IN THE SUPREME COURT FOR THE STATE OF NEVADA

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Tracie K. Lindeman
Clerk of Supreme Court

JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK AND THE HONORABLE JOANNA KISNER, DISTRICT COURT JUDGE Respondents, and DAVID and TAMARA HAMMER, husband and wife, Real Parties in Interest.	SC NO.: DC NO.: A-15-729281-C Dept. No.: XXXI

PETITIONER'S APPENDIX INDEX

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VOLUME I

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Exhibit A

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CLERK OF THE COURT

COMP
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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

DAVID and TAMARA HAMMER, husband and wife,

Plaintiffs,

vs.

JMR CABINET CORPORATION; KLEIN CABINETS LLC, RANDOLPH DAVID KLEIN, JACQUELYN PAGE KLEIN, DAVID MELVIN KLEIN, RANDOLPH JOSEPH KLEIN, DOES 1 through 20; DOE EMPLOYEES 1 through 5. ROE CORPORATIONS 1 through 20, inclusive.

Defendants.

Case No : A- 15- 729281- C
Dept No : XXXI

COMPLAINT

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COME NOW Plaintiffs, DAVID AND TAMARA HAMMER, by and through their attorney of record, DANIEL E. CARVALHO, ESQ., and complains and alleges as follows:

I.

OVERVIEW

1. At all times relevant hereto, Plaintiffs DAVID and TAMARA HAMMER were residents of the County of Clark, State of Nevada. The incident which forms the basis of the subject lawsuit occurred on August 16, 2015.

2. At all times relevant hereto, Plaintiffs resided at 1842 Sydney Leigh Lane, Henderson, Nevada, 89047 in a home purchased by Plaintiffs since 2007 from Kimball Hill Homes.

3. On or around April, 2009 Plaintiffs needed to replace a broken microwave oven in their existing cabinet system. In order to fit the new microwave into their existing cabinet, they retained Defendants to perform the repair/retrofit work needed to place a new microwave in their existing cabinet system. To that end, Plaintiffs contacted Defendants, and DOES 1 through 5 and ROE CORPORATIONS 1 through 5, inclusive, in order to perform the repair/replacement work. The work was performed on or about April 21, 2009 by Defendants themselves and/or DOE EMPLOYEES 1 through 5 of JMR Cabinet Corporation, within the course and scope of their employment.

4. Defendants, and each of them, performed negligent, grossly negligent, and intentionally substandard repair work on the Plaintiffs kitchen cabinet system in April 2009, leaving the cabinet in a dangerous condition, with knowledge by Defendants, and each of them, that said condition would likely cause physical harm in the future. Specifically, Defendants, and each of them, performed work on the kitchen cabinet where the microwave was located which was substandard, defective and dangerous, and ultimately caused the cabinetry to fall from the wall, causing injuries and damages to Plaintiffs as alleged herein.

5. Unbeknown to Plaintiffs, the repair of the cabinet to allow placement of the new

microwave failed to comply with the proper standards in the industry. The work performed on the cabinet left it in a defective and unreasonably dangerous condition, and Defendants, and each of them, used substandard materials and workmanship in performing the cabinet work at Plaintiff's residence. Defendants, and each of them, repaired and replaced the cabinet without due regard for the safety of Plaintiffs, and the required standards and codes, and in conscious disregard of the substantial risk of injury which was ultimately suffered by Plaintiffs.

6. The substandard service was defective and dangerous, such that Defendants, and each of them, knew or should have known that the cabinet repair was not performed properly and was a danger to come apart from the kitchen wall in the future. To the experienced persons in Defendants' position, it was reasonably foreseeable that Plaintiffs would be injured by such work on account of the substandard workmanship on the cabinets, and the willful failure to disclose the dangerous condition, known to such defendants, and each of them, to Plaintiffs. That Defendants and each of them negligently hired, trained and retained personnel knowing that said personnel were incapable of performing the work needed, did not inspect work they knew likely to be dangerous and potentially injurious, but retained them due to their low cost of doing business.

7. As expected, on August 16, 2015, Plaintiff TAMARA HAMMER went into her kitchen to simply open the microwave. Plaintiff was utilizing the microwave which was placed in the cabinet in a manner fully foreseeable to Defendants, and each of them. As Tamara opened the microwave, the entire cabinet came apart from the wall and fell on top of her. Plaintiff sustained serious injuries, including spinal cord injury, from the direct impact of the cabinet. While Plaintiff had surgery to attempt to repair the cord damage, it is unlikely that Plaintiff will make a full recovery.

8. The direct and proximate cause of Plaintiff's injury was the flawed repair work performed by the Defendants, and each of them, in conscious disregard of the likelihood of injury.

A. JMR Cabinet Corporation and Klein Cabinet LLC are related corporations under the Alter Ego and Successor Corporation theories.

9. Defendant JMR Cabinet Corporation (JMR) is a corporation first established in 2004. Corporate officers of JMR were Defendant Randolph David Klein (President), Jacquelyn Page Klein (Secretary), Jamie Kathryn Fifita (Treasurer) and Marcus Hillman Fifita (Director). The principal place of business was 2903 Hardin Drive, Henderson Nevada 89075. This principal place of business was changed in June, 2006 to 1175 American Pacific Drive, Suite A, Henderson, Nevada 89074. However, Service of process was still legally designated to be served at 2903 Hardin Drive, Henderson, NV 89074.

10. The qualified employee of the business was designated as Marcus Fifita, who presumably would oversee the operations of the Defendants.

11. On April 2008, Marcus Hillman Fifita terminated his relationship with JMR Cabinet Corporation, and no longer acted as the qualified individual for the JMR license. The qualified individual was then changed to David Melvin Klein. Klein thereafter oversaw the activities of the Defendants.

12. In April 2009, Plaintiffs hired JMR to perform the needed repair work to place a new microwave oven in their existing cabinetry, and paid for the work.

13. In June 2011, David and Randolph Klein applied for a new Nevada State Contractor's License under the name of Klein Cabinets LLC. David Klein was again listed as the qualifying individual under the application.

14. On June 22, 2011, the Nevada State Contractor's board informed Defendants Randolph and David Klein that David was already listed as the qualified individual for JMR Cabinet Corporation. Klein Cabinets LLC did not provide sufficient financial information to obtain another license.

15. Defendants ultimately chose to allow JMR to voluntarily surrender its license, which occurred on January 28, 2012. Klein Cabinets LLC had already obtained conditional approval of a license in June 2011, and obtained final approval for the license in November 2012.

16. JMR Cabinet Corporation and Klein cabinets LLC performed repair and installation work

of kitchen cabinetry. These entities utilized the same qualified individual (David Klein) required under the license, and the same owner/principal (Randolph Klein).

17. For all intents and purposes, the entities of JMR Cabinet Corporation and Klein Cabinets, LLC, and their related officers and directors, are legal fictions, and the entities were formed in a manner invoking the alter ego doctrine. Thus, each entity and individual should be considered the alter ego of the other, and/or Klein Cabinets LLC considered the successor company of JMR Cabinet Corporation, such that each entity and individual is liable for the injuries and damages detailed herein.

18. Defendants RANDOLPH DAVID KLEIN, JACQUELYN PAGE KLEIN, DAVID MELVIN KLEIN, and RANDOLPH JOSEPH KLEIN, fully influenced, controlled, governed and directed the operations of JMR Cabinet Corporation and Klein Cabinets LLC. David Klein acted as the qualified individual for both entities, and as such was the person directly responsible for supervision of the actions of its employees and agents. The acts and omissions of these officers and directors were such that the entities and individuals should be deemed compatible and indistinct from one another. The unity of interest and ownership between these entities and individuals make them inseparable as a matter of law.

19. That Klein Cabinets, LLC also should be deemed the successor corporation and/or Alter Ego of JMR Cabinet Corporation, as the assets, officers, directors, and employees were simply transferred from JMR Cabinet Corporation to Klein Cabinets LLC. The formation of Klein Cabinets, LLC was done as a mere continuation of JMR Cabinets Corporation for the purpose of escaping liabilities incurred while operating as JMR Cabinet Corporation. That adherence to the corporate fictions would promote a fraud or injustice to Plaintiffs injured by these entities as alleged herein. That shielding the individual officers would also promote a fraud or injustice.

B. The officers and directors of each entity are personally responsible for the injuries incurred by Plaintiffs.

20. Defendants RANDOLPH DAVID KLEIN, DAVID MELVIN KLEIN, RANDOLPH JOSEPH KLEIN and JACQUELYN PAGE KLEIN should be held personally responsible

for the actions of JMR Cabinet Corporation and Klein Cabinets LLC as a matter of law. The actions of these officers and directors show that the corporations were one and the same, and were mere legal fictions utilized to shield these Defendants from personal responsibility as JMR Cabinet Corporation and Klein Cabinets LLC had identical officers, directors, owners, and qualified individuals and utilized the same employees, such that the use of the first was a mere shell or conduit for the continuation of affairs of the second. Further, that the officers and directors of each entity should be deemed the same as the fictitious entity pursuant to alter ego law, and the individuals should be responsible for the damages herein to prevent injustice. Further, the two entities were dominated and controlled by the same officers and directors, owners and qualified individuals. Finally, there was a failure to adequately capitalize JMR Cabinet Corporation and Klein Cabinets LLC, including a failure to capitalize or insure for forseeable bodily injury damages caused by their expected and anticipated substandard work due to their hiring and retention of unqualified servants to perform repair work and/or by performing substandard repair work themselves in a manner that allowed quick profit at the expense of safety. That there was a failure to operate the entities in a legal manner such that the business entities were unable to pay liabilities incurred and ceased to function. That there was fraud, concealment and/or misrepresentation concerning the proper experience and operation of JMR Corporation and the ability to properly perform the work at Plaintiff's residence. That there was a failure to maintain arm's length relationships among related entities; i.e. the use of the corporate entity to procure labor, services or merchandise for another person or entity and/or manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another; that the formation and use of Klein Cabinets LLC was for the purpose to transfer to it the existing assets and personnel while separating the liabilities of JMR Cabinet Corporation.

II.

JURISDICTION, PARTIES, CLAIMS FOR INTERPLEADER RELIEF

21. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 20 of this complaint, and incorporate the same herein by reference.

22. That Defendant JMR CABINET CORPORATION, (JMR) was a Nevada Corporation which at all times relevant hereto, was licensed to do business, and actually doing business, in Clark County, Nevada. That Defendant JMR held itself out as a company experienced in the repair of kitchen cabinets, including the model which was repaired in Plaintiff's kitchen.

23. That Defendant KLEIN CABINETS LLC was a Nevada Limited Liability Company which at all times relevant hereto, was licensed to do business, and actually doing business, in Clark County, Nevada. That Defendant KLEIN CABINETS held itself out as a company experienced in the repair of kitchen cabinets, including the model which was repaired in Plaintiff's kitchen.

24. That at the times relevant to this Complaint, Defendant RANDOLPH DAVID KLEIN was a resident of the State of Nevada.

25. That at the times relevant to this Complaint, Defendant DAVID MELVIN KLEIN was a resident of the State of Nevada.

26. That at the times relevant to this Complaint, Defendant RANDOLPH JOSEPH KLEIN was a resident of the State of Nevada.

27. That at the times relevant to this Complaint, Defendant JACQUELYN PAGE KLEIN was a resident of the State of Nevada.

28. Plaintiffs are informed, and allege that at all times relevant hereto, Defendants, and each of them, were the agents, servants, employers, joint venturers, contractors, partners, owners, subsidiary, successor corporation, alias and/or alter ego of each of the remaining Defendants, and was, at all times relevant hereto, acting within the scope of said agency, contract, servitude, employment, ownership, subsidiary, alias or alter ego, and with the express or implied authority, consent, approval, control, influence and/or ratification of

each other Defendant named herein.

29. That Defendants themselves and/or DOE EMPLOYEES 1 through 5 performed repair work upon Plaintiffs Kitchen cabinet while operating within the course and scope of their employment with JMR Cabinet Corporation, resulting in an accident on August 16, 2015.

30. That DOES 1-20 and ROES 1-20 identified within the caption which forms the basis of the subject lawsuit are, and at all relevant times herein were entities and/or individuals who were the agents, servants, employers, joint venturers, contractors, partners, owners, subsidiary, successor corporation, alias and/or alter ego of each of the remaining Defendants, and was, at all times relevant hereto, acting within the scope of said agency, contract, servitude, employment, ownership, subsidiary, alias or alter ego, and with the express or implied authority, consent, approval, control, influence and/or ratification of each other Defendant named herein.

31. That the true names and capacities of the Defendants designated herein as DOES and/or ROE are presently unknown to Plaintiff at this time who, therefore, sues said Defendants by such fictitious names and when their true names and capacities are ascertained, Plaintiff will amend her Complaint accordingly to insert the same herein. Plaintiff requests leave of the Court to amend the Complaint to name the Defendants specifically when their identities become known, and to insert additional appropriate claims for relief as may be necessary.

FIRST CAUSE OF ACTION

Negligence, Negligent hiring, training, and retention

32. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 31 of this complaint, and incorporate the same herein by reference.

33. On or about April 2009 Defendants, and each of them, including negligently hired, trained and retained employees performed repair work on Plaintiff's Kitchen Cabinets at Plaintiffs' residence located at 1842 Sydney Leigh Lane, Henderson, Nevada, 89047. The work performed included repair of a kitchen cabinet in a manner that was forseeable to fail, and likely over time to result in dislodging from the wall presenting a risk of serious

injury.

34. Defendants represented that the cabinetry repair work would be properly performed, with the use of standard materials in the industry and performed with compliance with all applicable codes and regulations. Unbeknownst to Plaintiffs, the work performed on the repair of the cabinets was grossly substandard, utilizing materials and products unfit for proper use of the cabinets, which left the cabinets in a defective and dangerous condition.

35. On August 16, 2015, Plaintiff TAMARA HAMMER attempted to open the microwave oven, which had been placed inside the cabinetry, when the cabinetry came detached from the wall, striking Plaintiff, and causing the injuries and damages described below.

36. Defendants, and each of them, owed a duty of care to Plaintiffs to manufacture, assemble install and/or, repair the cabinetry, which were free from defects and fit for their intended purposes. Defendants, and each of them, breached this duty to Plaintiff by failing to manufacture, assemble, install, and/or repair the cabinetry to be free from defects and fit for their intended purposes. Plaintiff TAMARA HAMMER used the cabinetry in the manner that was intended and expected by Defendants, and each of them. The defective and dangerous condition in which the cabinetry was left by Defendants, and each of them, was the direct and proximate cause of the injury and damages suffered by Plaintiff.

37. At all times mentioned in this complaint, Defendants, and each of them, so negligently and carelessly repaired the cabinetry that the cabinets were left in a dangerous, defective and unsafe condition for their intended use.

38. At all times mentioned in this complaint, defendants, and each of them, so negligently and carelessly inspected, maintained, and repaired the cabinetry such that the cabinets were left in a dangerous, defective and unsafe condition for their intended use.

39. That as a direct and proximate result of the aforesaid actions of Defendants, and each of them, Plaintiff TAMARA HAMMER has in the past and will in the future suffer from serious and severe injuries and illness to her person, great pain and suffering, and emotional distress and anxiety, and was in the past and will in the future be required to incur expenses for and to employ the services of physicians and other medical care

providers and to procure diagnostics, medicine, and general medical care and attention, all to her damage in an amount in excess of Ten Thousand Dollars ($10,000.00);

40. That as a result of the aforesaid actions of Defendants, and each of them, Plaintiff has also suffered past, present and future general and special damages in a sum in excess of Ten Thousand Dollars ($10,000.00).

41. That as a further direct and proximate result of the actions of Defendants, and each of them, Plaintiffs have in the past and will in the future suffer from lost earnings, and a loss of earning capacity, and have been required to incur medical expenses and other incidental damages in a sum to be determined at the time of trial, and will continue in the future to need medical care and further treatment and rehabilitation in an amount to be determined at trial.

42. That as a direct and proximate result of the aforementioned negligence of Defendants, Plaintiffs have been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

43. That the actions and omissions of the Defendants and each of them, were performed with conscious disregard of the risk of injury to the Plaintiffs, and justify an award of exemplary and punitive damages in an amount to be determined at the time of trial.

SECOND CAUSE OF ACTION

Strict Products Liability

44. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 43 of this complaint, and incorporate the same herein by reference.

45. Plaintiffs incorporate by this reference all allegations contained in Paragraphs 1 through 7 of the First Cause of Action of this complaint, as though fully set forth herein.

46. At all times mentioned in this complaint, the cabinets and component parts sold to Plaintiffs by Defendants were defective and unreasonably dangerous and/or made without sufficient and adequate warnings as to the defective and dangerous condition, causing the cabinets and their component parts to be in a dangerous and defective condition that made them unsafe for their intended use. That Defendants sold the product to Plaintiffs in a

condition that was forseeable to cause injury, and failed to warn Plaintiffs of the defective condition, causing injuries and damages to Plaintiffs as alleged herein.

THIRD CAUSE OF ACTION

Breach of Contract

47. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 46 of this complaint, and incorporate the same herein by reference.

48. On or about April 2009 Plaintiffs and Defendants entered into a contract whereby Defendants, and each of them, agreed to perform repair work of Plaintiffs' kitchen cabinet.

49. The consideration paid by Plaintiffs pursuant to the agreement was fair and reasonable. Plaintiffs performed all conditions, covenants, and promises required by them to be performed in accordance with the terms and conditions of the contract.

50. Defendants, and each of them, breached the agreement by failing to properly repair Plaintiffs kitchen cabinetry, and concealed a dangerous defect in the product sold to them. causing injuries and damages to Plaintiffs as alleged herein.

51. By reason of the breach of the contract by Defendants, and each of them, Plaintiffs have been damaged in an amount in excess of $10,000.

FOURTH CAUSE OF ACTION

Breach of Warranty

(Fitness for a particular purpose)

52. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 51 of this complaint, and incorporate the same herein by reference.

53. Defendants knew or should have known that the cabinets were defective and not fit for their ordinary and intended use, and failed to perform in accordance with the representations and warranties disseminated by Defendants, and each of them, and further failed to perform to the reasonable expectations of ordinary consumers, causing injuries and damages to Plaintiffs as alleged herein.

FIFTH CAUSE OF ACTION

Alter Ego

54. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 53 of this complaint, and incorporate the same herein by reference.

55. For all intents and purposes, the entities of JMR Cabinet Corporation and Klein Cabinets, LLC, and their related officers and directors, are legal fictions and should be considered the alter ego of the other, and/or Klein Cabinets LLC considered the successor company of JMR Cabinet Corporation, such that each entity and individual is liable for the injuries and damages detailed herein.

56. Defendants Randolph Klein and David Klein fully influenced, controlled, governed and directed the operations of JMR Cabinet Corporation and Klein Cabinets LLC. David Klein acted as the qualified individual for both entities, and as such was the person directly responsible for supervision of the actions of its employees. The unity of interest and ownership between these entities make these entities inseparable as a matter of law.

57. That Klein Cabinets, LLC should be deemed the successor corporation and/or Alter Ego of JMR Cabinet Corporation, as the assets, officers, directors, and employees were simply transferred from JMR Cabinet Corporation to Klein Cabinets LLC without proper consideration. The formation of Klein Cabinets, LLC was done as a mere continuation of JMR Cabinets Corporation for the purpose of escaping liabilities incurred while operating as JMR Cabinet Corporation. That adherence to the corporate fictions would promote a fraud or injustice to Plaintiffs injured by these entities as alleged herein.

58. Defendants RANDOLPH DAVID KLEIN ,JACQUELYN PAGE KLEIN, DAVID MELVIN KLEIN, and RANDOLPH JOSEPH KLEIN, should be held personally responsible for the actions of JMR Cabinet Corporation and Klein Cabinets LLC as a matter of law. The actions of these officers and directors show that the corporations and individuals were one and the same, and were mere legal fictions utilized to shield these Defendants from personal responsibility.

59. For all Causes of Action referenced in this Complaint, in performing the above acts and

omissions, Defendants, and each of them, fraudulently concealed the substandard work from Plaintiffs, and failed to disclose the dangerous and defective condition of the cabinetry. The work was performed in a manner representing a conscious disregard to the risk of substantial bodily injury and justify an award of punitive damages.

60. In performing the above acts and omissions, Defendants, and each of them, acted with conscious disregard, i.e. they had knowledge of the probable harmful consequences of their wrongful acts and made a willful and deliberate failure to avoid the consequences of their actions. Further, Defendants and each of them acted with malice and oppression intending to cause injuries to others, and acted in a despicable manner with a conscious disregard for the rights and safety of others, including Plaintiffs herein.

61. The Defendants, officers, directors and/or managing agents of Defendants JMR Corporation and KLEIN CABINETS LLC were guilty of oppression, malice or conscious disregard in authorizing and/or ratifying or personally committing the wrongful conduct alleged herein and had advance knowledge that its Defendant employees would utilize materials during repair of Plaintiffs' kitchen that were substandard, defective and dangerous, and that the employees who installed and/or repaired the cabinetry utilizing these substandard materials were unskilled and unfit for the purposes of their employment. Accordingly, Plaintiffs seeks to recover punitive damages for the sake of example and by way of punishing Defendants to deter such future similar conduct and prevent others from suffering severe injuries or death as a result of Defendants' malicious practices.

SIXTH CAUSE OF ACTION

Loss of Consortium

62. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 61 of this complaint, and incorporate the same herein by reference.

63. At the time of the accident complained of in the Plaintiffs' Complaint, the Plaintiffs were married and that the Plaintiffs continue to be married.

64. That as a result of the wrongful acts of the Defendants, and each of them, the Plaintiffs

were caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of their marital relationship, all to their damages in an amount in excess of Ten Thousand Dollars ($10,000.)

WHEREFORE, Plaintiffs pray for Judgment and Order of this Court as follows:

1. For general damages according to proof;
2. For economic damages according to proof;
3. For medical expenses according to proof;
4. For punitive and exemplary damages according to proof;
5. For interest, costs and reasonable attorney fees; and
6. For such other and further relief as the Court deems just and proper.

DATED this 20 day of December, 2015.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

Daniel Carvalho, Esq.
Nevada Bar No. 005600
BANK OF AMERICA PLAZA
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorney for Plaintiff

Exhibit B

SUMM
Daniel E. Carvalho, Esq.
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300 S. Fourth Street, Suite 710
Las Vegas, Nevada 89101
(702) 383-3400
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife,

Plaintiffs,

vs.

JMR CABINET CORPORATION; KLEIN CABINETS LLC, RANDOLPH DAVID KLEIN, JACQUELYN PAGE KLEIN, DAVID MELVIN KLEIN, RANDOLPH JOSEPH KLEIN, DOES 1 through 20; DOE EMPLOYEES 1 through 5, ROE CORPORATIONS 1 through 20, inclusive.

Defendants.

Case No : A-15-729281-C
Dept No : XXXI

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

JACQUELYN PAGE KLEIN

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:
a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.
b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:

DANIEL E. CARVALHO, ESQ.
Nevada Bar No. 5600
300 South Fourth Street, #710
Las Vegas, Nevada 89101
(702) 383-3400 FAX 384-1460
Attorney for Plaintiff

CLERK OF COURT
MIRIAM MEJIA

DISTRICT COURT SEAL

JAN 06 2016
Date

By: _____
Deputy Clerk
Clark County Courthouse
200 Lewis Avenue
Las Vegas, Nevada 89101

NOTE: When service is by publication, add a brief statement of the object of the action. See Rules of Civil Procedure, Rule 4(b).

STATE OF NEVADA)
) ss. **AFFIDAVIT OF SERVICE**
COUNTY OF CLARK)

_____, being duly sworn says: That at all times herein affiant was a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received ___ copy(ies) of the Summons and Complaint, _____ on the ___ day of _____, 2016, and served the same on the___ day of _____, 2016 by:

(affiant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant_____ at (state address)_____
2. serving the defendant_____ by personally delivering and leaving a copy with_____, a person of suitable age and discretion residing at the defendant's usual place of abode located at: (state address)_____

(use paragraph 3 for service upon agent, completing A or B)

3. serving the defendant _____ by personally delivery and leaving a copy at (state address)_____

a. with _____ as _____, an agent lawfully designated by statute to accept service of process;
b. with _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United State Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

__ ordinary mail
__ certified mail, return receipt requested
___ registered mail, return receipt requested

addressed to the defendant_____ at the defendant's last known address which is (state address)_____

SUBSCRIBED AND SWORNto before me this _____ day of _____, 2016.

_____
Signature of person making service

_____
NOTARY PUBLIC

My commission expires:_____
(SEAL)

ACE Executive Services, LLC (NV #2021C)
170 S GREEN VALLEY PKWY SUITE 300
HENDERSON, NV 89012
Phone 702-919-7223

Job: 842921 (Hammer v. JMR Cabinet; Kleins) **Due:**
Recipient: JACQUELYN PAGE KLEIN
Server: CSR Investigations **Fee:**

Client: Rogers, Mastrangelo, Carvalho & Mitchell, Ltd. **Phone:** (702) 383-3400

Case	A-15-729281-C	**Plaintiff**	DAVID HAMMER; TAMARA HAMMER
Court	DISTRICT COURT, CLARK COUNTY, NEVADA	**Defendant**	JMR CABINET CORPORATION; KLEIN CABINETS, LLC; DAVID MELVIN KLEIN; JACQUELYN PAGE KLEIN; RANDOLPH DAVID KLEIN; RANDOLPH JOSEPH KLEIN
Documents	SUMMONS; COMPLAINT		

Instructions

04/15/2016, VIA E MAIL
SENT TO:
RICK NEILSON

PHYSICAL DESCRIPTION: 60 years old, 5'7", 115 pounds, brown hair, brown eyes.

Please serve the enclosed documents at the address that is listed below.
IF THIS ADDRESS IS NOT THE DEFENDANT'S RESIDENCE: THE DOCUMENTS MUST BE PERSONALLY SERVED ONLY - NO EXCEPTIONS.
IF THIS ADDRESS IS THE DEFENDANT'S RESIDENCE: THEY MAY BE PERSONALLY SERVED OR LEFT WITH AN ADULT CO-RESIDENT ON THE FIRST ATTEMPT. PLEASE NOTE THE RELATIONSHIP (BROTHER, MOTHER, CO-TENANT, etc.). NO MAILING IS REQUIRED.
SERVICE TO A GATE GUARD AT THE RESIDENCE, ONLY IF DENIED ENTRY IS ACCEPTABLE.
NO OTHER TYPE OF SERVICE IS ALLOWED. PLEASE CALL OR EMAIL DETAILS IF THERE ARE ANY PROBLEMS WITH SERVICE.

PLEASE PROVIDE SERVICE DETAILS VIA EMAIL(SERVER'S NAME & ID NUMBER, DATE AND TIME OF SERVICE, NAME AND RELATIONSHIP OR TITLE OF PERSON SERVED, PHYSICAL DESCRIPTION OF PERSON SERVED, ADDRESS SERVED AT) AND I WILL PROVIDE A PROOF OF SERVICE FOR SIGNATURE, TO RETURN TO ACE EXECUTIVE SERVICES - NOT THE ATTORNEY'S OFFICE. (THE CLERK HERE WILL ONLY ACCEPT THE PROOF OF SERVICE ON THEIR FORM OR IN THEIR FORMAT.) IF THERE IS AN AFFIDAVIT OR PROOF OF SERVICE INSIDE THE DOCUMENT - PLEASE LEAVE IT THERE - IT IS PART OF THE SERVICE DOCUMENTS AND IS NOT TO BE USED FOR THE RETURN OF SERVICE.

Please bill to cover the Fee for Service. Please check with us before incurring additional costs. If you have any questions, please give me a call. Thank you for your prompt attention to this matter.

John Ely
info@aceexecutiveservices.com
Member of:
National Association Of Professional Process Servers
Oregon Association of Process Servers

Served Jacquelyn Klein
By Nelson
At 45 So 300 E
Date 4/14/2016 Time 6:00 pm
CSR INVESTIGATIONS, LLC

Address
45 EAST 300 SOUTH, PAROWAN, UT 84761

JACQUELYN PAGE KLEIN

COPY

Date & Time: **Description of Service / Recipient:**

Exhibit C

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CLERK OF THE COURT

NOTC
Kurt K. Harris, Esq.
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kharris@702law com
Attorney for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife, Plaintiff,	Case No.: A-15-729281-C
vs.	Dept. No : XXXI
JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5, ROE CORPORATIONS 1 through 20, inclusive, Defendants.	

NOTICE OF MOTION ON DEFENDANTS' LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS

TO: ALL PARTIES; and

TO: THEIR RESPECTIVE COUNSEL:

PLEASE TAKE NOTICE that the undersigned will bring the **DEFENDANTS' LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS** on for hearing before the above-entitled

Court on the **7th day of June, 2016**, at the hour of **9:30 a.m.**, of said day, or as soon thereafter as counsel can be heard.

DATED this 9th day of May, 2016.

HARRIS LAW OFFICE

KURT K. HARRIS, ESQ.
Nevada Bar No. 5354
4730 S. Fort Apache Rd., Ste. 300
Las Vegas, Nevada 89147
Tele: (702) 252.3838
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I hereby certify that I am an employee of HARRIS LAW OFFICE, and that on the 9th day of May, 2016, I served a true and correct copy of the **NOTICE OF MOTION ON DEFENDANTS' LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS** by depositing for mailing, in a sealed envelope, U.S. postage prepaid, and by way of the E-file system in Clark County, Nevada.

Daniel E. Carvalho, Esq.
Rogers, Mastrangelo, Carvalho & Mitchell
300 S. Fourth Street, Suite 719
Las Vegas, Nevada 89101

An employee of HARRIS LAW OFFICE

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CLERK OF THE COURT

MDSM
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DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife, Plaintiff, vs. JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5; ROE CORPORATIONS 1 through 20, inclusive, Defendants.	Case No.: A-15-729281-C Dept. No.: XXXI

DEFENDANTS' LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS

COMES NOW Defendants, JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN, (hereinafter, "Defendants"), by and through their attorney of record, Kurt K. Harris, Esq., pursuant to NRCP 12(b) hereby moves the Honorable Court to Dismiss the Six Causes of Action against the Defendants as follows:

This motion is based upon all of the papers and pleadings on file herein, NRCP 12(b), NRS 11.190, NRS 86, A.B. 125, and NRCP 17, the relevant rules and case law, the following memorandum of points and authorities and any oral argument given at the time of the hearing.

DATED this 2nd day of May, 2016.

HARRIS LAW OFFICE

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NOTICE OF MOTION

TO: All parties and their attorneys of record;

PLEASE TAKE NOTICE THAT the above and foregoing motion to strike on order shortening time will be heard before this Honorable Court in the above-stated Department of the Clark County Courthouse, 200 Lewis, Las Vegas, Nevada, on the 7th day of June, 2016, at the hour of 9:30 A.M., or as soon thereafter as counsel may be heard.

DATED this 2nd day of April, 2016.

HARRIS LAW OFFICE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

Based upon the four corners of the Complaint, "[t]he work was performed on or about April 21, 2009 by Defendants..." *Complaint* at p. 2, para. 3, ll. 16-17. Therefore, any and all work was performed six (6) years and eight (8) months after all work was performed. The Complaint was filed on December 21, 2015. There is no question based upon the calendar that the Complaint was filed more than six (6) years after all work was complete at the residence. There is no question the Complaint is barred by AB 125.

The Complaint is not easily comprehended. Apparently, Plaintiff, TAMERA HAMMER was hanging from the microwave oven when it fell on her head, injuring her spine. It is unknown why she was under the microwave? It is unknown why all that weight was put on the microwave? However, after seven apparently, the microwave fell under her pressure? This is all that can be gleaned from the facts of the Complaint.

The Complaint asserts six causes of action, namely:

1. Negligence, Negligent hiring, training and retention;
2. Strict Products Liability;
3. Breach of Contract;
4. Breach of Warranty (Fitness for a particular purpose)
5. Alter Ego; and
6. Loss of Consortium.

All of the foregoing claims for relief are barred by applicable statutes of limitation and or other statutory law. There is simply no legal basis for this action to move forward in the State of Nevada. Defendants now move this Court to dismiss the Complaint.

II. LAW

Moreover, NRCP 12(b)(5) states as follows in pertinent part:

> **(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the

responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter,
(2) lack of jurisdiction over the person,
. . . .
(4) insufficiency of service of process,
(5) failure to state a claim upon which relief can be granted,
. . . .
A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Moreover, the applicable statutes of limitation are as follows in pertinent part:

NRS 11.190 Periods of limitation. Except as otherwise provided in NRS 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

1. Within 6 years:

. . . .

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

. . . .

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

. . . .

4. Within 2 years:

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

. . . .

Moreover, NRCP 17 states in pertinent part:

. . . .

(b) Capacity to Sue or Be Sued. The capacity of an individual, including one acting in a representative capacity, to sue or be sued shall be determined by the law of this State. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless a statute of this State provides to the contrary.

NRS 78.747 prohibits the liability of a director or officer of a corporation for the debt or liability of the corporation as follows in pertinent part:

1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation is individually liable for a debt or liability of the corporation, unless the stockholder, director or officer acts as the alter ego of the corporation.

2. A stockholder, director or officer acts as the alter ego of a corporation if:

(a) The corporation is influenced and governed by the stockholder, director or officer;

(b) There is such unity of interest and ownership that the corporation and the stockholder, director or officer are inseparable from each other; and

(c) Adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice.

3. The question of whether a stockholder, director or officer acts as the alter ego of a corporation must be determined by the court as a matter of law.

Additionally, NRS 86 governs the liability of members of Limited Liability Companies in Nevada as follows:

NRS 86.381 Member of company is not proper party in proceeding by or against company; exception. A member of a limited-liability company is not a proper party to proceedings by or against the company, except where the object is to enforce the member's right against or liability to the company.

Additionally, with regard to liability of Limited Liability Companies in Nevada, the following statute applies as follows:

NRS 86.371 Liability of member or manager for debts or liabilities of company. Unless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of this State is individually liable for the debts or liabilities of the company.

Moreover, the lack and limits of liability of a dissolved Limited Liability Company is set forth in NRS 86.491 as follows in pertinent part:

NRS 86.491 Events requiring dissolution and winding up of affairs; powers and duties of person winding up affairs; effect of certain events affecting member.

1. A limited-liability company must be dissolved and its affairs wound up:

. . . .

(c) Unless otherwise provided in the articles of organization or operating agreement, upon the affirmative vote or written agreement of all the members;

. . . .

(e) Except as otherwise provided in subsection 5, within 180 days, or such other period provided in the articles of organization or operating agreement, after the company ceases to have any members, but the company is not required to be so dissolved and its affairs wound up if, within such period:

(1) The personal representative of the last remaining member agrees in writing to continue the company and the personal representative or its nominee or designee is admitted as a member; or

(2) Any person is admitted as a member pursuant to a provision of the operating agreement providing for the admission of a person as a member after there is no longer a member of the company.

2. The affairs of a series of a limited-liability company must be wound up:

(a) At the time, if any, so specified in the articles of organization;

(b) Upon the occurrence of an event so specified in the articles of organization or the operating agreement;

(c) Unless otherwise provided in the articles of organization or operating agreement, upon the affirmative vote or written agreement of all the members associated with the series;

. . . .

3. Unless otherwise provided in the articles of organization or operating agreement, upon:

(a) The occurrence of an event requiring the affairs of a limited-liability company to be wound up, a manager of the company who has not wrongfully terminated the company

or, if none, the members, or a person approved by all the members, may wind up the affairs of the company, and the person or persons winding up the affairs of the company:

(1) May take all actions necessary or proper to wind up the affairs of the company; and

(2) Shall distribute the assets of the company as provided in NRS 86.521 to the creditors of the company and the members of the company.

(b) The occurrence of an event requiring the affairs of a series to be wound up, a manager of the series who has not wrongfully terminated the series or, if none, the members associated with a series, or a person approved by all those members, may wind up the affairs of the series, and the person or persons winding up the affairs of the series:

(1) May take all actions necessary or proper to wind up the affairs of the series; and

(2) Shall distribute the assets of the series as provided in NRS 86.521 to the creditors of the series and the members associated with the series.

4. Except as otherwise provided in this section, the articles of organization or the operating agreement, the death, retirement, resignation, expulsion, bankruptcy, dissolution or dissociation of a member or any other event affecting a member, including, without limitation, a sole member, does not:

(a) Terminate the status of the person as a member; or

(b) Cause the limited-liability company, or the series of the company with which the member is associated, to be dissolved or its affairs to be wound up.

. . . .

With regard to maintaining an action against a Limited Liability Company after the appropriate winding up of the company, NRS 86.505 provides as follows in pertinent part:

NRS 86.505 Continuation of company after dissolution for winding up of affairs; limitation on actions by or against dissolved company or its managers or members.

1. The dissolution of a limited-liability company does not impair any remedy or cause of action available to or against it or its managers or members commenced, within 2 years after the effective date of the articles of dissolution, with respect to any remedy or cause of action as to which the plaintiff learns, or in the exercise of reasonable diligence should have learned of, the underlying facts on or before the date of dissolution, or within 3 years after the date of dissolution with respect to any other remedy or cause of action. **Any such remedy or cause of action not commenced within the applicable period is barred.** A dissolved company continues as a company for the purpose of prosecuting and defending suits, actions, proceedings and claims of any kind or nature by or against it and of enabling it gradually to settle and close its business, to collect and discharge its obligations, to dispose of and convey its property, and to distribute its assets, but not for the purpose of continuing the business for which it was established.

2. Nothing in this section shall be so construed as to lengthen any shorter statute of limitations otherwise applicable provided that no provision of this chapter or other specific statute has the effect of applying any statute of limitations that is longer than provided in this section with respect to any such remedy or cause of action. Nothing in this section shall be construed to create any remedy or cause of action available to or against the company or its managers or members. (***Emphasis added***).

III. ARGUMENT

A. DEFENDANTS ARE IMPROPER PARTIES OR THE COURT LACKS JURISDICTION OVER SOME

1. JMR CABINET CORPORATION (hereinafter, JMR)

JMR CABINET CORPORATION was dissolved on March 12, 2012. It has been four years since its dissolution. There are no assets and the Corporation was property wound up. Should Plaintiffs' desire to have the dissolved corporate shell, this appears to be what they are requesting. There is no written contract with JMR CABINET CORPORATION which was pled by the Plaintiffs in their complaint. Plaintiffs indicate they do not have a written contract. Therefore, any work which was done was completed in April of 2009.

JMR CABINET CORPORATION was wound up due to the retirements of RANDOLPH DAVID KLEIN and JACQUELYN PAGE KLEIN ceased working for the company and went on a religious mission to West Virginia. When people reach a certain age, it is customary to retire. All of this is documented and there was nothing sinister about people retiring and serving missions for their church. Plaintiffs' attempts to sensationalize the winding up the corporation has no place in law or fact.

Moreover, the KLEINs are unaware of any consumer complaints, are unaware of any complaints to the contractor's board and are unaware of any complaints to the Better Business Bureau. One would believe Plaintiffs would have alleged the same in their sensationally drafted Complaint if that were true or if that were the case? A great deal of investigation was conducted by Plaintiffs in regard to licensing, which was always appropriate. However, no complaints. It is indicative of the type of people the defendants are.

JMR was properly dissolved and is no longer an active entity. The action should be dismissed as time-barred. However, even if the entire action were not time-barred pursuant to NRS 11.190 and AB 125, Plaintiffs must demonstrate privity and they are welcome to pursue the company which is out of business and has no assets.

2. KLEIN CABINETS LLC

This Court has no jurisdiction over KLEIN CABINETS, LLC. KLEIN was not in existence in 2009. According to the Secretary of State, KLEIN CABINETS, LLC was formed on April 14, 2011, two years after the alleged work was completed on April 21, 2009. KLEIN CABINETS is not the real party in interest.

Moreover, KLEIN CABINETS, LLC is a Utah Corporation which was registered as a foreign corporation in Nevada KLEIN CABINETS and JMR are not related corporations under Alter Ego and Successor Corporations. Again, JMR was dissolved on March 12, 2012. The corporate officers of JMR were RANDOLPH DAVID KLEIN and JACQUELYN PAGE KLEIN. The corporate officers of KLEIN CABINETS were DAVID MELVIN KLEIN and RANDOLPH JOSEPH KLEIN, not the same people. There are no common corporate officers. The corporate addresses are different. The States of organization are different. Although the co-defendants are related, this is not adequate to make the leaps and conclusions drawn by Plaintiffs. The logical analysis of the matter is as follows:

JMR is a Nevada company. The corporate officers of JMR were RANDOLPH DAVID KLEIN and JACQUELYN PAGE KLEIN. JMR was dissolved on March 12, 2012.

KLEIN CABINETS is a Utah company. The corporate officers of KLEIN CABINETS were DAVID MELVIN KLEIN and RANDOLPH JOSEPH KLEIN. The addresses are different. KLEIN CABINETS was dissolved on February 12, 2013.

Therefore, KLEIN CABINETS LLC is an improper party and must be dismissed. This Court lacks subject matter jurisdiction and personal jurisdiction over this Corporation in reference to this Complaint. It is undisputed and this Court may take judicial notice that this corporation was not formed at the time of the alleged actions giving rise to this litigation. KLEIN CABINETS LLC must be dismissed.

Additionally, KLEIN CABINETS, LLC was dissolved on February 12, 2013. Pursuant to NRS 86.505, Plaintiffs' claims are barred as against KLEIN CABINETS, LLC. NRS 86.505.1 sets forth that the dissolution does not impair any remedy brought within two years. Therefore, Plaintiff's claim would have had to have been brought by February 12, 2015. Again, the Complaint was filed on December 21, 2015, ten (10) months too late. The claim is barred. NRS 86.505 states, "**Any such remedy or cause of action not commenced within the applicable period is barred.**" There is no misunderstanding on the plain language of the statute. Plaintiffs' claims are clearly barred as against KLEIN CABINETS LLC.

3. RANDOLPH DAVID KLEIN

RANDOLPH DAVID KLEIN was an officer of JMR. JMR was dissolved on March 12, 2012. RANDOLPH does not maintain any interest in a dissolved company. There is no indication there any fraud and allowing the case to proceed against him would violate any reason any person ever had for establishing a corporation in the State of Nevada. There is no allegation or evidence which would suggest that the corporate veil be pierced. There is no proof or even credible allegations which would substantiate an alter ego allegation. To the contrary, the four corners of the Complaint and judicial notice proves the following:

1. Corporate properly established;
2. Corporation had officers and directors and was in full compliance with the State of Nevada;
3. Corporation had a bank account;
4. Corporation had invoices or bills which were paid by Plaintiff.
5. Corporation was dissolved according to Nevada law;
6. Corporation apparently filed all its taxes and tax returns;
7. Corporation had a business license; and,
8. The Corporation had a contractor's license.

Plaintiffs own allegations contradict their cause of action for alter ego. Additionally, just because a corporation is closely held does not indicate it is an alter ego. NRS 78.747 prohibits the liability of a RANDOLPH DAVID KLEIN or JACQUELYN KLEIN for the debt or liability of JMR.

Just because Sheldon Adelson owns the Sands Corporation and it is closely held does not nullify the corporate veil of the Sands Corporation. Plaintiffs should know this.

Pursuant to NRS 78.747 the court must determine as a matter of law and Plaintiff must prove:

RANDALL and JACQUELYN acted as the alter egos of JMR and that they did all of the following:

(a) Influenced and governed JMR;

(b) JMR and RANDOLPH and JACQUELYN were so inseparable and intertwined that there is virtually no difference; AND

(c) If the Court decided the forgoing to be a matter of law, allowing the corporate structure to remain intact would sanction fraud or promote manifest injustice.

In essence, the Court has to make a determination that these parties were manipulating the corporation and that upholding the corporate structure, which they paid for and followed all of the rules, would promote fraud or an injustice. Again, just because a corporation is closely held, it is not necessarily the alter ego which subjects personal liability. There is no indication that all corporate formalities were not followed.

4. Defendant, JACQUELYN PAGE KLEIN

This Court lacks jurisdiction at this time. JACQUELYN PAGE KLEIN is a resident of the State of Utah. Pursuant to NRS 78.747, JACQUELYN must be dismissed from the instant litigation. JACQUELYN PAGE KLEIN was an officer of JMR which was dissolved. There is no proof that personal liability should be imposed. Plaintiffs allege that officers and directors of entities are personally responsible as a matter of law is just wrong. Complaint at pp. 5:27 – 6:1. This is not the law in Nevada and is an improper and incorrect statement. There is NO BASIS or allegations to pierce the corporate veil or to impose personal liability.

////

5. DAVID MELVIN KLEIN

Defendant, DAVID MELVIN KLEIN, was a manager of KLEIN CABINETS LLC. KLEIN CABINETS was wound up on February 12, 2013. Pursuant to Nevada law, managers of an LLC cannot be held personally responsible for the debts of the LLC. NRS 86.381. This is the law and the members cannot be held responsible.

Therefore, DAVID MELVIN KLEIN is not a proper party in the proceeding and must be dismissed. The Statute states:

> *A member of a limited-liability company is not a proper party to proceedings by or against the company, except where the object is to enforce the member's right against or liability to the company.*

NRS 86.381. The statute is clear that DAVID MELVIN KLEIN must be dismissed from the litigation.

6. RANDOLPH JOSEPH KLEIN

Based upon the foregoing analysis and NRS 86.381, RANDOLPH JOSEPH KLEIN cannot be held personally liable. There is no basis and there is no pleading which would render personal liability. Therefore, RANDOLPH JOSEPH KLEIN must be dismissed. Holding otherwise is contrary to NRS 86.

B. THE STATUTES OF LIMITATION BAR ALL CAUSES OF ACTION

1. Negligence, Negligent hiring, training and retention.

Commencing in February 24, 2015, ten months prior to the filing of the instant complaint, AB 125 was passed by the Nevada legislature. AB 125 creates a universal statute of repose. Under the new AB 125, all actions for defective construction allegations must be commenced within six (6) years of substantial completion, unless tolled. There is no tolling in this case and the instant claim is barred as it was required to be filed by April 2015 and no later. There is no justification for tolling the time period of computation and the case must be dismissed.

Even if the case had been filed earlier, AB 125 was retroactively applied to actions where

substantial completion of the home occurred prior to February 24, 2015. The Nevada Legislature applied the statute retroactively for a reason and that was to stop the extended Statutes of Repose.

Even if AB 125 did not bar the claim, The First Cause of Action for Negligence, Negligent hiring, training and retention must be dismissed as it is barred by NRS 11.190. Pursuant to the clear statutory construction and laws upon which Nevada is bound, this claim is barred. The two year statute of limitations applies to this Cause of Action.

NRS 11.190 states as follows with regard to the commencement of an action for Negligence:

4. Within 2 years:

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

Based upon the statutory law of the State of Nevada, the First Cause of action had to be filed by April 2011. As this Court is aware, it is past April 2016. It was more than six (6) years after the installation and the claimed negligence. AB 125 bars recovery. NRS 11.190 additionally bars recovery and bars the cause of action. It is clearly outside the two year statute of limitation and the claim is barred. Therefore, the First Cause of Action must be dismissed.

2. Strict Products Liability

Plaintiffs have pled Strict Liability. The Statute of Limitations for Strict Product Liability in the State of Nevada is four (4) years. NRS 11.190. Therefore, the Second Cause of Action is barred by the applicable statute of limitation. The action would have had to have been filed by April of 2013. However, the case was not filed until the end of 2015 thus rending the matter time barred and must be dismissed.

Even if the claim were not barred by the applicable statutes, generally, to prevail, it must be proven that there is an inherent defect in a product that in fact, caused the claimed damages. Plaintiffs

failed to make even a threshold pleading. Plaintiffs must prove:

a. The product was inherently defective; and
b. The caused injury.

Both elements must be proven. Plaintiffs must prove an inherent defect, which is not even pled at this time. Typically, expert testimony is required to establish that the product was inherently defective. It must be demonstrated that a product was manufactured in such a manner as to present some inherent risk to the consumer. One cannot plead a conclusion but must identify the exact defect. Blanket allegations are inadequate. There must be proof of an inherent defect. It is insufficient to plead that an incident occurred and that someone was injured due to some occurrence. Absent a specific pleading, the matter must be dismissed.

Thereafter, Plaintiffs would need to prove there is a causal connection between the actual defect, which they cannot identify, and the claimed damages. The pleading must be very specific and has entirely failed in this requirement.

3. Breach of Contract

The Breach of Contract Cause of Action must be dismissed as it is time-barred. There is no question. Plaintiffs do not allege a written contract and therefore, four years would be the applicable statute of limitations. Even if there is a written contract, which was not specifically pled, it would be required to have filed the action by April 21, 2015. As this court has been made repeatedly aware, the action was filed in December of 2015 some two years and eight months late for an oral contract. The claim is additionally barred by AB 125 which requires the case to be dismissed.

Even if the claim were not time-barred, Plaintiffs have failed to make the appropriate allegations upon which relief can be granted. NRCP 12(b)(5). To prove a breach of contract claim, Plaintiff must prove the following:

1. A valid and existing Contract with All Defendants and Plaintiffs;

2. A breach of the Contract by all Defendants; and,

the individuals. There is no question, this cause of action is derivative of the underlying causes of action for negligence, breach of contract, breach of warranty and strict product liability which are all barred by the statutes of limitation. The cause of action must be dismissed.

6. Loss of Consortium.

Again, this is a derivative cause of action. The claim is derivative of the underlying causes of action for negligence, breach of contract, breach of warranty and strict product liability which are all barred by the statutes of limitation. The cause of action must be dismissed.

IV. CONCLUSION

Based upon the foregoing, Defendants request this Honorable Court grant their Motion to Dismiss.

DATED this 2nd day of May, 2016

HARRIS LAW OFFICE

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Attorney for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I hereby certify that I am an employee of HARRIS LAW OFFICE, and that on the 31st day of May, 2016, I served a true and correct copy of the **DEFENDANTS' LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS** by depositing for mailing, in a sealed envelope, U.S. postage prepaid, and by way of the E-file system in Clark County, Nevada.

Daniel E. Carvalho, Esq.
Rogers, Mastrangelo, Carvalho & Mitchell
300 S. Fourth Street, Suite 719
Las Vegas, Nevada 89101

An employee of HARRIS LAW OFFICE

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife, Plaintiff, vs. JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5; ROE CORPORATIONS 1 through 20, inclusive, Defendants.	Case No.: A-15-729281-C Dept. No.: XXXI

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

Defendant, JMR CABINET CORPORATION	$223.00
Defendant, KLEIN CABINETS LLC	$30.00
Defendant, RANDOLPH DAVID KLEIN	$30.00
Defendant, JACQUELYN PAGE KLEIN	$30.00

IAFD
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DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife, Plaintiff, vs. JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5; ROE CORPORATIONS 1 through 20, inclusive, Defendants.	Case No.: A-15-729281-C Dept. No.: XXXI

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Defendant, JACQUELYN PAGE KLEIN	$30.00

Defendant, DAVID MELVIN KLEIN	$30.00
Defendant, RANDOLPH JOSEPH KLEIN	$30.00
TOTAL REMITTED:	$373.00

DATED this 3rd day of May, 2016.

HARRIS LAW OFFICE

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I hereby certify that I am an employee of HARRIS LAW OFFICE, and that on the 3rd day of May, 2016, I served a true and correct copy of the **DEFENDANTS' LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS** by depositing for mailing, in a sealed envelope, U.S. postage prepaid, and by way of the E-file system in Clark County, Nevada.

Daniel E. Carvalho, Esq.
Rogers, Mastrangelo, Carvalho & Mitchell
300 S. Fourth Street, Suite 719
Las Vegas, Nevada 89101

An employee of HARRIS LAW OFFICE

Exhibit D

OPP
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DISTRICT COURT

CLARK COUNTY, NEVADA

*****

DAVID and TAMARA HAMMER, husband and wife,

Plaintiffs,

vs.

JMR CABINET CORPORATION; KLEIN CABINETS LLC.; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5, ROE CORPORATIONS 1 through 20, inclusive.

Defendants.

Case No : A-15-729281-C
Dept No : XXXI

DATE OF HEARING: 6/7/16
TIME OF HEARING: 9:30 a.m.

OPPOSITION TO DEFENDANTS' LIMITED OR SPECIAL MOTION TO DISMISS

COME NOW Plaintiffs, DAVID AND TAMARA HAMMER, by and through their attorneys, the law firm of ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and hereby submits their Opposition to Defendants' Limited or Special Motion to Dismiss. This Opposition is made and based upon the points and authorities attached hereto, the papers and pleadings on file herein, and on any oral argument allowed at the hearing of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTS

This is not a construction defect case where Defendants are alleged to have completed construction of an improvement on land/real property. Rather, it is a personal injury case involving an accident which occurred on **August 16, 2015** as a result of negligent repair. Plaintiffs, DAVID and TAMARA HAMMER filed their Complaint four (4) months after the accident on December 21, 2015.

Dr. David Hammer, a local anesthesiologist, and his wife Tamara purchased the subject completed home in 2007. In April 2009 they needed to replace a broken microwave which was fitted inside their existing cabinet system. When the new microwave arrived, they realized it would not fit into the space the prior one did. In order to remedy this, they retained Defendants to perform the repair/retrofit work needed to place a new microwave in their existing cabinet system. This was not new construction, but simple retrofit/repair to place a microwave in existing cabinet space.

The work was performed by Defendants in April 2009. Unbeknownst to Plaintiffs, the repair of the cabinet to allow placement of the new microwave left the cabinet dangerous. On **August 16, 2015**, Plaintiff TAMARA went into her kitchen to simply open the microwave. As Tamara opened the microwave, the entire cabinet dislodged from the wall and fell on top of her. Plaintiff sustained serious injuries, including spinal cord injury, from the direct impact of the cabinet.

Four (4) months later on **December 21, 2015**, Plaintiffs filed their Complaint against the Defendants. Defendants have collectively filed a motion to dismiss, arguing that the applicable statutes of repose and statutes of limitation have expired. As Defendant's motion is legally without merit, Plaintiffs request that this court deny the motion to dismiss.

SUMMARY OF ARGUMENT

Defendants' motion can be summarily denied for two reasons. First, Defendants conducted mere repair work to Plaintiffs' kitchen cabinetry, and thus the statute of repose for construction defects does not apply to this case. Secondly, even if this case were deemed a construction defect, Plaintiffs' Complaint, filed four (4) months after the accident on **December 21, 2015** was timely,

as Plaintiffs had one year from the enactment of revised NRS 11.202, (enacted in February 2015) to file the Complaint.

Defendants' motion conveniently failed to notify the court that the Plaintiffs claim "accrued" prior to the enactment of NRS 11.202, and of the "grace period" applicable to NRS 11.202, and Defendants' motion confuses the difference between a statute of limitations and a statute of repose. To explain, Plaintiffs will provide the judicial and legislative history applicable to the 2015 amendments to the construction defect statutes.

Defendants' request for dismissal based upon corporate dissolution statutes are likewise without merit. Therefore, Plaintiffs request this court deny Defendants' motion in its entirety.

II

ARGUMENT

A. NRS 11.202, by its own terms, does not apply to this action which does not involve construction defect.

NRS 11.202 governs actions for "construction defect" cases. The statute sets forth an outer time limit of six years to sue a contractor for a defect in "construction of an improvement to real property". That statute reads, in pertinent part:

> 1. No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the **construction of an improvement to real property** more than 6 years after the substantial completion of such an improvement, for the recovery of damages for:
>
> (a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;
>
> (b) Injury to real or personal property caused by any such deficiency; or
>
> (c) Injury to or the wrongful death of a person caused by any such deficiency.
>
> 2. The provisions of this section do not apply:
>
> (a) To a claim for indemnity or contribution.
>
> (b) In an action brought against:
>
> (1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.

(2) Any person on account of a defect in a product.

Defendants did not perform new construction of an improvement to real property. That construction was completed long before Plaintiffs needed cabinet repair work. Plaintiffs' Complaint is for recovery due to Defendants' negligent repair of Plaintiffs' existing kitchen cabinetry. Mere negligent repair does not constitute construction defect, and the work performed was not an improvement to real property. Thus, NRS 11.202 does not apply to this action.

1. Mere repair of a residence cabinet is not considered a construction defect.

For example, in *Travelers Indemnity. Co. v. Simpson Unlimited, Inc.*, 80 Va. Cir. 16 (2010), the Court determined that a mere repair or replacement of completed property, which simply maintained its pre-existing use, was not covered under the construction defect statutes:

> Under this same analysis, the removal and replacement of the soffit performed by Simpson was a "mere replacement" that permitted the continuation of the pre-existing use of the property. Simpson was hired to make necessary replacements of goods that had reached the endpoint of their useful life span. The work Simpson performed was therefore part of the normal upkeep and maintenance of the building. It was not a modification or an addition, and thus not an improvement under Va.Code. § 8.01–250. Therefore the protection afforded by the statute of repose does not apply in the present case, and Plaintiff's cause of action withstands Defendant's challenge.

Travelers Indem. Co. v. Simpson Unlimited, Inc., 80 Va. Cir. 16 (2010). See also *State v. Perini Corp.*, 221 N.J. 412, 426 27 (2015).

Similarly, Plaintiffs' Complaint alleges that Defendants negligently performed *repair* work on Plaintiffs' pre-existing kitchen cabinetry. They did not add a room or even add a new cabinet to their kitchen nor engage in new construction to improve their land. Plaintiffs already had a permanent cabinet, and this was simply repair/retrofit of existing cabinetry. Plaintiffs needed to replace a broken microwave oven in their *pre-existing* cabinet system. In order to fit the new microwave into their existing cabinet, they retained Defendants to perform the repair/retrofit work needed to place a new microwave in their existing cabinet system.

When Defendants conducted the work, they simply expanded Plaintiffs' existing kitchen cabinets, in order to fit the new microwave. The cabinetry was then re-attached to the wall, in a

negligent manner.

It is unknown at this time exactly why the re-attached cabinetry failed, except that the work was performed negligently and upon information and belief will reveal that the manner in which it was attached to the wall was unsecure. However, what is known is that the entire cabinetry detached from the wall, fell on top of Plaintiff's head, and caused spinal cord injury. This work, however, does not fall under the definition of a construction defect.

2. The cabinetry work was not an improvement to real property.

By its own terms, the limitations in NRS 11.202 only apply to "improvements to real property". To be such an improvement, it must permanently increase the property's value. As noted above, Plaintiff did not purchase a new cabinet nor did they engage in new construction. See *State v. Perini Corp.*, 221 N.J. 412, 426 27 (2015):

> The statute of repose applies only to work that constitutes an "improvement to real property." N.J.S.A. 2A:14–1.1(a). Generally, "an improvement to real property permanently increases the property's value." *Ebert v. S. Jersey Gas Co.*, 157 N.J. 135, 139, 723 A.2d 599 (1999). When a court must determine whether work is an improvement to real property, it should consider " 'whether the modifications or addition enhances the use of the property, involves the expenditure of labor or money, **is more than mere repair or replacement**, adds to the value of the property, and is permanent in nature.' " Ibid. (quoting *Van Den Hul v. Baltic Farmers Elevator Co.*, 716 F.2d 504, 508 (8th Cir.1983)).

Plaintiffs' residence already had existing cabinetry. The simple repair and then replace work to the cabinetry did not permanently increase the value of the property and was a simple repair job. Thus, the cabinetry work could not be considered an "improvement to real property" under the statute.

B. Even if the construction defect statutes applied, Plaintiffs' Complaint was timely filed, as it accrued prior to enactment of the statute and the grace period allowed Plaintiffs to February 2016 to file a Complaint.

Unfortunately, Defendants' motion did not discuss the judicial and legislative history of NRS 11.202, which is key to understanding how the construction defect statutes have been interpreted in Nevada. Plaintiffs, therefore, will briefly discuss the relevant portions of history applicable to the current version of the statute, which shows Plaintiffs' Complaint, filed December 2015, was timely filed within one year of the enacted changes to the statute (February 2015).

1. Any reduction to a time period for filing a complaint under a statutes of repose requires a "grace period" or the statute is unconstitutional.

Nevada law recognizes that when a cause of action "accrues" prior to the enactment of a limiting statute, it must include a grace period or it would otherwise be unconstitutional. In 1983, the State of Nevada adopted NRS 11.202-205 which set forth three distinct time limitations for construction defect cases. See *G & H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 229, 232-33 (1997) (emphasis added):

> In 1983, the Legislature enacted a new statute of repose to correct **the constitutional defect** identified in State Farm and also separated the statute of repose into three different sections: NRS 11.203 provides that actions regarding defects known to the defendant, or which should have been known through the exercise of reasonable diligence, must be brought within ten years of substantial completion of the improvement to real property; NRS 11.204 provides that actions regarding latent deficiencies must be brought within eight years from substantial completion of the improvement to real property; and NRS 11.205 provides that actions regarding patent deficiencies must be brought within six years from substantial completion of the improvement to real property.

The "constitutional defect" referred to in *G&H Associates* was the determination by the Supreme Court that any statutory changes to the statutes of repose which shortened the time limit for filing of a construction defect case would be unconstitutional unless a "grace period" were allowed for claims which had already then accrued:

> In response, appellants argue that SB 105 is unconstitutional in that it does not provide a grace period so that those parties who have a viable claim may file their actions. **We concur.**
>
> As the federal district court for the Eastern District of Louisiana stated: [T]here are constitutional restrictions on the impairment of vested rights which can limit retroactive application of statutes of limitation. However, "[a] statute of limitations that allows a reasonable time for the assertion of a right or the enforcement of an obligation is not violative of the constitutional prohibition against divesting a vested right or impairing the obligation of a contract."

Alsenz v. Twin Lakes Vill., Inc., 108 Nev. 1117, 1122, 843 P.2d 834, 837 38 (1992). This ruling was in line with the Federal Courts, which hold that it is unfair and illogical to expect plaintiffs to foresee a new limitations period. See *Kelly v. Burlington Northern R. Co.*, 896 F.2d 1194, 1198 (9th Cir.1990):

> The same considerations that make it inequitable and prejudicial to apply a new, shortened statute of limitations to a claim filed prior to the announcement of the new rule also make it unfair to apply such a rule to a cause of action which accrued prior to the rule without affording the plaintiff a reasonable period in which to file his claim after the announcement

of the new limitations period. In both instances, the **plaintiff's cause of action accrued at a time when he had a more extended period of time to file suit and the adoption of a shorter time limit was unforeseeable.** Whether the plaintiff actually filed his action prior to the time the new, shortened rule was announced is largely irrelevant, if the application of that rule would serve to cut off his rights before he was informed of the new rule and had a reasonable time to file under it.

Thus, in order to pass constitutional muster, any change in the statutes of repose for filing a claim for a construction defect must allow for a "grace period" of time to file an accrued claim.

2. Assembly Bill 125, which created the new time limits, allows for a one year grace period after enactment to file suit

In 2015, the Nevada Assembly drafted assembly bill 125. (Exhibit "A"). The bill removed Nevada's three distinct time limits for filing construction defect cases (repealing NRS 11.203-205) and created one time limit of 6 years (NRS 11.202). In order to pass constitutional muster, AB 125 provided for a one-year "grace period" to the 6 year time limit:

> Sections 17-19 and 22 of this bill provide that the statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is 6 years after substantial completion of the improvement. Sections 17-19 and 22 also eliminate existing provisions of law that allow such actions to be commenced within 2 years after the date of an injury which occurs during the final year of the particular period of limitation. Section 21 of this bill: (1) provides that the revised statutes of repose set forth in sections 17-19 apply retroactively under certain circumstances; and (2) **establishes a 1-year grace period during which a person may commence an action under the existing statutes of repose, if the action accrued before the effective date of this bill.**

Section 21 of AB 125 states in pertinent part:

> 5. Except as otherwise provided in subsection 6, the period of limitations on actions set forth in NRS 11.202, as amended by section 17 of this act, applies retroactively to actions in which the substantial completion of the improvement to the real property occurred before the effective date of this act.
>
> 6. The provisions of subsection 5 do not limit an action:
>
> (a) **That accrued before the effective date of this act, and was commenced within 1 year after the effective date of this act;** or
>
> (b) If doing so would constitute an impairment of the obligation of contracts under the Constitution of the United States or the Constitution of the State of Nevada.

Thus, under the legislative history of AB 125, Section 21(6)(a), Plaintiffs' Complaint was filed within one year of the enactment of the changes to the statute. Thus, Plaintiffs' Complaint was timely filed.

C. Defendants' motion to dismiss confuses a statute of repose with a statute of limitation.

Defendants additionally argue that all claims in the Complaint are barred under the applicable statutes of limitations, whether it was 2 years or 6 years. For example, Defendants' motion claims that a cause of action for negligence would have expired in April 2011, two years from the date the repair work was completed. (Motion at page 13).

Defendants' motion clearly confuses a statute of limitation with a statute of repose. The date a statute of repose "accrues" is the date the construction was completed, while the date a statute of limitations "accrues" is the date the injury or accident occurs. Plaintiffs' Complaint complies with both time periods.

A statute of limitations requires discovery of the injury. A statute of repose does not. See *G & H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 229, 232 33 (1997):

> "Statutes of repose" bar causes of action after a certain period of time, regardless of whether damage or an injury has been discovered. In contrast, "statutes of limitation" foreclose suits after a fixed period of time following occurrence or discovery of an injury.

Statutes of repose set an outside time limit, generally running from the date of substantial completion of the project and with no regard to the date of the injury, after which causes of action for personal injury or property damage allegedly caused by deficiencies in the improvements to real property may not be brought. *G & H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 229, 232 33 (1997).

"In determining when a cause of action "accrues" for the purposes of the statute of repose, most jurisdictions, including Nevada, have concluded that the time limits set forth in a statute of repose commence at the time of substantial completion of the building and not at the time of discovery of the injury." *Alsenz v. Twin Lakes Village, Inc.*, 108 Nev. 1117, 1121, 843 P.2d 834, 836 (1992).

"Statutes of limitation are procedural bars to a plaintiff's action, and in a tort action such as this, the time limits do not commence and the cause of action does not "accrue" until the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury".

Nevada State Bank v. Jamison Partnership, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990).

Thus, for statute of repose purposes, the cause "accrued" April 21, 2009. The Complaint was timely filed for statute of repose purposes as discussed above. For statute of limitations purposes, the injury occurred **August 16, 2015.** The Complaint was filed four (4) months later on **December 21, 2015**, well within any applicable statute of limitations period. Thus, none of Plaintiffs' various causes of action, from negligence to breach of contract, are time barred.

D. Plaintiffs claim of Alter Ego are sufficient allegations in the Complaint.

Defendants also argue that this court must, as a matter of law, dismiss the various individual Defendants because the Plaintiffs cannot prove the claim of Alter Ego (to pierce the corporate veil) against the individual defendants and their corporations. As this is a motion to dismiss, all of the allegations in the complaint must be taken as true.

> On a motion to dismiss for failure to state a claim for relief, the trial court and this court must construe the pleading liberally and draw every fair intendment in favor of the plaintiff. *Merluzzi v. Larson*, 96 Nev. 409, 610 P.2d 739 (1980). **Allegations in the complaint must be accepted as true.** *San Diego Prestressed v. Chicago Title Ins.*, 92 Nev. 569, 555 P.2d 484 (1976).

Brown v. Kellar, 97 Nev. 582, 583, 636 P.2d 874, 874 (1981) (emphasis added).

Plaintiffs clearly alleged that the individual Defendants acted as alter egos by influencing and governing the entities, they had such unity of interest and ownership that the corporations and Defendants were inseparable, and adherence to this corporate fiction would sanction fraud, and promote an injustice.[1] These allegations **must** be taken as true. Therefore, the individual defendants should not be dismissed from this litigation.

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[1]Case law also allows such suits against LLC's. See *Garrett Materials, LLC v. BMI Const.*, 126 Nev. 713, 367 P.3d 772 (2010); *Montgomery v. eTrepped Technologies, LLC*, 548 F.Supp.2d 1175, 1179 (D.Nev.2008) (recognizing that federal and state courts have consistently applied the law of corporations to LLCs for piercing the corporate veil, the "alter ego" doctrine, the "business judgment rule," and derivative actions, while treating LLC's, partnerships and limited partnerships as corporations for the attorney-client privilege); see also, *In re Giampietro*, 317 B.R 841, 845–47 (D. Nev 2004) (treating an LLC as a corporation for the "alter ego" doctrine); *RES NV CHLV, LLC v. Shull*, 2011 WL 6752547 (D. Nev. Dec. 23, 2011).

Moreover, all of the work was performed in Nevada and Defendants were residents of Nevada at the time the work was performed. Their control and actions over the corporation, and conducting business in Nevada, clearly subject them to jurisdiction. *Consipio Holding, BV v. Carlberg*, 128 Nev. Adv. Op. 43, 282 P.3d 751, 755 (2012).

E. JMR Cabinet Corporation should not be dismissed from this action.

JMR Cabinet Corporation was allegedly dissolved in 2012. Defendants moved for dismissal of JMR under the theory that the allegations against them were barred by the statute of repose and the statute of limitations. However, as shown above, these contentions are without merit.

Defendants then suggest that Plaintiffs are "welcome to pursue the company which is out of business and has no assets". (Motion at page 8.) While Plaintiffs believe that Defendant Klein Cabinets may be a successor entity, and that assets may be found, there is also the potential that an insurance policy could cover JMR's liability. Thus, Plaintiffs, following Defendants' suggestion, do wish to pursue this defunct corporation even though assets may not be available.

F. Klein Cabinets LLC should not be dismissed pursuant to NRS 86.505.

Plaintiffs believe and allege in the complaint that Klein Cabinets is a successor entity which was controlled by some of the same individual defendants. They likewise claim that this entity is out of business, and suits against it are barred by NRS 86.505. That section states:

> 1. The dissolution of a limited-liability company does not impair any remedy or cause of action available to or against it or its managers or members commenced, within 2 years after the effective date of the articles of dissolution, with respect to any remedy or cause of action as to which the plaintiff learns, or in the exercise of reasonable diligence should have learned of, the underlying facts on or before the date of dissolution, **or within 3 years after the date of dissolution with respect to any other remedy or cause of action.** Any such remedy or cause of action not commenced within the applicable period is barred. A dissolved company continues as a company for the purpose of prosecuting and defending suits, actions, proceedings and claims of any kind or nature by or against it and of enabling it gradually to settle and close its business, to collect and discharge its obligations, to dispose of and convey its property, and to distribute its assets, but not for the purpose of continuing the business for which it was established.

NRSA § 86.505 (West).

According to the motion (page 10), Klein Cabinets LLC was dissolved February 12, 2013. Plaintiffs thus had, pursuant to the statute Defendants cite, three years to bring a claim against them

from the date of dissolution. The Complaint wad filed in December, 2015, well before the bar date of February 12, 2016.

While Defendants claim that the statute is limited to two years, that limitation applies only to claims Plaintiffs knew or should have known about prior to the dissolution. Defendants establish no facts which show that Plaintiffs knew of their potential claim on or before February 12, 2013. In fact, the first notice came as a result of the injury, which occurred in August, 2015. Thus, the **three** year provision of the statute applies.

CONCLUSION

Defendants' motion to dismiss should be denied in all respects.

DATED this 16 day of May, 2016.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 17 day of May, 2016, a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS' LIMITED OR SPECIAL MOTION TO DISMISS** was served via electronic means with the Eighth Judicial District Court, addressed as follows, upon the following counsel of record:

Kurt K. Harris, Esq.
4730 S. Fort Apache Road, Suite 300
Las Vegas, Nevada 89147
Attorney for Defendants

An employee of ROGERS, MASTRANGELO, CARVALHO & MITCHELL

EXHIBIT 1

Assembly Bill No. 125–Committee on Judiciary

CHAPTER.....

AN ACT relating to constructional defects; enacting provisions governing the indemnification of a controlling party by a subcontractor for certain constructional defects; enacting provisions governing wrap-up insurance policies or consolidated insurance programs covering certain claims for constructional defects; authorizing the parties to a claim for a constructional defect to agree to have a judgment entered before the filing of a civil action under certain circumstances; revising the definition of "constructional defect"; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; requiring a claimant to pursue a claim under a homeowner's warranty under certain circumstances; revising provisions governing the damages recovered by a claimant; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; prohibiting a homeowners' association from pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, before an owner of a residence or appurtenance or certain other persons may commence a civil action against a contractor, subcontractor, supplier or design professional for certain defects in the residence or appurtenance, the claimant must provide notice of the defect to the contractor. Not later than 30 days after the date on which the contractor receives the notice, the contractor must forward a copy of the notice to each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice. The subcontractor, supplier or design professional who receives the notice must inspect the alleged constructional defect and may elect to repair the defect. (NRS 40.645, 40.646, 40.647)

Section 2 of this bill establishes the circumstances under which a provision in a residential construction contract requiring a subcontractor to indemnify, defend or otherwise hold harmless a controlling party for the negligence or intentional acts or omissions of the controlling party is void and unenforceable. **Section 2** also enacts provisions governing: (1) when a subcontractor's duty to defend a controlling party arises; (2) the manner in which a controlling party may pursue indemnification from a subcontractor when the controlling party is named as an additional insured in the commercial general liability insurance policy of the subcontractor; and (3) wrap-up insurance policies or consolidated insurance programs that cover two or

more contractors or subcontractors who perform work on residential construction for risks associated with the construction.

Existing law establishes a procedure by which the parties in a civil action may agree to have a judgment entered in the action in accordance with the terms and conditions of an offer of judgment. A court is prohibited from awarding costs or attorney's fees to a party who rejects such an offer of judgment and fails to obtain a more favorable judgment at trial. (NRS 17.115; N.R.C.P. 68) **Section 3** of this bill establishes a similar procedure under which a person who has given notice of a constructional defect and a contractor, subcontractor, supplier or design professional who has received such a notice may agree to have a judgment entered before a civil action for the constructional defect is commenced.

Section 6 of this bill amends the existing definition of "constructional defect" to provide that a constructional defect is a defect: (1) which presents an unreasonable risk of injury to a person or property; or (2) which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence or appurtenance.

Section 8 of this bill amends the provision of existing law requiring certain information to be included in a notice of constructional defect to require the notice to: (1) state in specific detail, rather than in reasonable detail, each defect, damage and injury to each residence or appurtenance that is subject to the notice; (2) state the exact location of each defect, damage and injury, rather than describe in reasonable detail the location of the defect; and (3) include a statement signed by the owner of the residence or appurtenance in the notice that the owner verifies that each defect, damage and injury exists in the residence or appurtenance.

Sections 5, 8-13 and 22 of this bill remove a provision of existing law which authorizes one notice to be sent concerning similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects.

Section 11 of this bill requires a claimant and an expert who provided an opinion concerning an alleged constructional defect, or a representative of the expert who has knowledge of the alleged defect, to: (1) be present when a contractor, subcontractor, supplier or design professional conducts the required inspection of the alleged defect; and (2) identify the exact location of the alleged defect.

Under existing law, if a residence or appurtenance is covered by a homeowner's warranty that is purchased by or on behalf of the claimant, the claimant must diligently pursue a claim under the contract. (NRS 40.650) **Section 14** of this bill: (1) prohibits a claimant from filing a notice of constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) provides that a claim for a constructional defect may include only the claims that have been denied under the homeowner's warranty. **Section 14** further provides that statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner's warranty until 30 days after the insurer denies the claim, in whole or in part.

Section 15 of this bill removes the provision of existing law that provides that a claimant may recover reasonable attorney's fees as part of the claimant's damages in a cause of action for constructional defects. **Section 15** also provides that certain costs recoverable as damages must have been incurred for constructional defects proven by the claimant.

Existing law provides that the statutes of limitation and repose applicable to a claim for constructional defects are tolled from the time that a claimant gives notice of a claim for constructional defects until 30 days after the mediation required by

existing law is concluded or waived. (NRS 40.695) **Section 16** of this bill provides that the period for which the statutes of limitation and repose are tolled may not exceed 1 year. **Section 16** further authorizes a court to extend the tolling period if the claimant demonstrates good cause for such an extension.

Existing law generally limits the period in which an action for damages caused by a deficiency in construction of improvements to real property may be commenced after substantial completion of the improvement. These periods of limitation are known as statutes of repose, and the period set forth in each statute of repose during which an action must be commenced is: (1) for a known deficiency, 10 years after substantial completion of the improvement; (2) for a latent deficiency, 8 years after substantial completion of the improvement; and (3) for a patent deficiency, 6 years after substantial completion of the improvement. However, if a deficiency was a result of willful misconduct or was fraudulently concealed, an action may be commenced at any time after substantial completion of the improvement. (NRS 11.202-11.205) **Sections 17-19 and 22** of this bill provide that the statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is 6 years after substantial completion of the improvement. **Sections 17-19 and 22** also eliminate existing provisions of law that allow such actions to be commenced within 2 years after the date of an injury which occurs during the final year of the particular period of limitation. **Section 21** of this bill: (1) provides that the revised statutes of repose set forth in **sections 17-19** apply retroactively under certain circumstances; and (2) establishes a 1-year grace period during which a person may commence an action under the existing statutes of repose, if the action accrued before the effective date of this bill.

Existing law authorizes a homeowners' association to institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. (NRS 116.3102) In D.R. Horton, Inc. v. Eighth Judicial District Court, 125 Nev. 449 (2009), the Nevada Supreme Court held that existing law grants standing to a homeowners' association to pursue constructional defect claims on behalf of units' owners with respect to constructional defects in individual units. **Sections 5 and 20** of this bill provide that an association may not pursue a constructional defect claim on behalf of itself or units' owners, unless the claim pertains exclusively to the common elements of the association.

EXPLANATION – Matter in bolded italics is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. In any action or other proceeding involving a constructional defect asserted by a claimant and governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:

(a) Except as otherwise provided in paragraph (b), any provision in a contract entered into on or after the effective date of this act for residential construction that requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling

party from any liability, claim, action or cause of action resulting from a constructional defect caused by the negligence, whether active or passive, or intentional act or omission of the controlling party is against public policy and is void and unenforceable.

(b) Except as otherwise provided in paragraph (c), a provision in a contract entered into on or after the effective date of this act for residential construction is not against public policy and is not void and unenforceable under paragraph (a) to the extent that the provision requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling party from any liability, claim, action or cause of action resulting from a constructional defect arising out of, related to or connected with the subcontractor's scope of work, negligence, or intentional act or omission.

(c) A provision in a contract entered into on or after the effective date of this act for residential construction is against public policy and is void and unenforceable under paragraph (a) to the extent that it requires a subcontractor to defend, indemnify or otherwise hold harmless a controlling party from any liability, claim, action or cause of action resulting from a constructional defect arising out of, related to or connected with that portion of the subcontractor's work which has been altered or modified by another trade or the controlling party.

(d) Except as otherwise provided in paragraph (e), if a provision of a contract entered into on or after the effective date of this act for residential construction that requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling party is not against public policy and is not void and unenforceable under this subsection, the duty of the subcontractor to defend the controlling party arises upon presentment of a notice pursuant to subsection 1 of NRS 40.646 containing a particular claim, action or cause of action from which it can be reasonably inferred that an alleged constructional defect was caused by or attributable to the subcontractor's work, negligence, or wrongful act or omission.

(e) If a controlling party gives a notice to a subcontractor pursuant to NRS 40.646 that contains a claim, action or cause of action from which it can be reasonably inferred that an alleged constructional defect was caused by or attributable to the subcontractor's work, negligence, or wrongful act or omission, the claim, action or cause of action is covered by the subcontractor's commercial general liability policy of insurance issued by an

insurer, and the controlling party is named as an additional insured under that policy of insurance:

(1) The controlling party, as an additional insured, must pursue available means of recovery of its defense fees and costs under the policy before the controlling party is entitled to pursue a claim against the subcontractor.

(2) Upon the final settlement of or issuance of a final judgment in an action involving a claim for a constructional defect, if the insurer has not assumed the controlling party's defense and reimbursed the controlling party for the defense obligation of the subcontractor, or if the defense obligation is not otherwise resolved by the settlement or final judgment, the controlling party has the right to pursue a claim against the subcontractor for reimbursement of that portion of the attorney's fees and costs incurred by the controlling party which are attributable to the claims, actions or causes of action arising out of, related to or connected with the subcontractor's scope of work, negligence, or intentional act or omission.

(3) The provisions of subparagraphs (1) and (2) do not prohibit a controlling party from:

(I) Following the requirements of NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act relating to providing notice of an alleged constructional defect or any other procedures set forth in those provisions; or

(II) Filing a third-party complaint against the subcontractor if a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a controlling party which arises out of, relates to or is otherwise connected with the subcontractor's scope of work, negligence, or wrongful act or omission.

2. For any wrap-up insurance policy or other consolidated insurance program that covers a subcontractor who performs work on residential construction for which a contract is entered into on or after the effective date of this act, for claims, actions or causes of action for a constructional defect governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:

(a) The controlling party obtaining the wrap-up insurance policy or other consolidated insurance program shall disclose the total amount or method of calculation of any credit or compensation for the premium required from a subcontractor or other participant for that wrap-up insurance policy in the contract documents.

(b) Except as otherwise provided in paragraph (c), the contract documents must disclose, if and to the extent known:

(1) The policy limits;

(2) The scope of policy coverage;

(3) The policy term;

(4) The basis upon which the deductible or occurrence is triggered by the insurer;

(5) If the policy covers more than one work of improvement, the number of units, if any, indicated on the application for the insurance policy; and

(6) A good faith estimate of the amount of available limits remaining under the policy as of a date indicated in the disclosure obtained from the insurer.

(c) The disclosure requirements of subparagraphs (1) to (4), inclusive, of paragraph (b) may be satisfied by providing the participant with a copy of the binder or declaration.

(d) The disclosures made pursuant to subparagraphs (5) and (6) of paragraph (b):

(1) May be based upon information available at the time the disclosure is made and are not inaccurate or made in bad faith solely because the disclosures do not accurately reflect the actual number of units covered by the policy or the amount of insurance available, if any, when a later claim is made.

(2) Are presumptively made in good faith if:

(I) The disclosure pursuant to subparagraph (5) of paragraph (b) is the same as that contained in the application to the wrap-up insurance policy insurer; and

(II) The disclosure pursuant to subparagraph (6) of paragraph (b) was obtained from the wrap-up insurance policy insurer or broker.

The presumptions stated in subparagraph (2) may be overcome only by a showing that the insurer, broker or controlling party intentionally misrepresented the facts identified in subparagraph (5) or (6) of paragraph (b).

(e) Upon the written request of any participant in the wrap-up insurance policy or consolidated insurance program, a copy of the insurance policy must be provided, if available, that shows the coverage terms and items in subparagraphs (1) to (5), inclusive, of paragraph (b). If the policy is not available at the time of the request, a copy of the insurance binder or declaration of coverage may be provided in lieu of the actual policy.

(f) Any party receiving a copy of the policy, binder or declaration shall not disclose it to third parties other than the

participant's insurance broker or attorney unless required to do so by law. The participant's insurance broker or attorney may not disclose the policy, binder or declaration to any third party unless required to do so by law.

(g) If the controlling party obtaining the wrap-up insurance policy or other consolidated insurance program does not disclose the total amount or method of calculation of the premium credit or compensation to be charged to the participant before the time the participant submits its bid, the participant is not legally bound by the bid unless that participant has the right to increase the bid up to the amount equal to the difference between the amount the participant included, if any, for insurance in the original bid and the amount of the actual bid credit required by the controlling party obtaining the wrap-up insurance policy or other consolidated insurance program. This paragraph does not apply if the controlling party obtaining the wrap-up insurance policy or other consolidated insurance program did not require the subcontractor to offset the original bid amount with a deduction for the wrap-up insurance policy or program.

(h) The subcontractor's monetary obligation for enrollment in the wrap-up insurance policy or consolidated insurance program ceases upon the subcontractor's satisfaction of its agreed contribution percentage, which may have been paid either as a lump sum or on a pro rata basis throughout the subcontractor's performance of the work.

(i) In the event of an occurrence, the dollar amount required to be paid by a subcontractor as a self-insured retention or deductible must not be greater than the amount that the subcontractor would have otherwise been required to pay as a self-insured retention or deductible under a commercial general liability policy of comparable insurance in force during the relevant period for that particular subcontractor and within the specific market at the time the subcontract is entered into.

3. As used in this section:

(a) "Controlling party" means a person who owns real property involved in residential construction, a contractor or any other person who is to be indemnified by a provision in a contract entered into on or after the effective date of this act for residential construction.

(b) "Residential construction" means the construction of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance.

(c) "Wrap-up insurance policy" is an insurance policy, or series of policies, written to cover risks associated with the construction, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance, and covering two or more of the contractors or subcontractors that work on that construction, repair or landscaping.

Sec. 3. 1. At any time after a claimant has given notice pursuant to NRS 40.645 and before the claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant or any contractor, subcontractor, supplier or design professional who has received notice pursuant to NRS 40.645 or 40.646 may serve upon one or more other parties a written offer to allow judgment to be entered without action in accordance with the terms and conditions of the offer of judgment.

2. Except as otherwise provided in subsection 7, if, within 10 days after the date of service of an offer of judgment, the party to whom the offer was made serves written notice that the offer is accepted, the party who made the offer or the party who accepted the offer may file the offer, the notice of acceptance and proof of service with the clerk of the district court. Upon receipt by the clerk, the clerk shall enter a judgment according to the terms of the offer. Any judgment entered pursuant to this section shall be deemed a compromise settlement. The judgment, the offer, the notice of acceptance and proof of service, with the judgment endorsed, become the judgment roll.

3. If the offer of judgment is not accepted pursuant to subsection 2 within 10 days after the date of service, the offer shall be deemed rejected by the party to whom it was made and withdrawn by the party who made it. The rejection of an offer does not preclude any party from making another offer pursuant to this section. Evidence of a rejected offer is not admissible in any proceeding other than a proceeding to determine costs and fees.

4. Except as otherwise provided in this section, if a party who rejects an offer of judgment fails to obtain a more favorable judgment in an action for a constructional defect, the court:

(a) May not award to the party any costs or attorney's fees;

(b) May not award to the party any interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment;

(c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and

(d) May order the party to pay to the party who made the offer any or all of the following:

(1) A reasonable sum to cover any costs incurred by the party who made the offer for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case.

(2) Any applicable interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment.

(3) Reasonable attorney's fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment. If the attorney of the party who made the offer is collecting a contingent fee, the amount of any attorney's fees awarded to the party pursuant to this subparagraph must be deducted from that contingent fee.

5. To determine whether a party who rejected an offer of judgment failed to obtain a more favorable judgment:

(a) If the offer provided that the court would award costs, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs.

(b) If the offer precluded a separate award of costs, the court must compare the amount of the offer with the sum of:

(1) The principal amount of the judgment; and

(2) The amount of taxable costs that the claimant who obtained the judgment incurred before the date of service of the offer.

6. Multiple parties may make a joint offer of judgment pursuant to this section.

7. A party may make to two or more other parties pursuant to this section an apportioned offer of judgment that is conditioned upon acceptance by all the parties to whom the apportioned offer is made. Each party to whom such an offer is made may serve upon the party who made the offer a separate written notice of acceptance of the offer. If any party rejects the apportioned offer:

(a) The action must proceed as to all parties to whom the apportioned offer was made, whether or not the other parties accepted or rejected the offer; and

(b) The sanctions set forth in subsection 4:

(1) Apply to each party who rejected the apportioned offer.

(2) Do not apply to any party who accepted the apportioned offer.

8. The sanctions set forth in subsection 4 do not apply to:

(a) An offer of judgment made to multiple parties who received a notice pursuant to NRS 40.645 or 40.646 unless the same person is authorized to decide whether to settle the claims against all the parties to whom the offer is made and:

(1) There is a single common theory of liability against all the parties to whom the offer is made;

(2) The liability of one or more of the parties to whom the offer is made is entirely derivative of the liability of the remaining parties to whom the offer is made; or

(3) The liability of all the parties to whom the offer is made is entirely derivative of a common act or omission by another person.

(b) An offer of judgment made to multiple claimants unless the same person is authorized to decide whether to settle the claims of all the claimants to whom the offer is made and:

(1) There is a single common theory of liability claimed by all the claimants to whom the offer is made;

(2) The damages claimed by one or more of the claimants to whom the offer is made are entirely derivative of an injury to the remaining claimants to whom the offer is made; or

(3) The damages claimed by all the claimants to whom the offer is made are entirely derivative of an injury to another person.

Sec. 4. NRS 40.600 is hereby amended to read as follows:

40.600 As used in NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, unless the context otherwise requires, the words and terms defined in NRS 40.603 to 40.634, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 40.610 is hereby amended to read as follows:

40.610 "Claimant" means:

1. An owner of a residence or appurtenance; or

2. A representative of a homeowners' association [~~that is responsible for a residence or appurtenance and is~~] acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS . [~~; or~~

~~3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of NRS 40.645.~~]

Sec. 6. NRS 40.615 is hereby amended to read as follows:

40.615 "Constructional defect" means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence,

of an alteration of or addition to an existing residence, or of an appurtenance:

1. Which ~~[is done in violation of law, including, without limitation, in violation of local codes or ordinances;~~

~~2. Which]~~ presents an unreasonable risk of injury to a person or property; or

2. Which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed . ~~[;~~

~~3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping; or~~

~~4. Which presents an unreasonable risk of injury to a person or property.]~~

Sec. 7. NRS 40.635 is hereby amended to read as follows:

40.635 NRS 40.600 to 40.695, inclusive ~~[.]~~ , and sections 2 and 3 of this act:

1. Apply to any claim that arises before, on or after July 1, 1995, as the result of a constructional defect, except a claim for personal injury or wrongful death, if the claim is the subject of an action commenced on or after July 1, 1995.

2. Prevail over any conflicting law otherwise applicable to the claim or cause of action.

3. Do not bar or limit any defense otherwise available, except as otherwise provided in those sections.

4. Do not create a new theory upon which liability may be based, except as otherwise provided in those sections.

Sec. 8. NRS 40.645 is hereby amended to read as follows:

40.645 1. Except as otherwise provided in this section and NRS 40.670, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant:

(a) Must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's address listed in the records of the State Contractors' Board or in the records of the office of the county or city clerk or at the contractor's last known address if the contractor's address is not listed in those records; and

(b) May give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the

constructional defect, if the claimant knows that the contractor is no longer licensed in this State or that the contractor no longer acts as a contractor in this State.

2. The notice given pursuant to subsection 1 must:

(a) Include a statement that the notice is being given to satisfy the requirements of this section;

(b) ~~[Specify in reasonable detail the defects or any damages or injuries]~~ Identify in specific detail each defect, damage and injury to each residence or appurtenance that is the subject of the claim ~~[; and]~~ , including, without limitation, the exact location of each such defect, damage and injury;

(c) Describe in reasonable detail the cause of the defects if the cause is known ~~[.]~~ and the nature and extent that is known of the damage or injury resulting from the defects ~~[and the location of each defect within each residence or appurtenance to the extent known.~~

~~3. Notice that includes an expert opinion concerning the cause of the constructional defects and the nature and extent of the damage or injury resulting from the defects which is based on a valid and reliable representative sample of the components of the residences or appurtenances may be used as notice of the common constructional defects within the residences or appurtenances to which the expert opinion applies.~~

~~4. Except as otherwise provided in subsection 5, one notice may be sent relating to all similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects if:~~

~~(a) An expert opinion is obtained concerning the cause of the common constructional defects and the nature and extent of the damage or injury resulting from the common constructional defects;~~

~~(b) That expert opinion concludes that based on a valid and reliable representative sample of the components of the residences and appurtenances included in the notice, it is the opinion of the expert that those similarly situated residences and appurtenances may have such common constructional defects; and~~

~~(c) A copy of the expert opinion is included with the notice.~~

~~5.]~~ ; and

(d) Include a signed statement, by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners' association, the statement required by this paragraph must be signed under

penalty of perjury by a member of the executive board or an officer of the homeowners' association.

3. A representative of a homeowners' association may send notice pursuant to this section on behalf of an association ~~[that is responsible for a residence or appurtenance]~~ if the representative is acting within the scope of the representative's duties pursuant to chapter 116 or 117 of NRS.

~~[6.]~~ 4. Notice is not required pursuant to this section before commencing an action if:

(a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or

(b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.

Sec. 9. NRS 40.646 is hereby amended to read as follows:

40.646 1. Except as otherwise provided in subsection 2, not later than 30 days after the date on which a contractor receives notice of a constructional defect pursuant to NRS 40.645, the contractor shall forward a copy of the notice by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice.

2. If a contractor does not provide notice as required pursuant to subsection 1, the contractor may not commence an action against the subcontractor, supplier or design professional related to the constructional defect unless the contractor demonstrates that, after making a good faith effort, the contractor was unable to identify the subcontractor, supplier or design professional whom the contractor believes is responsible for the defect within the time provided pursuant to subsection 1.

3. ~~[Except as otherwise provided in subsection 4, not]~~ Not later than 30 days after receiving notice from the contractor pursuant to this section, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with ~~[subsection 1 of]~~ NRS 40.6462 and provide the contractor with a written statement indicating:

(a) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(b) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the

repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

~~4. [If the notice of a constructional defect forwarded by the contractor was given pursuant to subsection 4 of NRS 40.645 and the contractor provides a disclosure of the notice of the alleged common constructional defects to the unnamed owners to whom the notice may apply pursuant to NRS 40.6452:~~

~~(a) The contractor shall, in addition to the notice provided pursuant to subsection 1, upon receipt of a request for an inspection, forward a copy of the request to or notify each subcontractor, supplier or design professional who may be responsible for the alleged defect of the request not later than 5 working days after receiving such a request; and~~

~~(b) Not later than 20 days after receiving notice from the contractor of such a request, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 2 of NRS 40.6462 and provide the contractor with a written statement indicating:~~

~~(1) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and~~

~~(2) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.~~

~~5.]~~ If a subcontractor, supplier or design professional elects to repair the constructional defect, the contractor or claimant may hold the subcontractor liable for any repair which does not eliminate the defect.

Sec. 10. NRS 40.6462 is hereby amended to read as follows:

40.6462 ~~[1. Except as otherwise provided in subsection 2,~~ after~~]~~ After notice of a constructional defect is given to a contractor pursuant to NRS 40.645, the claimant shall, upon reasonable notice, allow the contractor and each subcontractor, supplier or design professional who may be responsible for the alleged defect reasonable access to the residence or appurtenance that is the subject of the notice to determine the nature and extent of a constructional defect and the nature and extent of repairs that may be necessary. To the extent possible, the persons entitled to inspect shall coordinate

and conduct the inspections in a manner which minimizes the inconvenience to the claimant.

~~[2. If notice is given to the contractor pursuant to subsection 4 of NRS 40.645, the contractor and each subcontractor, supplier or design professional who may be responsible for the defect do not have the right to inspect the residence or appurtenance of an owner who is not named in the notice unless the owner requests the inspection in the manner set forth in NRS 40.6452. If the owner does not request the inspection, the owner shall be deemed not to have provided notice pursuant to NRS 40.645.]~~

Sec. 11. NRS 40.647 is hereby amended to read as follows:

40.647 1. ~~[Except as otherwise provided in NRS 40.6452, after]~~ After notice of a constructional defect is given pursuant to NRS 40.645, before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to NRS 40.6462; ~~[and]~~

(b) Be present at an inspection conducted pursuant to NRS 40.6462 and identify the exact location of each alleged constructional defect specified in the notice and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert, or a representative of the expert who has knowledge of the alleged constructional defect, must also be present at the inspection and identify the exact location of each alleged constructional defect for which the expert provided an opinion; and

(c) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to NRS 40.6472.

2. If a claimant commences an action without complying with subsection 1 or NRS 40.645, the court shall:

(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or

(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.

Sec. 12. NRS 40.6472 is hereby amended to read as follows:

40.6472 1. Except as otherwise provided in NRS [~~40.6452,~~] 40.670 and 40.672, a written response must be sent by certified mail, return receipt requested, to a claimant who gives notice of a constructional defect pursuant to NRS 40.645:

(a) By the contractor not later than 90 days after the contractor receives the notice; and

(b) If notice was sent to a subcontractor, supplier or design professional, by the subcontractor, supplier or design professional not later than 90 days after the date that the subcontractor, supplier or design professional receives the notice.

2. The written response sent pursuant to subsection 1 must respond to each constructional defect in the notice and:

(a) Must state whether the contractor, subcontractor, supplier or design professional has elected to repair the defect or cause the defect to be repaired. If an election to repair is included in the response and the repair will cause the claimant to move from the claimant's home during the repair, the election must also include monetary compensation in an amount reasonably necessary for temporary housing or for storage of household items, or for both, if necessary.

(b) May include a proposal for monetary compensation, which may include contribution from a subcontractor, supplier or design professional.

(c) May disclaim liability for the constructional defect and state the reasons for such a disclaimer.

3. If the claimant is a homeowners' association, the association shall send a copy of the response to each member of the association not later than 30 days after receiving the response.

4. If the contractor, subcontractor, supplier or design professional has elected not to repair the constructional defect, the claimant or contractor may bring a cause of action for the constructional defect or amend a complaint to add a cause of action for the constructional defect.

5. If the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the claimant must provide the contractor, subcontractor, supplier or design professional with a reasonable opportunity to repair the constructional defect.

Sec. 13. NRS 40.648 is hereby amended to read as follows:

40.648 1. If the response provided pursuant to NRS 40.6472 includes an election to repair the constructional defect:

(a) The repairs may be performed by the contractor, subcontractor, supplier or design professional, if such person is properly licensed, bonded and insured to perform the repairs and, if such person is not, the repairs may be performed by another person who meets those qualifications.

(b) The repairs must be performed:

(1) On reasonable dates and at reasonable times agreed to in advance with the claimant;

(2) In compliance with any applicable building code and in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of repair; and

(3) In a manner which will not increase the cost of maintaining the residence or appurtenance than otherwise would have been required if the residence or appurtenance had been constructed without the constructional defect, unless the contractor and the claimant agree in writing that the contractor will compensate the claimant for the increased cost incurred as a result of the repair.

(c) Any part of the residence or appurtenance that is not defective but which must be removed to correct the constructional defect must be replaced.

(d) The contractor, subcontractor, supplier or design professional shall prevent, remove and indemnify the claimant against any mechanics' liens and materialmen's liens.

2. Unless the claimant and the contractor, subcontractor, supplier or design professional agree to extend the time for repairs, the repairs must be completed:

(a) ~~[If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are four or fewer owners named in the notice, for the named owners, not later than 105 days after the date on which the contractor received the notice.~~

~~(b) If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are five or more owners named in the notice, for the named owners, not later than 150 days after the date on which the contractor received the notice.~~

~~(c) If the notice was sent pursuant to subsection 4 of NRS 40.645, not later than 105 days after the date on which the contractor provides a disclosure of the notice to the unnamed owners to whom the notice applies pursuant to NRS 40.6452.~~

~~(d) If the notice was not sent pursuant to subsection 4 of NRS 40.645:~~

~~(1)~~] Not later than 105 days after the date on which the notice of the constructional defect was received by the contractor,

subcontractor, supplier or design professional if the notice of a constructional defect was received from four or fewer owners; or

[(2)] (b) Not later than 150 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice was received from five or more owners or from a representative of a homeowners' association.

3. If repairs reasonably cannot be completed within the time set forth in subsection 2, the claimant and the contractor, subcontractor, supplier or design professional shall agree to a reasonable time within which to complete the repair. If the claimant and contractor, subcontractor, supplier or design professional cannot agree on such a time, any of them may petition the court to establish a reasonable time for completing the repair.

4. Any election to repair made pursuant to NRS 40.6472 may not be made conditional upon a release of liability.

5. Not later than 30 days after the repairs are completed, the contractor, subcontractor, supplier or design professional who repaired or caused the repair of a constructional defect shall provide the claimant with a written statement describing the nature and extent of the repair, the method used to repair the constructional defect and the extent of any materials or parts that were replaced during the repair.

Sec. 14. NRS 40.650 is hereby amended to read as follows:

40.650 1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, the court in which the action is commenced may:

(a) Deny the claimant's attorney's fees and costs; and

(b) Award attorney's fees and costs to the contractor.

□ Any sums paid under a homeowner's warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, must be deducted from any recovery.

2. If a contractor, subcontractor, supplier or design professional fails to:

(a) Comply with the provisions of NRS 40.6472;

(b) Make an offer of settlement;

(c) Make a good faith response to the claim asserting no liability;

(d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; or

(e) Participate in mediation,

□ the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act do not apply and the claimant may commence an action or amend a complaint to add a cause of action for a constructional defect without satisfying any other requirement of NRS 40.600 to 40.695, inclusive ~~[.]~~ , and sections 2 and 3 of this act.

3. If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive ~~[, a claimant shall diligently pursue a claim under the contract.]~~ :

(a) A claimant may not send a notice pursuant to NRS 40.645 or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act unless the claimant has first submitted a claim under the homeowner's warranty and the insurer has denied the claim.

(b) A claimant may include in a notice given pursuant to NRS 40.645 only claims for the constructional defects that were denied by the insurer.

(c) If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

(d) Statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act are tolled from the time notice of the claim under the homeowner's warranty is submitted to the insurer until 30 days after the insurer rejects the claim, in whole or in part, in writing.

4. Nothing in this section prohibits an offer of judgment pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS 17.115 ~~[if the offer of judgment includes all damages to which the claimant is entitled pursuant to NRS 40.655.]~~ or section 3 of this act.

Sec. 15. NRS 40.655 is hereby amended to read as follows:

40.655 1. Except as otherwise provided in NRS 40.650, in a claim governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) ~~[Any reasonable attorney's fees;~~

[(b)] The reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair;

[(c)] (b) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

[(d)] (c) The loss of the use of all or any part of the residence;

[(e)] (d) The reasonable value of any other property damaged by the constructional defect;

[(f)] (e) Any additional costs reasonably incurred by the claimant [,] for constructional defects proven by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:

(1) Ascertain the nature and extent of the constructional defects;

(2) Evaluate appropriate corrective measures to estimate the value of loss of use; and

(3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and

[(g)] (f) Any interest provided by statute.

2. [The amount of any attorney's fees awarded pursuant to this section must be approved by the court.

3.] If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act, the claimant may not recover from the contractor, as a result of the constructional defect, [anything] any damages other than [that which is provided] damages authorized pursuant to NRS 40.600 to 40.695, inclusive [.

4.] , and sections 2 and 3 of this act.

3. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

[5.] 4. As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

Sec. 16. NRS 40.695 is hereby amended to read as follows:

40.695 1. Except as otherwise provided in [subsection] subsections 2 [,] and 3, statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act are tolled from the time notice of the claim is given, until [30] the earlier of:

(a) One year after notice of the claim is given; or

(b) Thirty days after mediation is concluded or waived in writing pursuant to NRS 40.680.

2. Statutes of limitation and repose may be tolled under this section for a period longer than 1 year after notice of the claim is given only if, in an action for a constructional defect brought by a claimant after the applicable statute of limitation or repose has expired, the claimant demonstrates to the satisfaction of the court that good cause exists to toll the statutes of limitation and repose under this section for a longer period.

3. Tolling under this section applies to a third party regardless of whether the party is required to appear in the proceeding.

Sec. 17. NRS 11.202 is hereby amended to read as follows:

11.202 1. ~~[An]~~ No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property ~~[at any time]~~ more than 6 years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement ; ~~[which is the result of his or her willful misconduct or which he or she fraudulently concealed;]~~

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply ~~[in]~~ :

(a) To a claim for indemnity or contribution.

(b) In an action brought against:

~~[(a)]~~ (1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.

~~[(b)]~~ (2) Any person on account of a defect in a product.

Sec. 18. NRS 11.2055 is hereby amended to read as follows:

11.2055 1. Except as otherwise provided in subsection 2, for the purposes of this section and NRS 11.202 , ~~[to 11.206, inclusive,]~~ the date of substantial completion of an improvement to real property shall be deemed to be the date on which:

(a) The final building inspection of the improvement is conducted;

(b) A notice of completion is issued for the improvement; or

(c) A certificate of occupancy is issued for the improvement, whichever occurs later.

2. If none of the events described in subsection 1 occurs, the date of substantial completion of an improvement to real property must be determined by the rules of the common law.

Sec. 19. NRS 113.135 is hereby amended to read as follows:

113.135 1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 ~~[to 11.206, inclusive,]~~ , 11.2055 and 40.600 to 40.695, inclusive ~~[;]~~ , and sections 2 and 3 of this act;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his or her right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

Sec. 20. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

(c) May hire and discharge managing agents and other employees, agents and independent contractors.

(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. The association may not institute,

defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units' owners with respect to an action for a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act unless the action pertains exclusively to common elements.

(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

(f) May regulate the use, maintenance, repair, replacement and modification of common elements.

(g) May cause additional improvements to be made as a part of the common elements.

(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) May grant easements, leases, licenses and concessions through or over the common elements.

(j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) May impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) May impose construction penalties when authorized pursuant to NRS 116.310305.

(m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.

(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) May exercise any other powers conferred by the declaration or bylaws.

(r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(b) If doing so would constitute an impairment of the obligation of contracts under the Constitution of the United States or the Constitution of the State of Nevada.

7. The provisions of NRS 116.3102, as amended by section 20 of this act, do not apply if a unit-owners' association has given notice of a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act on or before the effective date of this act.

8. As used in this section:

(a) "Residential construction" means the construction of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance.

(b) "Unit-owners' association" has the meaning ascribed to it in NRS 116.011.

Sec. 22. NRS 11.203, 11.204, 11.205, 11.206 and 40.6452 are hereby repealed.

Sec. 23. This act becomes effective upon passage and approval.

Exhibit E

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife, Plaintiff, vs. JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5; ROE CORPORATIONS 1 through 20, inclusive, Defendants.	Case No.: A-15-729281-C Dept. No.: XXXI **Date of Hearing: June 7, 2016** **Time of Hearing: 9:30 a.m.**

REPLY TO PLAINTIFFS' OPPOSITION TO LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS

COMES NOW Defendants, JMR CABINET CORPORATION; KLEIN CABINETS LLC; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN, (hereinafter, "Defendants"), by and through their attorney of record, Kurt K. Harris, Esq., and hereby Replies to Plaintiffs' Opposition to Defendants' Limited or Special Motion to Dismiss as follows:

This Reply is based upon all of the papers and pleadings on file herein, NRCP 12(b), NRS 11.190, NRS 86, A.B. 125, and NRCP 17, the relevant rules and case law, the following memorandum of points and authorities and any oral argument given at the time of the hearing.

DATED this 31st day of May, 2016.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

Plaintiffs' Complaint is entirely without merit. Again, as was stated, the four corners of the Complaint do not sustain a colorable claim and it should be dismissed. The Complaint sets forth that "[t]he work was performed on or about April 21, 2009 by Defendants..." *Complaint* at p. 2, para. 3, ll. 16-17. Despite what is stated in the Opposition regarding negligence, the Complaint alleges a defective repair, which really was a construction improvement, which is alleged to have caused an injury. Defendant cannot style the claim in the alternative and all claims or causes of action are all barred by one or more statutes of limitation or the Statue of Repose. Moreover, the Court lacks jurisdiction over some if not all of the named Defendants which was ignored by Plaintiffs in their Opposition.

A. The Construction Defect Statutes are Applicable

In an effort to stave off dismissal, Plaintiffs' have changed their allegations with regard to what work was done at their home in 2009. Plaintiffs' mischaracterization of the retrofit of a microwave as a repair is clearly not the case. According to the Complaint, the cabinetry work was performed on

permanent cabinets in the home. Plaintiffs' disingenuously contend this was not an improvement to their real property. It certainly was not a repair nor was it a replacement. It was custom cabinetry or a modification to remedy HAMMER's blunder in purchasing a microwave which was not appropriate for their home. The HAMMERs purchased a microwave which did not fit and rather than buying one that did fit, elected to change their cabinets. The modification of the cabinet and the installation of the new microwave, according to Plaintiffs' complaint lasted for more than six (6) years and there was never a problem. It is unknown what Plaintiff, TAMARA HAMMER did to pull the microwave down; however, it is irrelevant as the mere fact that the microwave withstood the test of time is uncontroverted. The method of the alleged injury is unexplained and difficult to imagine given the confusion as to how she pulled the microwave from its mount down upon her head. Logistically, it makes no sense.

According to the Complaint, all work was performed six (6) years and eight (8) months prior to the filing of the Complaint. The calendar is clear with regard to the dates and the claim is barred. It is a matter of simple math. Based upon the timing allegations of the Plaintiffs, the Complaint is barred by AB 125 and the appropriate statute of repose, statutes of limitation and corporate statutes on all causes of action. In support of their position, Plaintiffs cite *Travelers Indemnity Co. v. Simpson Unlimited Inc.*, 80 Va. Cir. 16 (2010), which predates AB 125 by five years and is barely persuasive authority from a Virginia court. However, the citation is misplaced as the work on the premises was not a repair and was not a replacement.

The Opposition states that the "work was performed by Defendants in April 2009" and it is alleged that the "repair". . . . "left the cabinet dangerous". *Opposition to Motion*, p. 2:15-16. Plaintiffs' Opposition states that Defendants "conducted mere repair work" but not construction. *Id.*, at p. 2:25-26. This is untrue and need not be accepted as true by the Court. It is Plaintiffs' position that the work was a mere repair is not true and is inconsistent with prior representations to the Court. Plaintiffs' characterization of the work as a repair is untenable and contradictory. The Court does not have to

abandon logic in reviewing the allegations contained in the Complaint when considering the allegations in the context of a Motion to Dismiss.

There is no confusion, the Statutes of Repose AND the Statutes of Limitation bar this claim along with the corporate statutes. All causes of action are barred by the Statutes of Repose. All causes of action are barred by the Statute of Limitation on contract claims as well. All causes of action are barred by the Statute of Limitation with regard to negligence on the tort claims. There are no other avenues for relief and the Complaint should be dismissed and fees should be awarded to the Defendants and each of them.

B. AB 125 is Applicable and Bars the Claim

Plaintiffs note that NRS 11.202, (enacted in February 2015), does not bar the instant claim. However, Plaintiffs' application of NRS 11.202 is not that of the Defendants' interpretation nor the Nevada Legislature's. According to *Plaintiffs' Opposition*, NRS 11.202 was enacted in February 2015. This alleged accident occurred on August 16, 2015, six months after the enactment of NRS 11.202. According to Plaintiffs' allegations these are the applicable dates.

NRS 11.202 sets forth that no action may be commenced more than 6 years after the completion of such improvement for injury caused by any deficiency. NRS 11.202.1(c). It is clear that the claims outlined in the Complaint are barred by the application of this statute. The action was commenced more than 6 years after the custom cabinetry was performed.

Plaintiffs correctly cite that a grace period was enacted for claims arising **prior** to the enactment of AB 125, which modified NRS 11.202 to a hard cut-off statute of limitations to six (6) years. There was a grace period for claims which accrued "prior to the enactment of a limited statute". *Plaintiffs' Opposition* at p. 6:2-3. This claim, by Plaintiffs' admission, accrued in August of 2015, **six months after the enactment of the statute**. Again, as is stated in the Opposition, there was a one year grace period "if the action accrued before the effective date of this bill. Again, the bill was enacted in

February of 2015 and the action accrued on August 2015. *Plaintiffs' Opposition* citing Section 21 of AB 125 at p. 7:15-16. There is no debate or dispute that there is no one year grace period on the limitation. Moreover, the provisions under Section 6 are inapplicable as the one year grace period ONLY applies if the action accrued before the effective date of the act and if the suit were commenced within one year. As has been repeatedly stated, the action accrued after the enactment of the act and does not fall within the grace period outlined in the act.

Plaintiffs' Opposition states that the work was performed negligently, but it is unknown how the microwave became detached. *Plaintiffs' Opposition* at p. 5:2-3. The position is unsupported and appears to be more of a *res ipsa loquitur* claim, barred by the Statute of Limitation, rather than the Statute of Repose barred claims set forth in the Complaint. The Opposition notes that it was "unsecure", but at the same time admits the microwave hung on the wall for more than six years. Moreover, without getting too deep into the details, the allegations make no sense as the Opposition states that the Plaintiff was opening the microwave and that it fell on top of her head, which would be impossible.

C. Negligence Claims Are Also Barred

Plaintiffs assert some ongoing negligence claim which attaches to work performed on the cabinets. The Plaintiffs' assertion that there is an ongoing tort claim attached to the custom cabinetry work. This is incorrect. Plaintiff does assert a product defect claim but that claim is barred by the Statute of Limitations, NRS 11.190. Plaintiffs do not assert a *res ipsa locuitur* claim. There is no contact with the Plaintiff, which is required to maintain a tort claim. Therefore, the tort claim is barred by the two year Statute of Limitation from the date of the installation. This is unquestioned. Plaintiffs are mixing their claims for relief and confusing contract claims, defective construction claims and/or tort claims. None of the claims can be maintained and must be dismissed.

D. There is No Basis To Pierce the Corporate Veil

The Nevada Legislature has effected laws to protect members and managers of Corporations so

long as there is no basis to pierce the corporate veil. There are no allegations which would support piercing the corporate veil in this case. Even if the Claims were not barred by the Statutes, Plaintiffs can cite no basis to pierce the corporate veils in this case. Mere allegations are insufficient to overcome an NRCP 12(b) motion. NRCP 12(b)(5) is the appropriate rule to challenge the legally deficient pleading contained in the complaint. See also, *Whittlestone v. Handi-Craft Co.*, 618 F.3d 970, 974 (9th Cir. 2010). A properly pled complaint must provide a statement that the pleader is entitled to relief and requires some detailed factual allegations rather than asserting labels and conclusions or unsupported causes of action. *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). According to the Supreme Court ruling in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), "[f]actual allegations must be enough to rise above the speculative level." *Id.*, at 555. Contrary to Plaintiffs' assertions, this Court does not have to just accept all allegations contained in the Complaint as true.

Additionally, the Supreme Court clarified a two-step approach in Iqbal to apply to motions to dismiss as follows:

1. Well-pled factual allegations in the Complaint, which are clearly lacking in the case at bar (conclusions are not entitled to the assumption of truth); *Iqbal* at 1950, and,

2. Courts must consider whether factual allegations are plausible. *Id.*

Therefore, based upon the Supreme Court's ruling, allegations must be articulately pled and conclusions are not entitled to a blank assumption of truth. Additionally, the claims for relief must be plausible and must be plausibly sustained. Both elements of the instant complaint are clearly lacking. In other words, this Court does not have to blindly accept all allegations as true if they are inconsistent with the law or common sense.

Plaintiffs have failed to plead any plausible claims as to why the corporate veils of the corporations, if there is jurisdiction, should be pierced. There is no proof and no plausible or legible allegations. There is clearly no fraud and no reason to assume the corporate formalities had not been

followed in relation to JMR Cabinets. Plaintiffs' provide no basis to pierce the corporate veil and provide no reason for this Court to set aside the statutory authority of NRS 78.747 or NRS 86 et Seq.

E. Plaintiffs' Claims Are Barred As Against the Corporations

Plaintiffs now allege that all defendants were once residents of Nevada. However, this assertions, although totally unsupported, contradicts Plaintiffs' position that the claim accrued on February of 2015. If the Court accepts Plaintiffs' prior argument on the Statute of Repose, then this Court lacks jurisdiction over all named Defendants as they are not residents of the State of Nevada. As was previously stated, there is no basis to find liability with an alleged, so-called, successor corporation, KLEIN CABINETS. Plaintiffs ignore the fact that KLEIN CABINETS, LLC is a Utah Corporation which was registered as a foreign corporation in Nevada. The Plaintiffs ignore there is no commonality of ownership of the two corporations. There is absolutely no proof other than the same other than conclusory allegations of the liability of KLEIN CABINETS which are barred by *Twomby*.

JMR's liability is barred. JMR was dissolved on dissolved on March 12, 2012. Plaintiffs indicate "there is also a potential that an insurance policy would cover JMR's liability. First, JMR is not liable as it was not in existence at the time and second, there is no insurance policy which covers these claims. Insurance has denied coverage. Plaintiffs are suing real persons from out of State and real companies and no insurance policy is going to cover this claim as the claim was denied. JMR was appropriately wound down and the time to pursue this Corporation has expired. There is no viable entity and hence the claim must be dismissed.

Again, as was stated in the motion and ignored by the Plaintiffs, NRS 86.505.1 sets forth that the dissolution does not impair any remedy brought within two years. Therefore, Plaintiff's claim would have had to have been brought by February 12, 2015. Again, the Complaint was filed on December 21, 2015, ten (10) months too late.

////

F. There is No Jurisdiction

Plaintiffs' lack privity of contract with ALL Defendants, except for JMR Cabinets. JMR was legally wound down and is no longer in existence. The appropriate statutes were followed and any claims against JMR are time barred.

KLEIN CABINETS, DAVID MELVIN KLEIN and RANDOLPH JOSEPH KLEIN have no minimum contacts with Plaintiffs'. All of the forgoing are Utah Residents and have no connection with the Plaintiffs in any way and must be dismissed.

RANDOLPH DAVID KLEIN and JACQUELYN PAGE KLEIN are retired individuals residing in the State of Utah. They properly closed their business and followed all corporate formalities. They served a mission for their church and no longer reside in Nevada.

IV. CONCLUSION

Based upon the foregoing and the original Motion, Defendants request this Honorable Court grant their Motion to Dismiss. The Complaint is without merit.

DATED this 31st day of May, 2016

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I hereby certify that I am an employee of HARRIS LAW OFFICE, and that on the 31st day of May, 2016, I served a true and correct copy of the **DEFENDANTS' LIMITED OR SPECIAL APPEARANCE ON A MOTION TO DISMISS** by way of the E-file system in Clark County, Nevada.

Daniel E. Carvalho, Esq.
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An employee of HARRIS LAW OFFICE

Exhibit F

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DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife,

Plaintiffs,

vs.

JMR CABINET CORPORATION; KLEIN CABINETS LLC.; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5, ROE CORPORATIONS 1 through 20, inclusive.

Defendants.

Case No : A-15-729281-C
Dept No : XXXI

DATE OF HEARING: 6/7/16
TIME OF HEARING: 9:30 a.m.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and filed on the 21ST day of June, 2016, a copy of which is attached hereto.

DATED this 22nd day of June, 2016.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

DANIEL E. CARVALHO, ESQ.
Nevada Bar No. 005600
CHARLES A. MICHALEK, ESQ.
Nevada Bar No. 5721
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 23 day of June, 2016, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** was served via electronic means with the Eighth Judicial District Court, and U.S. Mail, postage prepaid, addressed as follows, upon the following counsel of record:

Kurt K. Harris, Esq.
4730 S. Fort Apache Road, Suite 300
Las Vegas, Nevada 89147
Attorney for Defendants

An employee of ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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CLERK OF THE COURT

ORDR
DANIEL E. CARVALHO, ESQ.
Nevada Bar No. 005600
CHARLES A. MICHALEK, ESQ.
Nevada Bar No. 5721
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
BANK OF AMERICA PLAZA
300 S. Fourth Street, Suite 710
Las Vegas, Nevada 89101
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Email: dcarvalho@rmcmlaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

DAVID and TAMARA HAMMER, husband and wife,

Plaintiffs,

vs.

JMR CABINET CORPORATION; KLEIN CABINETS LLC.; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5, ROE CORPORATIONS 1 through 20, inclusive.

Defendants.

Case No : A-15-729281-C
Dept No : XXXI

DATE OF HEARING: 6/7/16
TIME OF HEARING: 9:30 a.m.

ORDER ON DEFENDANTS' LIMITED OR SPECIAL MOTION TO DISMISS

Defendants' Limited or Special Motion to Dismiss, having come on for hearing before the above-entitled Court on the 7th day of June, 2016, Plaintiffs appearing by and through their attorneys, Daniel E Carvalho, Esq. and Charles A. Michalek, Esq of ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and Defendants appearing by and through their attorney, Kurt K. Harris, Esq.; and the Court having considered the Points and Authorities on file herein and argument

06-16-16 A08:45 IN

of counsel:

FINDINGS OF FACT

1. Plaintiffs' Complaint does not state a cause of action for construction defect.
2. The Allegations of the Four Corners of the Complaint do not constitute an action for construction defect and the parties did not request the action be deemed a construction defect case.
3. The Complaint was randomly generated to be submitted to this department, and not submitted as a Construction Defect matter.

CONCLUSIONS OF LAW

1. The allegations in the Complaint must be taken as true and all inferences must be given in favor of Plaintiffs.
2. The Court cannot consider any matter outside the pleadings in ruling on the motion to dismiss.
3. The statute of repose applicable to construction defect matters does not apply to this action as the Complaint does not state a cause of action for construction defect.
4. The Court has considered the remaining arguments as to all claims and has determined that the subject motion should be denied without prejudice as there are material issues of fact in dispute as set forth in the record.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that: Defendants' Motion to Dismiss be DENIED in its entirety, without prejudice.

DATED this 17 day of June, 2016.

JOANNA S. KISHNER

DISTRICT COURT JUDGE

Submitted by:

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

DANIEL E. CARVALHO, ESQ.
Nevada Bar No. 5600
CHARLES A. MICHALEK, ESQ.
Nevada Bar No. 5721
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorney for Plaintiffs

APPROVED AS TO FORM AND CONTENT:

Kurt K. Harris, Esq.
4730 S. Fort Apache Road, Suite 300
Las Vegas, Nevada 89147
Attorney for Defendants

Exhibit G

NEO
DANIEL E. CARVALHO, ESQ.
Nevada Bar No. 005600
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

DAVID and TAMARA HAMMER, husband and wife,

Plaintiffs,

vs.

JMR CABINET CORPORATION; KLEIN CABINETS LLC.; RANDOLPH DAVID KLEIN; JACQUELYN PAGE KLEIN; DAVID MELVIN KLEIN; RANDOLPH JOSEPH KLEIN; DOES 1 through 20; DOE EMPLOYEES 1 through 5, ROE CORPORATIONS 1 through 20, inclusive.

Defendants.

Case No : A-15-729281-C
Dept No : XXXI

THREE DAY NOTICE OF INTENT TO DEFAULT

TO: DEFENDANTS; and

TO: KURT K. HARRIS, ESQ., Attorney for Defendants

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that unless you answer or otherwise plead to Plaintiffs' Complaint on file herein within three (3) days of your receipt of this Notice of Intention to Take Default, Plaintiffs above-named will enter default against the

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Defendants and request the Court to enter a judgment against the Defendants by default.

DATED this 27th day of June, 2016.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

DANIEL E. CARVALHO, ESQ.
Nevada Bar No. 005600
CHARLES A. MICHALEK, ESQ.
Nevada Bar No. 5721
300 South Fourth Street, Suite 710
Las Vegas, Nevada 89101
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 23 day of June, 2016, a true and correct copy of the foregoing **THREE DAY NOTICE OF INTENT TO DEFAULT** was served via electronic means with the Eighth Judicial District Court, and U.S. Mail, postage prepaid, addressed as follows, upon the following counsel of record:

Kurt K. Harris, Esq.
4730 S. Fort Apache Road, Suite 300
Las Vegas, Nevada 89147
Attorney for Defendants

An employee of ROGERS, MASTRANGELO, CARVALHO & MITCHELL