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Attorneys for Defendants

D.R. HORTON, INC. and

D.R. HORTON-SCHULER HOMES, LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

TOWNSEND N. TAKUSHI AND JOANNE
E. BRYKCZYNSKI LIVING TRUST,
Individually and in its Representative
Capacity and on Behalf of a Class and
Subclass of All Persons Similarly Situated,

Plaintiffs,

vs.

D.R. HORTON, INC.; D.R. HORTON-
SCHULER HOMES, LLC; DOES 1-10;
DOE PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; DOE
GOVERNMENTAL AGENCIES 1-10; and
DOE ASSOCIATIONS 1-10,
Defendants.

Civil No. 18-1-1748-10 GWBC
(Construction Defects)

DEFENDANTS D.R. HORTON, INC. AND
D.R. HORTON-SCHULER HOMES, LLC'S
ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT FILED
DECEMBER 23, 2020; CERTIFICATE OF
SERVICE

**DEFENDANTS D.R. HORTON, INC. AND D.R. HORTON-SCHULER HOMES, LLC'S
ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

FILED DECEMBER 23, 2020

Defendants D.R. HORTON, INC. ("*D.R. Horton*") and D.R. HORTON-SCHULER HOMES, LLC ("*Horton-Schuler*") (collectively "*Defendants*"), by and through their attorneys Kobayashi Sugita & Goda, LLP, for their answer to the First Amended Complaint filed by Plaintiff TOWNSEND N. TAKUSHI AND JOANNE E. BRYKCZYNSKI LIVING TRUST (collectively "*Plaintiff*") on December 23, 2020 ("*Complaint*") in the above-entitled action allege and aver as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim against Defendants upon which relief can be granted.

SECOND DEFENSE

2. Defendants are without knowledge or information sufficient at this time to form a belief as to the truth or falsity of the allegations contained in the following paragraphs of the Complaint 8, 11, 42, 43, 46, 47, 73, and 83, and therefore deny the allegations and any implications arising therefrom.

3. Defendants deny each and every allegation contained in the following paragraphs of the Complaint and any implications arising therefrom: 2, 5, 6, 7, 41, 48, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 78, 79, 80, 84, 85, 86, 87, 90, 91, 94, 95, 96, 97, 98, 101, 102, 103, 105, 106, 107, 108, 109, 110, and 111.

4. With respect to the allegations in paragraph 1 of the Complaint, Defendants deny that named Plaintiff is a proper representative of the proposed class and further deny that any such class exists.

5. With respect to the allegations in paragraphs 3 and 4 of the Complaint Defendants admit that some of the alleged putative class homes used metal straps embedded in the concrete foundation of the homes and also used Steel Sill Tracks on homes using metal framing. Defendants deny all other allegations of said paragraphs and any implications arising therefrom.

6. With respect to the allegations of Paragraph 9 of the Complaint, Defendants admit that Defendant Horton-Schuler issued a Home Builders Limited Warranty, and assert that the document speaks for itself. Defendants further deny that the Home Builders Limited Warranty allows for the filing of any claims other than claims expressly allowed by the terms of the Home Builders Limited Warranty to seek warranty repairs and further denies that Home Builders Limited Warranty gives the right to pursue claims in a Class Action. Defendants deny the remaining allegations in paragraph 9 and any implications arising therefrom.

7. With respect to the allegations in paragraph 10 of the Complaint, Defendants admit that Defendant Horton-Schuler is doing business in the State of Hawaii and has its principal place of business located in the City and County of Honolulu, State of Hawaii and that it was the developer and original seller of the home identified as being owned by Plaintiff. Defendants deny the remaining allegations in paragraph 10 and any implications arising therefrom.

8. With respect to the allegations in paragraph 12 of the Complaint, Defendants admit that some incidents described in the Complaint took place within the Jurisdiction of this Court. Defendants deny the remaining allegations in paragraph 12 and any implications arising therefrom.

9. With respect to the allegations in paragraphs 13 and 14 of the Complaint, Defendants state that the Complaints in the Vitale matter speak for themselves, and deny the allegations on that basis. Defendants further deny that Takushi was in the putative class in Vitale, and allege that the allegations and content of the Vitale complaint are irrelevant and do not impact or otherwise affect this litigation. Defendants further allege that the Vitale action was meritless as evidenced by the dismissal of the action.

10. With respect to the allegations in paragraphs 15 to 26 and 30 to 34 of the Complaint, which purport to recite the Vitale procedural history, Defendants state that the procedural record of the Vitale matter, speaks for itself and on that basis denies the allegations of paragraphs 15 to 26 and 30 to 34, and any implications arising therefrom. Defendants allege that the allegations and content of the Vitale complaint and its procedural history are irrelevant and do not impact or otherwise affect this litigation. Defendants further allege that the Vitale action was meritless as evidenced by the dismissal of the action. In addition, Defendants specifically deny that in the Vitale matter, Plaintiffs were unable to conduct discovery or investigate their case.

11. With respect to the allegations of paragraphs 27 and 28 of the Complaint, Defendants admit that some joint inspections and destructive testing took place in the Vitale matter the time period from March of 2017 through the end of 2017. Defendants affirmatively state that during this time period the provisions of HRS Chapter 672E were not complied with by Plaintiff or any putative class member in this matter. Defendants deny the remaining allegations and any implications arising therefrom.

12. With respect to the allegations in paragraph 29 of the Complaint, Defendants state that the photographs speak for themselves and deny the allegations on that basis. Defendants further deny the allegations of Paragraph 29 of the Complaint on the basis that the photographs referred to are incomplete and not representative of the condition of the homes

13. With respect to the allegations in paragraph 35 to 37 of the Complaint, Defendants state that the procedural record of this matter, speaks for itself and on that basis denies the allegations and any implications arising therefrom.

14. Defendants admit the allegations of paragraph 38.

15. With respect to the allegations in paragraph 39, Defendants admit that Defendants participated in a mediation conducted with Keith Hunter as mediator on or about September 21, 2020, but affirmatively allege that Plaintiff failed to participate in the subject mediation in good faith and failed to mediate Plaintiff's own claims pursuant to and as required by HRS 672e, and further allege that the September 21, 2020 mediation did not fulfill the requirement of 672e mediation. Defendants deny any remaining portions of paragraph 39 and any implications arising therefrom.

16. With respect to the allegations in paragraph 40, Defendants admit that Plaintiff filed its First Amended Complaint. Defendants deny that the Answer was filed pursuant to the Court's April 26, 2019 order, and affirmatively allege that Plaintiff failed to fulfill the requirements of HRS 672E, and further allege that the class allegations of the Complaint must be stricken for failure to comply with HRS 672E. Defendants further deny any implications arising from Paragraph 40.

17. With respect to the allegations of paragraphs 44 and 45 of the Complaint Defendants admit that certain vertical and lateral load paths with anchors at the foundation of a home may help protect the home from high winds brought by hurricanes and that such paths may tie the structure of a home together, along with anchoring the home to its foundation to improve its wind resistance. Defendants deny all other allegations of said paragraphs and any implications arising therefrom.

18. With respect to the allegations in paragraph 49, Defendants are without sufficient knowledge as to the allegations relating to Haseko or the knowledge of other parties and denies those allegations on paragraph 49 on that basis. Defendants further deny and object to the allegations on the basis that any reference to homes built by other builders is prejudicial, misleading and irrelevant. Defendants deny all other allegations of said paragraphs and any implications arising therefrom.

19. With respect to the allegations in paragraphs 52, 82 and 93 of the Complaint, Defendants admit that Defendant Horton-Schuler is in the business of developing, building and/or selling homes to the public. Defendants deny all other allegations of said paragraphs and any implications arising therefrom.

20. With respect to the allegations in paragraphs 75, 76 and 77 of the Complaint, Defendants admit that Defendant Horton-Schuler provided certain warranties to buyers of their homes, but states that the warranty documents speak for themselves, and deny each and every allegation which is incomplete or contrary to the express language of the documents. Defendants further deny the allegations on the basis that Plaintiff and Vitale and all putative class members have failed to comply with the terms and procedures for submitting

warranty claims. With respect to the allegations of paragraph 76, Defendants specifically deny that the Vitale litigation provided proper notice under any Home Owners Warranty and further allege that the allegations and content of the Vitale complaint are irrelevant and do not impact or otherwise affect this litigation. Defendants further allege that the Vitale action was meritless as evidenced by the dismissal of the action. Defendants deny the remaining allegations of the Paragraphs and any implications arising therefrom

21. With respect to the allegations in paragraph 89 of the Complaint, Defendants state these allegations call for a legal conclusion and leaves Plaintiff to their proof and denies the allegations of the Paragraph and any implications arising therefrom.

22. With respect to the allegations in paragraph 100 of the Complaint, Defendants deny the allegations on the basis that Plaintiff is a trust. Defendants deny the remaining allegations of the Paragraph and any implications arising therefrom.

23. With respect to the allegations in paragraphs 74, 81, 88, 92, 99 and 104 of the Complaint, which allegations incorporate by reference prior allegations, Defendants hereby incorporate by reference their answers to the incorporated allegations.

24. Defendants deny that Plaintiff is entitled to any of the relief requested in paragraphs 1-14 of its prayer for relief on pages 25-26 of the Complaint.

25. Defendants deny each and every allegation contained in the Complaint that is not expressly admitted or responded to above.

THIRD DEFENSE

25. Plaintiff has failed to join an indispensable party or parties.

FOURTH DEFENSE

26. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members failed to mitigate their damages, if any.

FIFTH DEFENSE

27. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members not suffered any actual injury and/or damage.

SIXTH DEFENSE

28. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class member's damages, if any, are speculative, uncertain and/or cannot be reasonably ascertained.

SEVENTH DEFENSE

29. Defendants intend to rely on the defense that the named Plaintiff lacks standing to assert the claims set forth in the Complaint.

EIGHTH DEFENSE

30. Defendants intend to rely on the defense that the claims alleged in the Complaint fail to meet the class action requirements of commonality, typicality, numerosity and adequacy or representation by class representatives and are therefore not suitable for a class action.

NINTH DEFENSE

31. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members are estopped from asserting the claims.

TENTH DEFENSE

32. Defendants intend to rely on the defense that Plaintiffs and putative class and sub-class members' claims against D.R. Horton are barred by a lack of personal jurisdiction and with respect to Defendants, by a lack of subject matter jurisdiction.

ELEVENTH DEFENSE

33. Defendants intend to rely upon any and all common law and statutory defenses, privileges and immunities available against Plaintiff and putative class and sub-class members.

TWELFTH DEFENSE

34. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by the defenses of contributory and/or comparative negligence.

THIRTEENTH DEFENSE

35. Defendants intend to rely on the defenses of waiver, laches, and unclean hands.

FOURTEENTH DEFENSE

36. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by failure of consideration.

FIFTEENTH DEFENSE

37. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims for relief are barred by the economic loss doctrine and and/or the unavailability of tort remedies for contractual matters.

SIXTEENTH DEFENSE

38. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims for relief are barred by the statute of frauds.

SEVENTEENTH DEFENSE

39. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by the statute of limitations and/or statute of repose.

EIGHTEENTH DEFENSE

40. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by contract, including but not limited to the terms of the Deeds and warranties issued to Plaintiff and the putative class members and their failure to comply with the terms and conditions therein.

NINETEENTH DEFENSE

41. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by Plaintiff's or their alteration, and/or failure to properly use and/or maintain their home(s).

TWENTIETH DEFENSE

42. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by the defense of accord and satisfaction.

TWENTY-FIRST DEFENSE

43. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by defenses of res judicata and collateral estoppel.

TWENTY-SECOND DEFENSE

44. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by the defense that Defendants are entitled to the benefit of their bargain.

TWENTY-THIRD DEFENSE

45. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members are barred from maintaining this action by reason of their voluntary assumption of a known risk.

TWENTY-FOURTH DEFENSE

46. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members failed to exhaust or have incorrectly pursued contractual remedies and procedures, including but not limited to those contained in the limited warranty provided for each home.

TWENTY-FIFTH DEFENSE

47. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' recovery in this action, if any, should be reduced in accordance with the doctrine of avoidable consequences.

TWENTY-SIXTH DEFENSE

48. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred based on their contractual or other waiver of the damages or actions alleged.

TWENTY-SEVENTH DEFENSE

49. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred because the injuries or damages, if any, were caused by parties other than the Defendants.

TWENTY-EIGHTH DEFENSE

50. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by reason of their own negligence or other conduct which caused their injuries or damages, if any.

TWENTY-NINTH DEFENSE

51. Defendants intend to rely upon any other defenses, including but not limited to affirmative defenses, set forth in Rules 8(c), 9, 12(b) and 12(h) of the Hawaii Rules of Civil Procedure, or as provided by law or statute, which may apply, and which are not alleged in this Answer.

THIRTIETH DEFENSE

52. Defendants intend to seek leave to amend this Answer to allege such defenses of which they become aware during the course of discovery or trial.

THIRTY-FIRST DEFENSE

53. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members have failed to properly comply with the provisions of Chapter 672E of the Hawaii Revised Statutes, and the defense that class actions are not consistent with or allowable in construction defect claim cases governed by Chapter 672E of the Hawaii Revised Statutes.

THIRTY-SECOND DEFENSE

54. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by the provisions of Chapter 490 of the Hawaii Revised Statutes.

THIRTY-THIRD DEFENSE

55. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are subject to an agreement to arbitrate such claims and therefore must be dismissed and/or stayed, pending arbitration.

THIRTY-FOURTH DEFENSE

56. The named Plaintiff is not a proper representative of the purported Class Members, and the Class should not be certified, for one or more of the following reasons:

- a. On information and belief, the named Plaintiffs' claims are not typical of the claims of the purported Class Members.
- b. A class action is not superior to other available methods for the fair and efficient adjudication of this controversy.
- c. Joinder is not impracticable.
- d. Common questions of fact or law do not predominate over any questions affecting only individual Class Member or over all purported Class Members' claims, including those of the named Plaintiffs.
- e. The named Plaintiff is not adequate representatives of the class.
- f. The named Plaintiff may be vulnerable to affirmative defenses unique to them.

THIRTY-FIFTH DEFENSE

57. Defendants intend to rely on the defense that Plaintiffs and putative class and sub-class members' claims are barred because the homes were built in accordance with applicable building code provisions.

THIRTY-SIXTH DEFENSE

58. Defendants intend to rely on the defense that Plaintiff and putative class and sub-class members' claims are barred by the failure to follow agreed upon negotiation, mediation and/or arbitration procedures set forth in contractual and/or governing documents.

THIRTY-SEVENTH DEFENSE

59. Defendants intend to rely on the defense that Plaintiffs have waived any right to trial by jury and therefore the demand for a jury and any claims based upon a demand for a jury are invalid and barred.

DATED: Honolulu, Hawaii, January 19, 2021.

/s/ David M. Louie
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GOVERNMENTAL AGENCIES 1-10; and
DOE ASSOCIATIONS 1-10,

Defendants.

Civil No. 18-1-174810 GWBC
(Construction Defects)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was served upon the above named parties by electronic filing in the Judiciary Electronic Filing and Service System (JEFS):

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and on Behalf of a Class of All Persons Similarly Situated

DATED: Honolulu, Hawaii, January 19, 2021.

/s/ David M. Louie

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