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12 Attorneys for Plaintiffs and all those similarly situated.

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF ARIZONA**

15 ANTHONY and STEPHANY BEMBNISTER,  
16 husband and wife; DANIEL M. MCCARTNEY;  
17 and GLORIA FAY AUGMON, individually and  
18 on behalf of all persons similarly situated,

19 Plaintiffs,

20 v.

21 D.R. HORTON, INC. – DIETZ-CRANE  
22 HOMES, a Delaware Corporation; DRH  
23 SOUTHWEST CONSTRUCTION, INC., a  
24 California Corporation; D.R. HORTON, INC., a  
25 Delaware Corporation; and Does 1-100  
26 inclusive,

27 Defendants.

28 **Case No.:**

**CLASS ACTION COMPLAINT FOR  
BREACH OF IMPLIED  
WARRANTY OF WORKMANSHIP  
AND HABITABILITY**

29 Plaintiffs ANTHONY and STEPHANY BEMBNISTER, DANIEL M.  
30 MCCARTNEY, and GLORIA FAY AUGMON, on behalf of themselves and all others  
31 similarly situated, by and through their undersigned counsel, bring this Complaint in class  
32 action and complain as follows:

33 ///

1 I.

2 THE PARTIES

3 1. Plaintiffs are the owners of single family homes located in a development  
4 known as Mission Valley in the City of Casa Grande, County of Pinal, State of Arizona  
5 (“Project”). They bring this action individually, and as class representatives, on behalf of  
6 all persons similarly situated, pursuant to *Federal Rule of Civil Procedure 23* and other  
7 applicable laws. Each Plaintiff class member is a member of that group of individuals  
8 and/or entities who currently own homes within the Project. A list of Plaintiffs is attached  
9 hereto as “Exhibit 1.”  
10

11  
12 2. Plaintiffs seek damages from Defendants, and each of them, for defects in the  
13 selection, design, construction, assembly, and installation of Uponor (formerly Wirsbo, Inc.)  
14 plumbing systems in the homes in the Project. Among other things, Defendants selected,  
15 designed, constructed, and installed Uponor brass plumbing fittings in the plumbing  
16 systems in the homes in the Project. Those brass plumbing fittings have undergone, and  
17 continue to undergo, a process known as dezincification, resulting in compromised  
18 plumbing systems that have leaked and are prone to leaking and other deterioration.  
19  
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21 3. Plaintiffs are informed and believe, and based thereon allege, that Defendant  
22 D.R. Horton, Inc. – Dietz-Crane Homes, a Delaware corporation, authorized and doing  
23 business in Pinal County, Arizona, participated in the selection, design, construction,  
24 assembly, and installation of Uponor plumbing systems in the homes in the Project.  
25

26 4. Plaintiffs are informed and believe, and based thereon allege, that Defendant  
27 DRH Southwest Construction, Inc., a California corporation, authorized and doing business  
28

1 in Pinal County, Arizona, participated in the selection, design, construction, assembly, and  
2 installation of Uponor plumbing systems in the homes in the Project.

3  
4 5. Plaintiffs are informed and believe, and based thereon allege, that Defendant  
5 D.R. Horton, Inc., a Delaware corporation, authorized and doing business in Pinal County,  
6 Arizona, participated in the selection, design, construction, assembly, and installation of  
7 Uponor plumbing systems in the homes in the Project.

8  
9 6. Plaintiffs are ignorant of the true names and capacities of the parties sued as  
10 Does 1-100, inclusive, and therefore sue them under fictitious names. Upon learning their  
11 true names and capacities, Plaintiffs will amend the Complaint to reflect the same.  
12 Plaintiffs allege that Does 1-100, inclusive, are responsible in some manner for the  
13 occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately  
14 caused by such occurrences.

15  
16 7. Plaintiffs allege that Defendants, including Does 1-100, were engaged and did  
17 engage in the selection, design, construction, assembly, and installation of Uponor  
18 plumbing systems in the homes in the Project and were responsible under the law of  
19 contract to comply with minimum building standards, including, but not limited to, the  
20 provisions of the adopted building code, and were responsible to exercise direct supervision  
21 and control over the operations necessary to secure full compliance with all building, safety  
22 and health laws, rules and regulations.

23  
24 8. Plaintiffs allege that at all relevant times, each and every Defendant was  
25 acting as the duly authorized agent of each and every other Defendant, and that each  
26 Defendant is liable for each and every wrong committed by each and every other  
27 Defendant.

1 Defendant.

2 **II.**

3 **JURISDICTION AND VENUE**

4  
5 9. This Court has jurisdiction over the cause of action asserted and each  
6 Defendant named in this Complaint because the necessary minimal diversity exists among  
7 Plaintiffs and Defendants in this action due to the fact that at least one member of the  
8 purported class is a citizen and resident of the State of Arizona and Defendants are citizens  
9 of different States, namely Delaware and California, and because the matter in controversy  
10 is a class action seeking damages in excess of the sum of five million dollars  
11 (\$5,000,000.00), exclusive of interest and costs.  
12

13 10. Any and all relief Plaintiffs and members of their class seek is within the  
14 jurisdictional limits of this Court. Further, Plaintiffs allege that it is uncertain whether the  
15 prelitigation requirements of Arizona's Purchaser Dwelling Act (A.R.S. §§ 12-1361 through  
16 12-1366), including the protection for tolling of applicable statutes of limitation and repose  
17 (specifically, A.R.S. § 12-552) provided in A.R.S. § 12-1363(H), apply to class actions.  
18 Consequently, to toll applicable statutes of limitation and repose, Plaintiffs filed this  
19 Complaint and will serve upon Defendants summonses, the Complaint, and a notice of  
20 defects pursuant to A.R.S. § 12-1363(A). The parties may then avail themselves of the  
21 ninety-day period within which to comply with the PDA, before proceeding with the action.  
22  
23

24 11. Venue is proper in this Court because a substantial part of the events giving  
25 rise to the claim asserted herein occurred in the judicial district where this Court is situated,  
26 and all of the real property that is the subject of this action is situated in the judicial district  
27  
28

1 where this Court is situated, and also because the injuries complained of in this Complaint  
2 were injuries arising from a breach of a contract that was entered into and was to be  
3 performed in the judicial district where this Court is situated.  
4

5 **III.**

6 **STATUTES OF LIMITATION AND REPOSE**

7 12. The harm suffered by Plaintiffs and members of their class is harm that  
8 occurred within all operative statutes of limitation and statutes of repose.  
9

10 **IV.**

11 **GENERAL ALLEGATIONS**

12 13. Defendants placed single family residential homes in the Project in the stream  
13 of commerce for sale to members of the public after planning, designing, constructing, and  
14 selling those homes with the following defects, deficiencies and failures, among others:  
15

- 16 a. Defectively designed, assembled, and/or installed Uponor (formerly  
17 Wirsbo, Inc.) plumbing systems, which have leaked and/or are prone to  
18 leaking and other deterioration;  
19  
20 b. Defectively designed, assembled, and/or installed Uponor plumbing  
21 components and/or parts, including, without limitation, brass plumbing  
22 fittings that have undergone, and continue to undergo, a process known as  
23 dezincification, which have leaked and/or are prone to leaking and other  
24 deterioration; and  
25  
26 c. Defectively designed, assembled, and/or installed mechanical systems  
27 involving Uponor plumbing components and/or plumbing systems.  
28

1           14. Plaintiffs are informed and believe, and based thereon allege, that during the  
2 course of the selection, design, construction, assembly, and installation of the plumbing  
3 systems in the homes in the Project, Defendants, and each of them, failed to follow  
4 acceptable construction and/or building practices. Defendants' failure to follow acceptable  
5 construction and/or building practices include, but are not limited to: (a) failure to follow  
6 manufacturers' installation instructions, Project drawings, and specifications; (b) failure to  
7 follow the acceptable custom and practice for designers, developers, builders, sellers, and  
8 constructors in the community in which the homes in the Project were built; (c) failure to  
9 follow industry standards; (d) failure to follow the minimum workmanship standards of the  
10 Arizona Registrar of Contractors, and (e) failure to follow contract documents and agreed  
11 upon construction standards.  
12  
13

14           15. The construction elements set forth herein continue to fail, deteriorate,  
15 degrade, and cause damage to other property, and failures, deterioration, degradation, and  
16 damage will continue to occur over the expected useful life of each home in the Project.  
17

18           16. Plaintiffs allege that, as a direct or indirect result of the defective selection,  
19 design, assembly, workmanship, and construction performed by Defendants, including Does  
20 1-100, and each of them, the plumbing systems in the homes in the Project were not  
21 constructed in a workmanlike and habitable manner and are defective, effectively denying  
22 Plaintiffs the benefit of their bargain. Further, the defective selection, design, assembly,  
23 workmanship, and construction of the plumbing systems has caused and continues to cause  
24 resultant damage to building components, both interior and exterior, personal property,  
25 fixtures and surrounding structures, which may continue to occur over the expected useful  
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1 breached the implied warranty of workmanship and habitability by failing to ensure that the  
2 homes' plumbing systems were of habitable quality and installed in a good and  
3 workmanlike manner.

4  
5 21. The persons in the class include hundreds of individual owners of  
6 approximately eight hundred and twenty-six (826) homes within the Mission Valley  
7 development, and thus, are so numerous that the joinder of all such persons is impracticable,  
8 and the disposition of their claims as a class will benefit the parties and the Court.

9  
10 22. There is a well-defined commonality of interest in the issues of law and of  
11 fact involving and affecting the class members to be represented.

12 23. Plaintiffs' claims alleged in this Complaint are typical of those claims that  
13 could be alleged by any member of the class, and the relief sought is typical of the relief  
14 that would be sought by each member of the class in separate actions. Specifically,  
15 Defendants treated each class member similarly, and injured each of them similarly as a  
16 result, by failing to select, design, assemble, construct, and install the homes' plumbing  
17 systems in a good and workmanlike manner and failing to ensure that the plumbing systems  
18 were of habitable quality. Plaintiffs' claims are based upon the same course of conduct and  
19 the same legal theories.  
20  
21

22 24. Plaintiffs will fairly and adequately represent and protect the interests of all  
23 members of the class. Plaintiffs are committed to continuing to act in the interests of the  
24 Mission Valley residents as described in and evidenced by this Complaint. There are no  
25 known conflicts of interest between the named class representative and class members. If  
26 any conflicts do arise, other former and current class members are available to serve as class  
27  
28

1 representatives.

2           25. The prosecution of separate actions by individual members of the Plaintiffs'  
3 class would create a risk of inconsistent and/or varying adjudications with respect to the  
4 individual members of the class, establishing incompatible standards of conduct for  
5 Defendants and resulting in the impairment of class members' rights and the disposition of  
6 their interests through actions to which they were not parties.  
7

8           26. With respect to each member of the class and the cause of action set forth  
9 below, common issues predominate over individual issues.  
10

11           27. Proceeding in reliance on the class form of action is superior to numerous  
12 individual actions as a means of adjudicating those claims. Since the damages suffered by  
13 individual class members, while not inconsequential, may be relatively small, the expense  
14 and burden of individual litigation by each member makes, or may make, it impractical for  
15 class members to seek redress individually for the wrongful conduct alleged in this  
16 Complaint. Should separate actions be brought, or be required to be brought, by each  
17 individual class member, the resulting multiplicity of lawsuits would cause undue hardship  
18 and expense for both the Court and the litigants. The prosecution of separate actions would  
19 also create a risk of inconsistent rulings, which might be dispositive of the interests of other  
20 class members who are not parties to the adjudications and/or may substantially impede  
21 their ability to adequately protect their interests.  
22  
23

24           28. Plaintiffs have retained adequate counsel. The counsel retained by Plaintiffs  
25 are experienced and competent in civil litigation and class actions, and have served, on a  
26 number of occasions, as class counsel in other class actions.  
27  
28

1 **VI.**

2 **CLAIM FOR RELIEF**

3 **(Breach of Implied Warranty of Workmanship and Habitability)**

4 **(By All Plaintiffs Against All Defendants)**

5  
6 29. Plaintiffs re-allege paragraphs 1-28 of the Complaint above and incorporate  
7 them by reference as if fully set forth herein.

8  
9 30. Defendants, including Does 1-100, and each of them, knew, or had reason to  
10 know, that Plaintiffs would rely upon the skill, judgment, and experience of Defendants in  
11 the planning, design, development, construction, and sale of the homes in the Project.  
12 Defendants at the time of the planning, design, development, construction, and sale of the  
13 homes in the Project, impliedly warranted that the plumbing systems in the homes in the  
14 Project were of habitable quality and constructed and installed in a good and workmanlike  
15 manner.  
16

17 31. The plumbing systems in homes in the Project were not of habitable quality  
18 and not constructed in a good and workmanlike manner as alleged herein.

19  
20 32. The Defendants breached the implied warranty of workmanship and  
21 habitability by constructing, designing, assembling, and installing defective plumbing  
22 systems that have failed and will continue to fail well before the useful life of the plumbing  
23 system expires.

24  
25 33. As a direct and proximate result of the Defendants' breach, Plaintiffs have  
26 suffered damages and will continue to suffer damages in the form of damage to building  
27 components, both interior and exterior, personal property, fixtures and surrounding  
28

1 structures.

2 34. As a direct and proximate result of Defendants' breach, Plaintiffs have  
3 suffered damages in that they have incurred and will continue to incur expenses to correct,  
4 replace, and reconstruct defects to the homes' plumbing system, as well as the damage to  
5 property resulting therefrom, and related costs such as relocation, loss of use, substitute  
6 housing, and mitigation expenses, at a cost which is presently unknown but believed to  
7 exceed the jurisdictional minimum established for this Court. Plaintiffs were also required  
8 to retain the services of attorneys, experts and consultants to investigate the nature and  
9 extent of the alleged defective conditions and resulting damages and formulate repair  
10 recommendations and prosecute their claims.  
11

12  
13 35. The failures and deficiencies described herein were not apparent by  
14 reasonable inspection at the time of purchase. The failures, deficiencies, and resultant  
15 damages therefrom, as discovered from time to time, would not have put a reasonable  
16 person on notice of the nature, extent and permanence of those failures, deficiencies and  
17 resultant damages. The full extent and measure of the failures, deficiencies, and resultant  
18 damages is still unknown to Plaintiffs. When the precise amount of damages is ascertained,  
19 Plaintiffs will seek leave of the Court to amend this Complaint accordingly.  
20  
21

22 **VII.**

23 **RELIEF**

24 **WHEREFORE**, Plaintiffs and members of their class pray for judgment against  
25 Defendants, including Does 1-100, and each of them as follows:  
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- 27 1. For general and special damages according to proof at the time of trial as  
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provided by law;

- 2. For costs and expenses incurred herein;
- 3. For expert fees and investigative costs incurred herein pursuant to A.R.S. § 12-1364, any applicable contract provision, and other applicable law;
- 4. For attorneys’ fees and costs pursuant to A.R.S. §§ 12-341.01(A) and 12-1364, any applicable contractual provisions, and other applicable law; and
- 5. For such other and further relief as the Court deems just and proper.

DATED: April 8, 2011 ***KASDAN SIMONDS WEBER & VAUGHAN, LLP***

/s/ Michael J. White  
 Stephen L. Weber, Esq.  
 Michael J. White, Esq.  
 James W. Fleming, Esq.  
*Attorneys for Plaintiffs and Class*

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial by jury on all causes of action triable thereby.

DATED: April 8, 2011 ***KASDAN SIMONDS WEBER & VAUGHAN, LLP***

/s/ Michael J. White  
 Stephen L. Weber, Esq.  
 Michael J. White, Esq.  
 James W. Fleming, Esq.  
*Attorneys for Plaintiffs and Class*