

1 Stephen L. Weber, Esq. (AZ SBN 022751)
2 Michael J. White, Esq. (AZ SBN 018692)
3 James W. Fleming, Esq. (AZ SBN 027967)
4 **KASDAN SIMONDS WEBER & VAUGHAN, LLP**
5 3200 N. Central Ave., Suite 2100
6 Phoenix, AZ 85012
7 Phone: 602-224-7800
8 Fax: 602-224-7801
9 E-Mail: sweber@kasdansimonds.com
10 mwhite@kasdansimonds.com
11 jfleming@kasdansimonds.com

12 Attorneys for Plaintiffs and all those similarly situated.

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

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

19 Plaintiffs,

20 v.

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

27 Defendants.

Case No.:

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

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

///

1 I.

2 THE PARTIES

3 1. Plaintiffs are the owners of single family homes located in a development
4 known as Mission Valley in the City of Casa Grande, County of Pinal, State of Arizona
5 (“Project”). They bring this action individually, and as class representatives, on behalf of
6 all persons similarly situated, pursuant to *Federal Rule of Civil Procedure 23* and other
7 applicable laws. Each Plaintiff class member is a member of that group of individuals
8 and/or entities who currently own homes within the Project. A list of Plaintiffs is attached
9 hereto as “Exhibit 1.”
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12 2. Plaintiffs seek damages from Defendants, and each of them, for defects in the
13 selection, design, construction, assembly, and installation of Uponor (formerly Wirsbo, Inc.)
14 plumbing systems in the homes in the Project. Among other things, Defendants selected,
15 designed, constructed, and installed Uponor brass plumbing fittings in the plumbing
16 systems in the homes in the Project. Those brass plumbing fittings have undergone, and
17 continue to undergo, a process known as dezincification, resulting in compromised
18 plumbing systems that have leaked and are prone to leaking and other deterioration.
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21 3. Plaintiffs are informed and believe, and based thereon allege, that Defendant
22 D.R. Horton, Inc. – Dietz-Crane Homes, a Delaware corporation, authorized and doing
23 business in Pinal County, Arizona, participated in the selection, design, construction,
24 assembly, and installation of Uponor plumbing systems in the homes in the Project.
25

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

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

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

8
9 6. Plaintiffs are ignorant of the true names and capacities of the parties sued as
10 Does 1-100, inclusive, and therefore sue them under fictitious names. Upon learning their
11 true names and capacities, Plaintiffs will amend the Complaint to reflect the same.
12 Plaintiffs allege that Does 1-100, inclusive, are responsible in some manner for the
13 occurrences herein alleged and that Plaintiffs' damages as herein alleged were proximately
14 caused by such occurrences.
15

16 7. Plaintiffs allege that Defendants, including Does 1-100, were engaged and did
17 engage in the selection, design, construction, assembly, and installation of Uponor
18 plumbing systems in the homes in the Project and were responsible under the law of
19 contract to comply with minimum building standards, including, but not limited to, the
20 provisions of the adopted building code, and were responsible to exercise direct supervision
21 and control over the operations necessary to secure full compliance with all building, safety
22 and health laws, rules and regulations.
23

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

2 **II.**

3 **JURISDICTION AND VENUE**

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

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

24 11. Venue is proper in this Court because a substantial part of the events giving
25 rise to the claim asserted herein occurred in the judicial district where this Court is situated,
26 and all of the real property that is the subject of this action is situated in the judicial district
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1 where this Court is situated, and also because the injuries complained of in this Complaint
2 were injuries arising from a breach of a contract that was entered into and was to be
3 performed in the judicial district where this Court is situated.
4

5 **III.**

6 **STATUTES OF LIMITATION AND REPOSE**

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

10 **IV.**

11 **GENERAL ALLEGATIONS**

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

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

1 14. Plaintiffs are informed and believe, and based thereon allege, that during the
2 course of the selection, design, construction, assembly, and installation of the plumbing
3 systems in the homes in the Project, Defendants, and each of them, failed to follow
4 acceptable construction and/or building practices. Defendants' failure to follow acceptable
5 construction and/or building practices include, but are not limited to: (a) failure to follow
6 manufacturers' installation instructions, Project drawings, and specifications; (b) failure to
7 follow the acceptable custom and practice for designers, developers, builders, sellers, and
8 constructors in the community in which the homes in the Project were built; (c) failure to
9 follow industry standards; (d) failure to follow the minimum workmanship standards of the
10 Arizona Registrar of Contractors, and (e) failure to follow contract documents and agreed
11 upon construction standards.
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14 15. The construction elements set forth herein continue to fail, deteriorate,
15 degrade, and cause damage to other property, and failures, deterioration, degradation, and
16 damage will continue to occur over the expected useful life of each home in the Project.
17

18 16. Plaintiffs allege that, as a direct or indirect result of the defective selection,
19 design, assembly, workmanship, and construction performed by Defendants, including Does
20 1-100, and each of them, the plumbing systems in the homes in the Project were not
21 constructed in a workmanlike and habitable manner and are defective, effectively denying
22 Plaintiffs the benefit of their bargain. Further, the defective selection, design, assembly,
23 workmanship, and construction of the plumbing systems has caused and continues to cause
24 resultant damage to building components, both interior and exterior, personal property,
25 fixtures and surrounding structures, which may continue to occur over the expected useful
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1 breached the implied warranty of workmanship and habitability by failing to ensure that the
2 homes' plumbing systems were of habitable quality and installed in a good and
3 workmanlike manner.
4

5 21. The persons in the class include hundreds of individual owners of
6 approximately eight hundred and twenty-six (826) homes within the Mission Valley
7 development, and thus, are so numerous that the joinder of all such persons is impracticable,
8 and the disposition of their claims as a class will benefit the parties and the Court.
9

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

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

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

1 representatives.

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

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

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

2 **CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

23 **RELIEF**

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

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

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

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

DEMAND FOR JURY TRIAL

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

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

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