inc. a/k/a Wieland Realty Associates, Inc.; John Wieland, individually; Sue Wieland; Lindsey Parker; Robert Parker; Jack Wieland; Jorge Medina; Jorge Medina a/k/a JMC Construction, Inc. a/k/a JMC Construction, LLC; John Does (20-50); and Jane Does (41-50); AC Construction, Inc.; Scott Parker, individually; Builders FirstSource - Southeast Group, LLC; Muhler LLC a/k/a The Muhler Company, Inc.; YKK

AFFIDAVIT OF MARVIN D. INFINGER

(U.S.A), Inc.; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; WSREF, NRT, LLC; JW Homes, LLC; JWH RPIV, LLC; RP Falcon Land, LLC; Wieland Realty, LLC; RP Falcon Realty, LLC; Residential Partners II, LLC; Residential Partners III, LLC; Residential Partners IV, LLC; Paul M. Vasquez; Neighborhood Management Associates, Inc.; Billie and Antonio Arias d/b/a Antonio Arias Framing Construction; Tru-Don Contracting, Inc.; Fine Builders, LLC; Jose Alfredo Sandoval; Chad Larsen d/b/a Chad Larsen Co.; Ivan Jose Paiz d/b/a Jose Construction; William B. Angel; East Coast Wall Systems, Inc.; Tracyinne Construction a/k/a T&C Construction, LLC; Frankcisco and Andrea DaCosta d/b/a AAA Coastline, Inc.; Jack R. Clark d/b/a Jack Clark Construction, LLC; Alex Welch; Tracy McCuiston d/b/a Mastercraft Interior and Exterior; Universal Forest Products Eastern Division, Inc. a/k/a UFP Eastern Division, Inc.; Gonzalo Guerrero; A-Marc, Inc.; Emmanuel Kehagis d/b/a Creative Construction; Anthony Kirksey; Polly S. Clark d/b/a Glenn Clark Construction; Benjamin Mora a/k/a Benjamin L. Mora d/b/a Mora Construction f/k/a Mora's Construction and Benjamin Mora Construction, LLC n/k/a Mora Construction, LLC; Daniel L. Rogers d/b/a Rogers Roofing Co., Inc. n/k/a Dan Rogers Roofing, LLC; William C. Mulhern d/b/a Bill's Painting; Mark A. McFarland d/b/a In the Wind, Inc.; Harbor Master, Inc.; Chad Hood; Kinco Ltd. a/k/a Kinco, Inc.; Atrium Companies, Inc. d/b/a Atrium Windows and Doors, Inc. a/k/a HR Windows; The Contractor Yard, Inc.; New Construction Drywall Hanger, LLC f/k/a New Construction Drywall

Hanger, Inc.; Doug Pilcher; and Michael Cassidy; DBC Construction Services, LLC; Gerardo Rosette Sanchez a/k/a GR Painting, LLC; Jesus Mora a/k/a J. Mora Brick & Block Mason, LLC; Juan Luis Sanchez a/k/a Sanchez Brothers Painting; Latitude Construction Services, LLC; Richard Ditullio a/k/a RDT Contracting, LLC; Valencia Medina; J & R Construction, LLC a/k/a JJ&R Construction, LLC; Cohen's Drywall Company, LLC; All American Roofing and Construction, LLC; and Leor Construction LLC. Defendants.	)
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. AC Construction, Corp. Third-Party Defendant.	)

I, Marvin D. Infinger, being first duly sworn, depose and say:

1. I am over the age of eighteen (18), I am competent to make this Affidavit, and I have personal knowledge of the matters set forth herein.

2. I am former counsel for Wheelock Street Capital, LLC, Wheelock Street Real Estate Fund, LP; Wheelock Street Real Estate Fund II, LP; Wheelock Street Real Estate Fund V, LP; Wheelock Street Investment Management, LLC; RP Falcon Properties, LLC; RP Falcon Land, LLC; RP Falcon Realty, LLC; Residential Partners, LLC; JWH RPIV, LLC; WSREF, NRT, LLC; and WS JWH, LLC (collectively, the "Wheelock entities") in this litigation.

3. I also was former counsel for many of the Wheelock entities in other state and federal lawsuits, including Waverly at Hamlin Plantation Townhome Association, Inc. v. John Wieland Homes and Neighborhoods of the Carolinas, Inc. et al. (Charleston County case no. 2013-CP-10-3326); Madison at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, LLC et al. (C/A No.: 2:15-cv-04120-DCN); and Waverly at Hamlin Plantation Townhome Association, Inc. et al. v. Residential Partners, et al. (C/A No.: 2:16-cv-02973-DCN) (the "earlier actions").

4. John C. Hayes, IV and I. Keith McCarty—Plaintiffs' counsel in this lawsuit—were either counsel for plaintiffs, or otherwise aware of, involved or joined for discovery purposes, in the earlier actions. Hayes and McCarty communicated with me in the earlier actions numerous times regarding my former clients and were aware I represented them.

5. I learned from co-counsel of a default issue related to Plaintiffs' Complaint in this action. I was informed by co-counsel, that , following whatever service efforts had preceded and been the basis for the alleged default, Plaintiffs served my former clients with an Amended Summons and Amended Complaint, which was timely answered. As a result, I understood that any default issue was cured.

6. At the outset of this litigation I was secondary counsel for the Wheelock entities, but began transitioning to primary counsel in mid-January 2019, when I switched law firms. Before I could assume the role as primary counsel at the new firm a conflict was uncovered and I had to decline the representation.

7. Before the conflict was discovered, I contacted Plaintiffs' counsel to discuss the lawsuit. This contact occurred in the first half of January of this year. To my surprise, Plaintiffs' counsel informed they intend to pursue the default issue. Nevertheless, Plaintiffs' counsel

affirmed that any time delay from the date of my contact forward would not be held against the "defaulted" Defendants.

FURTHER AFFIANT SAYETH NOT.

Marvin D. Infinger

Subscribed and sworn before
me this 25th day of March, 2019.

Notary Public for South Carolina
My Commission Expires:

DEBRA L HURST
NOTARY PUBLIC
State of South Carolina
My Commission Expires June 16, 2026

EXHIBIT V

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO. 2017-CP-10-05245
ONE HAMLIN PLACE TOWNHOME ASSOCIATION, INC.,)	
Plaintiff,)	Transcript of Record
vs.)	Date: June 12, 2019
JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., ET. AL,)	
Defendants.)	

* * * * * * * * * * * * * * * * * *

B E F O R E:

The Honorable Craig D. Brown

* * * * * * * * * * * * * * * * * *

Denise J. Lauder, RPR

Ninth Judicial Circuit

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

JOHN C. HAYES, IV, ESQUIRE
180 Meeting Street, Suite 330
Charleston, SC 29401
KEITH MCCARTY, ESQUIRE
McCarty Law Firm, PC
P. O. Box 3055
Charleston, SC 29417

REPRESENTING THE DEFENDANT:

BRIAN DUFFY, ESQUIRE
BLAKE MCKIE, ESQUIRE
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

and all matters arising from or reasonably related to such.

The special referee has consented to hear this default judgment and damages matter and shall retain jurisdiction to perform all necessary incidents to this action.

Further, the special referee shall retain jurisdiction to hear any action contesting the validity of the judgment necessary to enforce the judgment and motions or actions to set aside entry of default, or default judgment, pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b).

I don't think I have an authority to reach back down unless you have some law for me that says I have authority to reach down and pull it back up. The circuit court has divested itself of jurisdiction of this case.

MR. DUFFY: Your Honor, the difference with that is we're parties to the case. You're entitled to rule on motions that we as parties --

THE COURT: But you're asking for something to set aside a default that's already been entered. That order -- and maybe I'm wrong and maybe you're exactly right, Mr. Duffy, but I

EXHIBIT W

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Dunn D. Hollingsworth
Theodore L. Manos
Paul R. Rahn
Michael E. Wright
Jillian S. Barton
Rachel Igdal

March 19, 2019

Via Hand Delivery:
Clerk of Court
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

RE: Gary Keisler, Individually and as Class Representatve, John Does (1-50) and Jane Does (1-50) v. John Wieland Homes and Neighborhoods of The Carolinas, Inc., et al.
Case No.: 2017-CP-10-5246

Dear Clerk:

Please find enclosed for Judge Young's consideration, the original and one (1) copy of a Motion and Information Cover Sheet, a proposed Consent Scheduling Order, and the requisite $25.00 filing fee for same in above-referenced matter. If you would, please give the enclosed to Judge Young for his review and execution. Once the Scheduling Order has been signed, please return a file-stamped copy to me in the self-addressed, pre-postage paid, return envelope also provided herein.

Thank you in advance for your time and assistance. Please feel free to contact us should you have any questions. With kind regards.

Sincerely,

Elissa Jones
Legal Assistant to Theodore L. Manos

/ej
Enclosures

cc: All counsel

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))))	IN THE FAMILY COURT NINTH JUDICIAL CIRCUIT
Gary Keisler, Individually, and as Class Representative, John Does 1-50 and Jane Does 1-50, Plaintiff, vs. John Wieland Homes and Neighborhoods of the Carolinas, Inc., et al., Defendant.	))))))	**MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET** Docket No. 2017-CP-10-5246

Plaintiff's Attorney:	Defendant's Attorney:
John C. Hayes, IV, Esquire, Bar No. _____ Address: Hayes Law Firm, LLC 180 Meeting Street, Suite 330 Charleston, SC 29401 Phone: 843-805-7003 Fax _____ E-mail: jhayes@hayeslawlorg Other: _____	Theodore L. Manos, Bar No. 8660 Address: Robertson Hollingsworth Manos & Rahn, LLC 550 King Street, Suite 300 Charleston, SC Phone: _____ Fax_____ E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Scheduling Order
Estimated Time Needed: None Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — March 19, 2019 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Gary Keisler, Individually and as Class Representative, John Does (1-50) and Jane Does (1-50), Plaintiff, v. John Wieland Homes and Neighborhoods of The Carolinas, Inc., et al. Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-5246 **CONSENT SCHEDULING ORDER**

The following Scheduling Order for mediation and trial is hereby established in this case:

1. The parties shall complete mediation on or before November 22, 2019; and

2. This case will be set for a status hearing following mediation to determine a trial date, and subject to being called for trial on or after January 20, 2020.

AND IT IS SO ORDERED

Honorable Roger M. Young
Chief Administrative Judge, Ninth Judicial Circuit

Charleston County, South Carolina

This _____ day of March, 2019.

WE SO MOVE AND CONSENT:

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[Consent signatures continue on following pages 2 and 3 of 3]

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THE STATE OF SOUTH CAROLINA
In The SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Craig D. Brown, Circuit Court Judge

Case No. 2017-CP-10-05246
Appellate Case No. 2019-001360

RECEIVED
SEP 03 2019
SC Court of Appeals

WHEELOCK STREET REAL ESTATE FUND, LP, AND WHEELOCK STREET CAPITAL, LLC., Appellants,

v.

GARY KEISLER, INDIVIDUALLY AND AS CLASS REPRESENTATIVE, JOHN DOES (1-50) AND JANE DOES (1-50). Respondents.

CERTIFICATE OF SERVICE

I, Janice V. Prosen, Paralegal at Duffy & Young, LLC, certify that I have served the **MEMORANDUM AS TO APPEALABILITY** on Respondents and other parties on August 30, 2019 by U.S. First Class mail to their attorneys of record as shown below:

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Paralegal

August 30, 2019
Charleston, South Carolina