

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NUMBER: 08 - CP - 07 - 3386
	)	
ROGER F. CARLSON AND	)	AMENDED COMPLAINT
MARY JO CARLSON, on behalf of	)	(CLASS ACTION)
themselves and others similarly situated,	)	
Plaintiff(s)	)	(Jury Trial Demanded)
	)	
vs.	)	
	)	
SOUTH CAROLINA STATE	)	
PLASTERING, LLC, PETER CONLEY,	)	
INDIVIDUALLY, DEL WEBB	)	
COMMUNITIES, INC., and PULTE	)	
HOMES, INC.,	)	
Defendant(s)	)	

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BEAUFORT COUNTY, S.C.

The Plaintiffs above named, hereby amending their Complaint, would allege and show as follows:

**PARTIES**

1. The Plaintiffs are citizens and residents of the County of Beaufort, State of South Carolina, and at all times hereinafter mentioned, own the residence, located at 229 Hampton Circle, Bluffton South Carolina.

2. That, upon information and belief, the Defendant, South Carolina State Plastering, LLC is a limited liability company organized and existing under the laws of the State of South Carolina, and conducted business in Beaufort County at all relevant times herein and was engaged in the design, building, construction, repair and in particular the application and/or installation of stucco to the Plaintiffs' residence located at 229 Hampton Circle, Bluffton, South Carolina.

3. That, upon information and belief, the Defendant, Peter Conley, is a citizen and resident of Beaufort County and conducts business in Beaufort County and

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is the alter-ego of and South Carolina residential specialty subcontractor license holder for South Carolina State Plastering, LLC, and he was engaged in the supervision, oversight, design, construction and/or repair of the residence at 229 Hampton Circle, Beaufort, South Carolina.

4. That, upon information and belief, Defendant, Del Webb Communities, Inc., an Arizona Corporation, is a corporation organized in another state, and is a brand, subsidiary, division or other device of Defendant, Pulte Homes, Inc. Del Webb Communities, Inc., conducts business and is authorized to conduct business in Beaufort County, State of South Carolina, and at all times relevant hereto was engaged in the design, construction, development and/or repair of residential housing and specifically was engaged in the design, development, building, construction and/or the repair of the Plaintiffs' residence located in Del Webb's Sun City Hilton Head Bluffton Township residential development (hereinafter "Sun City").

5. That, upon information and belief, Defendant, Pulte Homes, Inc., is a corporation organized under the laws of another state, and is the parent corporation and/or successor corporation of Del Webb Communities, Inc., and at all times relevant hereto was authorized to conduct business in Beaufort County, South Carolina and was engaged in the design, development, building, construction and/or the repair of residential housing and specifically was engaged in the design, development, building, construction and/or the repair of the Plaintiffs' residence located in Sun City.

### **JURISDICTION**

6. That this Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises all involve the residence of the Plaintiffs located in the County of Beaufort, State of South Carolina.

### **FACTUAL BACKGROUND**

7. That the exterior of the subject residence is constructed with stucco (commonly referred to as hard coat stucco) that was, upon information and belief, installed as part of the original construction of the Plaintiffs' home in 2002.

8. That the stucco exterior wall system, was not properly installed and contain various defects, problems and deficiencies that are in violation of applicable building codes, not in conformity with specifications and accepted construction industry standards and practices.

### **CLASS ACTION ALLEGATIONS**

9. Plaintiffs, as representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, seek to recover monetary damages from the Defendants for breaches of fiduciary duties, negligence, breach of implied warranties, unfair trade practices, with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

10. As described in Paragraph 9 above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently own stucco clad homes in Sun City, Bluffton, and are parties to currently pending litigation, the civil actions of which are attached hereto as Exhibit "A."

11. The Class does not include any former owner of a home in Sun City.

12. The Class is sufficiently numerous that joinder of all members is impractical, and unnecessary in light of indivisible common ownership of the common elements.

13. Plaintiffs will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representatives are coincident with, and not antagonistic to, those of the other Class members and Plaintiffs are represented by experienced and able counsel.

14. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, breach of warranties, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

15. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, construction and sale of the houses at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

16. Plaintiffs, for the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members, envision no unusual difficulty in the management of this action as a class action.

17. Certification of this action as a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure is appropriate.

**FOR A FIRST CAUSE OF ACTION**  
**(Breach of Contract)**  
**(AS TO DEL WEBB COMMUNITIES, INC., and PULTE HOMES, INC.)**

18. Each and every allegation contained in Paragraphs 1 through 17 above are incorporated herein by express reference as though fully set forth.

19. That at all times herein, the Plaintiffs, entered into a contract with the Defendants for the construction and/or repair of their residence located in Sun City.

20. That at all relevant times herein, the Defendants, by and through their agents, servants and employees had an obligation and duty to construct, develop, sell and/or repair the residence and to provide materials and services in accordance with the terms and conditions of the contract, applicable building codes, in conformance with accepted construction and industry standards and in conformity with component product manufacturer installation instructions and specifications.

21. That the Defendants breached the contract with the Plaintiffs by failing to construct said residence with a stucco exterior that was installed in accordance with the terms and conditions of the contract, applicable building codes, in conformance with accepted construction and industry standards and in conformity with component product manufacturer installation instructions and specifications, all of which have directly and proximately caused defects and deficiencies in the residence which will need

to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contract. Such breaches include but are not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair and remodeling of the subject residence;
- b. In failing to adequately supervise the construction, repair and remodeling of the subject residence;
- c. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- d. In constructing, developing, designing, repairing and remodeling subject residence in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. In improperly installing the stucco cladding in violation of the building code, standard building practices and accepted construction industry standards and practices and not in conformity with component product manufacturer installation instructions and specifications;
- f. In installing a home exterior which fails to provide a sufficient barrier against the intrusion of water into the system and adequate avenue for exit of water that gets into the system;
- g. In failing to properly install control joints;
- h. In failing to exercise due care;
- i. In such other deficiencies or failures as will be proven at trial.

22. That as a direct and proximate result of the Defendants' breach of contract with the Plaintiffs, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore their residence to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject residence causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements of Plaintiffs' home. All of which has or will require the Plaintiffs to expend great amounts of money to correct

and repair as well as to suffer the loss, use and enjoyment of their property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A SECOND CAUSE OF ACTION**

**(Negligence)**

**(AS TO SOUTH CAROLINA STATE PLASTERING, LLC,  
PETER CONLEY, INDIVIDUALLY, DEL WEBB COMMUNITIES, INC.,  
and PULTE HOMES, INC.)**

23. Plaintiffs repeats and realleges its allegations set forth in Paragraphs 1 through 22 above as if set forth herein verbatim.

24. At all times material hereto, the Defendants, through their agents, servants and employees, undertook and were under a duty to the Plaintiffs to construct the home and/or provide the materials and services in accordance with the manufacturer's installation instructions and the building code applicable in Beaufort County, State of South Carolina, and to construct the home in accordance with construction industry practices and with due care.

25. The Defendants were negligent, grossly negligent, careless, reckless, willful, and wanton in constructing, supervising, designing and inspecting the construction of the home and failing to comply with the requirements of the manufacturer's installation instructions, building codes and industry standards and practices, and in failing to employ good supervisory and construction practices, and as a direct and proximate result of which the residence has been constructed and ultimately sold to the Plaintiffs with the defects and deficiencies as now exist therein.

26. The Plaintiffs have has sustained damages as a direct and proximate cause of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants in one or more of the following particulars, to wit:

- a. In failing to use due care in the construction, repair and remodeling of the subject residence;
- b. In installing an improper stucco exterior system on the home,
- c. In failing and omitting to meet industry standards in stucco installation and sealant application;
- d. In applying an exterior stucco finish system so as to result in or will result in cracks and sealant failure.
- e. In failing and omitting to properly install wall termination weep flashing and/or a proper weep mechanism;
- f. In failing and omitting to properly install control joints;
- g. In failing and omitting to properly install proper head flashing;
- h. In failing to properly supervise work forces and to properly inspect the work;
- i. In failing to construct the residence according to the applicable building codes and industry standards;
- j. In failing and omitting to use due care on the stucco exterior systems on the residence;
- k. In failing and omitting to install stucco systems which would provide a sufficient barrier against intrusion of water into the system and an adequate avenue for exit of water that gets into the system;
- l. In construction the stucco cladding in violation of standard building practices, accepted construction industry standards, and in conformity with component product manufacturer installation instructions and specifications;

27. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness and wantonness of the Defendants, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore their residence to make it safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject residence causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements of Plaintiffs' home. All of which has or will require the



Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A THIRD CAUSE OF ACTION**

**(Breach of Warranty of Habitability, Breach of Warranty Against Latent Defects,  
Breach of Warranty of Workmanlike Services, Breach of Warranty for Fitness for a  
Particular Purpose and Breach of Warranty of Merchantability and Serviceability)  
(AS TO SOUTH CAROLINA STATE PLASTERING, LLC,  
PETER CONLEY, INDIVIDUALLY, DEL WEBB COMMUNITIES, INC.,  
and PULTE HOMES, INC.)**

28. Each and every allegation contained in Paragraphs 1 through 27 above are incorporated herein by express reference as though fully set forth.

29. That the Defendants implicitly and/or expressly warranted that the subject residence would be habitable and fit for its intended uses as single family residence and that said residence would be designed, developed, manufactured, constructed and repaired in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted building component manufacturing standards and specifications and accepted construction industry standards applicable thereto and that the subject residence would be merchantable, free from latent defects and fit for the particular purpose for which it was built.

30. That Defendants breached said warranties by designing, constructing, and/or repairing the stucco exterior of the subject residence in such manner as to be in violation of applicable building codes, not in conformance with accepted construction and industry standards and not in conformity with component product manufacturer installation instructions. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiffs have suffered actual, direct, incidental, consequential and

special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore their residence to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiffs' home. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A FOURTH CAUSE OF ACTION**  
**(Unfair Trade Practices)**  
**(AS TO SOUTH CAROLINA STATE PLASTERING, LLC AND**  
**PETER CONLEY, INDIVIDUALLY, DEL WEBB COMMUNITIES, INC.,**  
**and PULTE HOMES, INC.)**

31. Each and every allegation contained in Paragraphs 1 through 30 above are incorporated herein by express reference as though fully set forth.

32. The Defendants are "persons" within the meaning of South Carolina Code § 39-5-10(a).

33. The Defendants, by their actions in developing, designing, constructing, supervising and overseeing construction activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

34. The Defendants, by their action(s) described hereinabove, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

35. The Defendants' act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

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

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

38. As a direct, foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore their residence to make it safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject residence causing rot, deterioration and other damages to the finish and structural elements of Plaintiffs' home. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**WHEREFORE**, the Plaintiffs pray for judgment against the Defendants, South Carolina State Plastering, LLC, Peter Conley, Individually, Del Webb Communities, Inc., and Pulte Homes, Inc., jointly and severally, in a reasonable amount of actual, punitive and treble damages to be determined by the jury; for the attorneys fees and cost of this action; for a prejudgment or post-judgment interest on Plaintiffs' damages; and for such other and further relief as this Court may deem just and proper.

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