

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Midtown Townhomes HPR Owners Association, Inc., and Karen Tinsley, Terry Headley, and Wayne Scarsella, Derivatively, on behalf of the Midtown Townhomes HPR Owners Association, Inc.,

Plaintiffs,

vs.

Lennar Carolinas, LLC a/k/a Lennar Carolinas a/k/a Coastal Carolinas Division of Lennar a/k/a Lennar Corporation, Synchronicity, LLC d/b/a Synchronicity Land + Architecture, and VR Engineers, Inc. d/b/a R-K Engineers & Builders,

Defendants.

Lennar Carolinas, LLC

Third-Party Plaintiff,

vs.

Alpha Omega Group, Inc., CEBS-Construction LLC d/b/a CEBS Construction, Charleston Concrete Construction, LLC, Fogel Services, Inc., Home Energy Group LLC, Insulation by Cohen's LLC, SouthEnd Exteriors, Inc., Professional Builders Supply, LLC, and Hensley and Goerling Consulting Engineers, LLC

Third-Party Defendants

AND ALL RELATED ACTIONS

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04509

**PLAINTIFFS' MOTION TO COMPEL - PROFESSIONAL BUILDERS SUPPLY, LLC**

COME NOW Plaintiffs, by and through their undersigned counsel, and move this Court for an Order pursuant to Rule 37, SCRPC, compelling Professional Builders Supply, LLC ("PB") to fully respond to Plaintiffs' First Set of Interrogatories and Requests for Production. In support of their Motion, Plaintiffs will show:

1. The undersigned issued Plaintiff's First Set of Discovery Requests upon PB, by and through its office, on May 19, 2023 (hereto attached as Exhibit A).
2. On June 12, 2023, Defendant responded to Plaintiff's First Set of Discovery Requests.
3. On September 26, 2023, Plaintiff issued a Rule 11 Letter, noting several deficiencies in PB's production (hereto attached as **Exhibit B**). Specifically, Defendant did not provide a detailed description of their work at the Midtown project; answer whether they self-performed any work at the Midtown project; provide any description or list of any self-performed work; identify any subcontractors they might have hired to perform work at Midtown; identify any individuals employed by Defendant Lennar who were responsible for overseeing/supervising/managing/approving PB's work at Midtown; identify whether they employed a professional to evaluate failures associated with their scope of work, or became aware of a professional being engaged by someone else; identify whether they were aware of deviations from original plans or installation instructions; identify product information, source of installation instructions, or changes to the installation methods pertaining to windows at the Midtown project. Additionally, Defendant was asked to supplement their responses with all email addresses belonging to company employees for work related to the Midtown project and native versions of all materials pertaining to the installation of windows at Midtown. Further, Defendant was asked to supplement their production with the native version(s) of their electronically stored material (ESI).
4. PB has failed to respond to Plaintiff's Rule 11 letter or otherwise supplement their discovery.

Based on the foregoing, Plaintiffs request the Court issue an Order compelling PB to fully respond to Plaintiff's Discovery Requests. Pursuant to Rule 11, SCRPC, and as described above, Plaintiff's counsel affirms that PB's Counsel was contacted in good faith in an attempt to resolve this dispute. Please take further notice that Plaintiffs' counsel, if successful in this Motion, may seek an award of costs and attorneys' fees associated with the prosecution of said Motion.

This motion may also be supported by memoranda, briefs, and evidence, which may be received and/or required by the Court.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

*/s/ Mande Funai*

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October 9, 2023  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Midtown Townhomes HPR Owners Association, Inc., and Karen Tinsley, Terry Headley, and Wayne Scarsella, Derivatively, on behalf of the Midtown Townhomes HPR Owners Association, Inc.,

Plaintiffs,

vs.

Lennar Carolinas, LLC a/k/a Lennar Carolinas a/k/a Coastal Carolinas Division of Lennar a/k/a Lennar Corporation, Synchronicity, LLC d/b/a Synchronicity Land + Architecture, and VR Engineers, Inc. d/b/a R-K Engineers & Builders,

Defendants.

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04509

**PLAINTIFFS' FIRST SET OF INTERROGATORIES TO THIRD-PARTY DEFENDANT PROFESSIONAL BUILDERS SUPPLY, LLC**

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Lennar Carolinas, LLC

Third-Party Plaintiff,

vs.

Alpha Omega Group, Inc., CEBS-Construction LLC d/b/a CEBS Construction, Charleston Concrete Construction, LLC, Fogel Services, Inc., Home Energy Group LLC, Insulation by Cohen's LLC, SouthEnd Exteriors, Inc., Professional Builders Supply, LLC, and Hensley and Goerling Consulting Engineers, LLC

Third-Party Defendants

---

AND ALL RELATED ACTIONS

**TO: PHILIP CRISTALDI, ESQ., ATTORNEY FOR THIRD-PATY DEFENDANT PROFESSIONAL BUILDERS SUPPLY, LLC**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Midtown Townhomes HPR Owners Association, Inc., and Karen Tinsley, Terry Headley, and Wayne Scarsella, derivatively, on behalf of Midtown Townhomes HPR Owners Association, Inc., hereby request, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Third-Party Defendant Professional Builders Supply, LLC, answer in writing and under oath, within thirty (30) days after the service hereof, the following Interrogatories. Documents and things responsive to the Interrogatories should be produced for inspection and copying at the law offices of Justin O'Toole Lucey, 415 Mill Street, Mount Pleasant, South Carolina, 29464.

### **DEFINITIONS AND INSTRUCTIONS**

A. The terms “The Project” and/or “The Residences” means all townhomes and common areas located in The Midtown Townhomes a/k/a Lennar at Midtown Townhomes a/k/a Midtown Townhomes by Lennar in Mount Pleasant, South Carolina, and includes the development, planning, construction, repair, advertising, marketing, listing, and sale of the same.

B. “You,” “Your,” or “Defendants,” shall mean the above-named Defendants, Third-Party Defendants and/or the Defendants’ agents, employees, consultants, attorneys, or other representatives.

C. The word “person” means any natural person, firm, corporation, partnership, joint venture, or any other entity.

D. The term “evidence” refers to all evidence of any kind existing in any type of medium, specifically including paper, electronic, and other evidence and includes writings of any kind, including both the originals and all non-identical copies, and further includes, without limitation, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, general and accounting ledgers, payment

ledgers, tax returns, summaries, pamphlets, books, marketing material, interoffice communications, offers, notations of any sort of conversations, telephone calls, meetings, and/or other communications, bulletins, printed matter, computer printouts, purchase orders, invoices, work sheets, and all drafts, alterations, modifications, changes, construction documents, and amendments or revisions to any of the foregoing, graphic or aural records, and/or representations of any kind, including without limitation, photographs, charts, microfilm, videotape, recordings, and/or motion pictures, and electronics, mechanical, and/or electrical records or representations of any kind, including, without limitation, tapes, cassettes, discs, or other records, exemplars, failed or returned product, or the like.

Pursuant to South Carolina Rules of Civil Procedure 34(a), Plaintiffs are requesting that all electronically stored information (“ESI”) be produced in its native format so that all metadata is preserved. For example, Excel Spreadsheets must be produced in “.xls” format; word documents in “.doc” format; and emails in “.msg” or similar format. All ESI must be accompanied by a printed or pdf copy of the ESI and an industry-standard load file which contains corresponding bates numbers and all available metadata. The format of the load file should be the industry standard DAT file format or similar (e.g., .CSV). Native files should be produced in a reasonably usable form (searchable, sortable, and filterable, with data unhidden) that allows access to all available metadata).

E. All of the Interrogatories are deemed continuing requests, and You are obliged to supplement Your responses to produce all answers responsive to these Interrogatories, including such answers as will become available to You or of which You become aware of after the responses hereto are served.

F. Privileged Documents and Evidence. To the extent any documents and/or evidence shall be withheld from production based upon the attorney-client privilege, the work product doctrine, or any other claim of privilege asserted, then as to each such document and/or evidence, the party claiming privilege shall describe the document, its subject matter, its authors, its date, its recipients, and sufficient other information to permit the opposing party to make an informed decision on whether to challenge the privilege.

### **INTERROGATORIES**

1. Identify each person known to you or your counsel to be a witness concerning the design, construction, failure, and repair of the Residences at Midtown; indicate whether or not written or recorded statements have been taken from the witness and indicate who has possession of such statements. 2. For each person known to You or Your counsel to be a witness concerning the above set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

2. Provide a detailed description of Your Company's scope of work at Midtown. (Your response should include the approximate dates of work, a description of the work, and identification of any documents related to such work, including but not limited to subcontracts, work/purchase orders, draw requests, invoices, or other evidence of dates and tasks undertaken).

3. Identify the individuals within or employed by Your company that were personally involved with the construction and / or repairs of Midtown (including warranty / repair work), and provide a brief description of their involvement / role. (Your response should include the name, last known residential and email address, last known phone number, current or former position, and any license(s) held by said person(s)).

4. For Labor, state whether Your company self-performed any work whatsoever at Midtown (as opposed to all labor within scope being subcontracted).

5. If Your company did self-perform labor at Midtown, provide a list / description of all work which was self-performed, and a list / description of all work that was subcontracted to others).

6. Identify all subcontractors hired or employed by You to perform work at Midtown. For each subcontractor, provide a brief description of their scope of work (*ie*, Window installation), including the buildings or residences that they worked on (*ie*, Building L & M), and state whether you are in possession of a written contract with the subcontractor, whether you are in possession of an insurance certificate for the subcontractor, and how much the subcontractor was paid for his work. (Your response should include the company name, name of the company owner or primary contact person for the company, last known residential and email address for that individual, last known business address, last known phone number, and any license(s) held by said person(s)).

7. Identify the individual(s) within or employed by Your company who was/were responsible for overseeing / supervising the work of the subcontractors listed above at Midtown.

8. Identify the individual(s) employed by or acting on Lennar's behalf who was/were responsible for overseeing / supervising / managing / approving Your scope of work.

9. Set forth a list of all Evidence in your possession or available to you which relate to the claims or defenses in the case, including by not limited to your bid documents to Lennar (for each bid, if multiple bids were provided or if alternate scopes were provided), contracts, subcontracts, photographs, recordings, communications, emails, construction/design materials, sketches, notes, RFI's, EPO's change orders, backcharges, product information, financial records, and any other Evidence relating to the Project, from the time of construction to the present.



10. Set forth the names and addresses of all insurance companies which may have liability insurance coverage relating to the claim, including any available umbrella insurance policies, and list all policies with the policy number, term, and the amount or amounts of liability coverage in each policy.

11. List the names and addresses of all expert witnesses, engineers, architects, contractors, inspectors, consultants or testing laboratories engaged by You and/or Your agents at any time to inspect, investigate, examine, test, or analyze the Project in connection with each, give the following information:

- a. their full name and address;
- b. their qualifications as an expert and field of expertise;
- c. the subject matter on which they are expected to testify;
- d. the substance of the facts and/or opinions to which the expert is expected to testify;
- e. a complete summary of the grounds for each opinion; and
- f. a listing of documents and evidence provided to the expert.

12. Describe generally your company's business and experience as of 2019 and its officers / owners.

13. Identify all products and/or materials used for the work performed at the Project and the identity of any documents related to such products and/or materials, including but not limited to, supplier information, invoices, product specifications, product brochures, application and/or installation instructions, test reports, and technical literature.

14. Set forth in detail any change(s) to the scope of work or services being supplied by your company during work at the Project. Include in your response the approximate date of the change(s), the substance of the change(s), the reasons for the change(s), the identity of the

employee or agent who instituted and/or approved the change(s), and the identity of any documents which relate to and/or support your answer.

15. State whether You at any time prior to the completion and issuance of a certificate of occupancy on the final building / residence in Midtown, employed a design or engineering or other professional to evaluate failures at Midtown associated with your scope of work, or met with or became aware of such a professional engaged by someone else (*ie*, Lennar).

16. Describe in detail any on-site changes, alterations, and/or modifications to the Project from the original plans and/or installation instructions. Include in your response the specific change, alteration and/or modification, the area at which said change, alteration, and/or modification was made, the reasons for making any such change, alteration, and/or modification, and the identity of any documents which relate to and/or support your answer.

17. Identify the windows installed at Midtown, including brand(s), style(s), product number(s) and other identifiers.

18. Identify any preconstruction conferences or meetings at Midtown, and state whether a manufacturer representative was present.

19. Identify the source(s) of instructions for the window installations at Midtown, including any cut sheets, manufacturer instructions, email correspondence with construction administrators, Lennar's Construction Managers or other managers, directors, or officers, or other sources.

20. State whether the window installation method(s) were altered at any point during construction, and provide a detailed explanation, if so.

21. Describe in detail any requests received to replace windows, or to remove and reinstall any windows at Midtown, including the person who made the request, surrounding

circumstances and reasons therefore, when this request occurred, and Identify all individuals involved, and Identify all communications relevant to the request.

22. Describe in detail any repairs made by Your company or Your subcontractors to any building or residence after the issuance of a certificate of occupancy for that building / residence. Include in your response the details of the repair, who requested the repair, materials used, area at which the repair was to occur, the reasons for the repair, and a list of residences / addresses or buildings where the repair was carried out.

23. State whether Lennar provided You with payment for any repairs made to any building or residence after the certificate of occupancy, outside of the original agreed upon payment agreement. Identify all amounts received.

24. Identify all email addresses belonging to or utilized by Your company or Your company's employees for work related to Midtown, including to receive trade partner emails, to receive or request EPO's, VPO's, RFI's, or change orders, coordination with Lennar's CMs, coordination with Your subcontractors, to receive project plans or plan clarifications from Lennar, to request clarification or assistance in any manner pertaining to the completion or quality of Your scope of work.

25. Set forth and detail a list of any and all inspections performed by any employee or agent of Your company relating to the work You performed at the Project. Include in Your response the approximate dates on which the inspection(s) occurred and the name(s) and position(s) of your company's employee(s) conducting said inspection(s), the components of your company's work inspected, and any corrections, repairs, and/or modifications to your work made as a result of or after the inspection(s).

26. List the names of all persons with whom You have spoken regarding construction and repair problems at the Project (excluding your attorney), the approximate date of the conversation, and the substance of the conversation.

27. State with specificity any warranty provided relating to Your work and the procedures and policies for providing warranty work for the Project.

28. For any and all litigation in which You have been a defendant in South Carolina in the last ten (10) years (including arbitration or mediation), set forth the case name, file number, county and state where the action was filed, the nature of the litigation, the year the action was filed, and the names, telephone numbers, and addresses of Plaintiffs' counsel, or such information as necessary for the undersign to identify and locate the litigation and procure the records relating thereto.

29. Identify the person or persons, including their position, who supplied the information used to answer these Interrogatories.

30. Please describe the computer infrastructure and associated software and devices that you use to run Your business, including the location of Your file server, the host of Your email accounts, and Your communications, accounting, record keeping, and backup software and systems.

31. If any information, documents, and/or evidence requested or relevant to the Interrogatories herein or the Request for Production being served contemporaneously herewith have been lost, discarded, or destroyed, please identify the documents and/or evidence so lost, discarded, or destroyed as completely as possible, including without limitation, the following information: the date of, manner of, reason for, person authorizing, and the person disposing of the document and/or evidence.

**JUSTIN O'TOOLE LUCEY, P.A.**

/s/ Collin H. Fuller

Justin O'Toole Lucey, Esq.

Collin H. Fuller, Esq. (Of Contract)

Mandee Funai, Esq.

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*Attorneys for Plaintiffs*

May 19, 2023

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Midtown Townhomes HPR Owners Association, Inc., and Karen Tinsley, Terry Headley, and Wayne Scarsella, Derivatively, on behalf of the Midtown Townhomes HPR Owners Association, Inc.,

Plaintiffs,

vs.

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Defendants.

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Lennar Carolinas, LLC

Third-Party Plaintiff,

vs.

Alpha Omega Construction Group, Inc., CEBS-Construction LLC d/b/a CEBS Construction, Charleston Concrete Construction, LLC, Fogel Services, Inc., Home Energy Group LLC, Insulation by Cohen's LLC, SouthEnd Exteriors, Inc., Professional Builders Supply, LLC, and Hensley and Goerling Consulting Engineers, LLC

Third-Party Defendants

AND ALL RELATED ACTIONS

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04509

**CERTIFICATE OF SERVICE**

I, John Hewson, the undersigned employee of Justin O’Toole Lucey, P.A., do hereby certify that **Plaintiffs’ First Set of Interrogatories** and **Plaintiffs’ First Set of Requests for Production to Third-Party Defendant Professional Builders Supply, LLC** in the above-captioned matter are being served by serving the same upon the following via electronic mail as indicated below:

<p>James Lynn Werner, Esq.  <a href="mailto:jimwerner@parkerpoe.com">jimwerner@parkerpoe.com</a>  Taylor Stair, Esq.  <a href="mailto:Taylorstair@parkerpoe.com">Taylorstair@parkerpoe.com</a>  Parker Poe Adams &amp; Bernstein, LLP  1221 Main Street  Suite 1100  Columbia, SC 29201</p> <p>William Greyson Land, Esq.  <a href="mailto:greysonland@parkerpoe.com">greysonland@parkerpoe.com</a>  Taylor Harrison Stair, Esq.  <a href="mailto:taylorstair@parkerpoe.com">taylorstair@parkerpoe.com</a>  Joshua Hugh Umbarger, Esq.  <a href="mailto:joshumbarger@parkerpoe.com">joshumbarger@parkerpoe.com</a></p> <p>Parker Poe Adams &amp; Bernstein, LLP  200 Meeting Street  Suite 301  Charleston, SC 29401  <i>Attorneys for Defendant Lennar Carolinas, LLC</i></p>	<p>Alan Ross Belcher, Jr., Esq.  <a href="mailto:abelcher@hallboothsmith.com">abelcher@hallboothsmith.com</a>  Connor Evan Johnson, Esq.  <a href="mailto:cjohnson@hallboothsmith.com">cjohnson@hallboothsmith.com</a>  Hall Booth Smith, P.C.  111 Coleman Boulevard  Suite 301  Mount Pleasant, SC 29464  <i>Attorneys for Defendant Synchronicity, LLC</i></p>
<p>Kenneth Michael Barfield, Esq.  <a href="mailto:mbarfield@barnwell-whaley.com">mbarfield@barnwell-whaley.com</a>  Barnwell Whaley Patterson &amp; Helms, LLC  211 King Street  Suite 300  Charleston, SC 29401</p> <p><i>Attorney for Defendant VR Engineers, Inc.</i></p>	<p>Erin DuBose Dean, Esq.  <a href="mailto:erindean@tgdcpa.com">erindean@tgdcpa.com</a>  Tupper, Grimsley, Dean, &amp; Canaday  611 Bay Street  Beaufort, SC 29902</p> <p><i>Attorney for Third-Party Defendant CEBS Construction, LLC</i></p>
<p>Edward Glenn Elliott, Esq.  <a href="mailto:ege@aikenbridges.com">ege@aikenbridges.com</a>  Aiken Bridges Attorneys at Law  181 East Evans Street  Suite 409  P.O. Drawer 1931, 29503  Florence, SC 29506</p> <p><i>Attorney for Third-Party Defendant Insulation by Cohen’s, LLC</i></p>	<p>Jenkins Heyward Wilson, Esq.  <a href="mailto:jenkins@bestlawsc.com">jenkins@bestlawsc.com</a>  L. Dean Best, Esq.  <a href="mailto:dean@bestlawsc.com">dean@bestlawsc.com</a>  Best Law, P.A.  P.O. Box 2374  Mt. Pleasant, SC 29465</p> <p><i>Attorney for Third-Party Defendant Alpha Omega Construction Group, Inc.</i></p>

<p>Michael Lawrence Leech, Esq.  <a href="mailto:mike@cslaw.com">mike@cslaw.com</a>  Clawson &amp; Staubes, LLC  126 Seven Farms Drive  #200  Charleston, SC 29492  <i>Attorney for Third-Party Defendant Charleston Concrete Construction, LLC</i></p>	<p>R. Michael Ethridge, Esq.  <a href="mailto:methridge@ethridgelawgroup.com">methridge@ethridgelawgroup.com</a>  James K. Bryson, Esq.  <a href="mailto:jbryson@ethridgelawgroup.com">jbryson@ethridgelawgroup.com</a>  Ethridge Law Group  1100 Queensborough Blvd., Ste. 200  Mt. Pleasant, SC 29464  <i>Attorneys for Third-Party Defendant Fogel Services, Inc.</i></p>
<p>Taylor Leigh Cary, Esq.  <a href="mailto:tcary@csvg.law">tcary@csvg.law</a>  Paul Elliot Sperry, Esq.  <a href="mailto:psperry@csvg.law">psperry@csvg.law</a>  Copeland Stair Valz &amp; Lovell  40 Calhoun Street, Suite 400  Charleston, SC 29401  <i>Attorneys for Third-Party Defendant Hensley &amp; Goerling Consulting, LLC</i></p>	<p>James H. Elliott, Jr., Esq.  <a href="mailto:jelliott@richardsonplowden.com">jelliott@richardsonplowden.com</a>  Evan A. Carter, Esq.  <a href="mailto:ecarter@richardsonplowden.com">ecarter@richardsonplowden.com</a>  Richardson Plowden  235 Magrath Darby Boulevard, Suite 100  Mt. Pleasant, SC 29464  <i>Attorneys for Third-Party Defendant Home Energy Group, LLC</i></p>
<p>Philip Cristaldi, Esq.  <a href="mailto:pcristaldi@rclawsc.com">pcristaldi@rclawsc.com</a>  Ross &amp; Cristaldi  863 Coleman Blvd., Suite B  Mount Pleasant, SC 29464  <i>Attorney for Third-Party Defendant Professional Builders Supply, LLC</i></p>	<p>George C. James, Esq.  <a href="mailto:George.james@mgclaw.com">George.james@mgclaw.com</a>  Trippet Boineau, Esq.  <a href="mailto:Trippet.boineau@mgclaw.com">Trippet.boineau@mgclaw.com</a>  McAngus Goudelock &amp; Courie  The Meridian  1320 Main Street, 10<sup>th</sup> Floor  Columbia, SC 29201</p> <p>Philip Cristaldi, Esq.  <a href="mailto:pcristaldi@rclawsc.com">pcristaldi@rclawsc.com</a>  Emily Christine Sheets, Esq.  <a href="mailto:esheets@rclawsc.com">esheets@rclawsc.com</a>  Brent DeShields, Esq.  Ross &amp; Cristaldi  863 Coleman Blvd., Suite B  Mount Pleasant, SC 29464  <i>Attorneys for Third-Party Defendant Southend Exteriors, Inc.</i></p>
<p>Shanna M. Stephens, Esq.  <a href="mailto:sstephens@arlawsc.com">sstephens@arlawsc.com</a>  Anderson Reynolds &amp; Stephens, LLC  37 ½ Broad Street  Charleston, SC 29401  <i>Attorney for Third-Party Defendant RDZ Services, LLC</i></p>	<p>David S. Cobb, Esq.  <a href="mailto:dcobb@turnerpadget.com">dcobb@turnerpadget.com</a>  Turner Padget Graham and Laney P.A.  40 Calhoun Street  Suite 200  Charleston, SC 29401  <i>Attorney for Third-Party Defendant LR Contractors, LLC</i></p>



<p>Jillian S. Barton, Esq. <a href="mailto:jsb@roblaw.net">jsb@roblaw.net</a> Robertson Hollingsworth Manos &amp; Rahn 550 King Street, Suite 300 Charleston, SC 29403 <i>Attorney for Third-Party Defendant ALF Enterprises, LLC</i></p>	<p>Thomas A. D. Barrow, Esq. <a href="mailto:tbarrow@hallboothsmith.com">tbarrow@hallboothsmith.com</a> Derek M. Newberry, Esq. <a href="mailto:dnewberry@hallboothsmith.com">dnewberry@hallboothsmith.com</a> Hall Booth Smith, P.C. 111 Coleman Boulevard, Suite 301 Mount Pleasant, SC 29464 <i>Attorneys for Arias Construction Services, LLC</i></p>
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John Hewson

May 19, 2023  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Midtown Townhomes HPR Owners Association, Inc., and Karen Tinsley, Terry Headley, and Wayne Scarsella, Derivatively, on behalf of the Midtown Townhomes HPR Owners Association, Inc.,

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Defendants.

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04509

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION TO THIRD-PARTY DEFENDANT PROFESSIONAL BUILDERS SUPPLY, LLC**

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Lennar Carolinas, LLC

Third-Party Plaintiff,

vs.

Alpha Omega Group, Inc., CEBS-Construction LLC d/b/a CEBS Construction, Charleston Concrete Construction, LLC, Fogel Services, Inc., Home Energy Group LLC, Insulation by Cohen's LLC, SouthEnd Exteriors, Inc., Professional Builders Supply, LLC, and Hensley and Goerling Consulting Engineers, LLC

Third-Party Defendants

---

AND ALL RELATED ACTIONS

**TO: PHILIP CRISTALDI, ESQ., ATTORNEY FOR THIRD-PATY DEFENDANT PROFESSIONAL BUILDERS SUPPLY, LLC**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Midtown Townhomes HPR Owners Association, Inc., and Karen Tinsley, Terry Headley, and Wayne Scarsella, derivatively, on behalf of the Midtown Townhomes HPR Owners Association, Inc., hereby request, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Third-Party Defendant Professional Builders Supply, LLC, respond within thirty (30) days after the service hereof, and produce and permit the Plaintiff to inspect, copy, or photograph each of the following documents or evidence which may be in the possession, custody, or control of the Defendants or Defendants' attorney which constitutes or contains evidence relating to the claim or defense of the within cause.

### **DEFINITIONS AND INSTRUCTIONS**

Pursuant to the provisions of the South Carolina Rules of Civil Procedure, Plaintiffs request Defendants produce, and make available for inspection and copying, all paper, electronic, and other documents, records, images, data, and evidence ("hereinafter, "evidence") in its possession, custody, or control which are responsive to the Requests for Production set forth below. The evidence produced pursuant to these Requests is to be made available for inspection and copying within the time provided by law at the office of Plaintiffs' counsel, or at such other place as may be agreed upon by counsel, continuing from day to day until inspection and copying are completed.

Pursuant to South Carolina Rules of Civil Procedure 34(a), Plaintiffs are requesting that all electronically stored information ("ESI") be produced in its native format so that all metadata is preserved. For example, Excel Spreadsheets must be produced in ".xls" format; word documents in ".doc" format; and emails in ".msg" or similar format. All ESI must be accompanied by a printed or pdf copy of the ESI and an industry-standard load file which contains corresponding bates numbers and all available metadata. The format of the load file should be the industry standard DAT file format or similar (e.g., .CSV). Native files should be produced in a reasonably usable

form (searchable, sortable, and filterable, with data unhidden) that allows access to all available metadata).

*The instructions and definitions set forth in Plaintiffs' First Set of Interrogatories to Defendants apply to these Requests.*

### **PRIVILEGED DOCUMENTS**

In the event that the attorney-client privilege, the work product doctrine, or any other claim of privilege is asserted with respect to any requested document, then as to each such document the party claiming privilege shall identify such document in writing with sufficient specificity to permit the Court to reach a determination, in the event of a Motion to Compel, as to the applicability of the asserted privilege, and supply in writing the specific bases for the assertion of the privilege.

### **REQUESTS FOR PRODUCTION**

1. Produce all Evidence relating to the design, development, construction, failure, and repair of Midtown, including but not limited to, any and all evidence which you intend to use as exhibits, or otherwise rely upon, to establish proof of claims, damages, or repudiation of claims or damages at the trial of this case.

2. Produce all evidence relating to the circumstances surrounding warranty work, and major or minor repairs at Midtown, including all pertinent communications internally, with Lennar, with your subcontractors, or homeowners.

3. Produce a complete export of all communications pertaining to Midtown from the email addresses:

- [tony.inabinet@pb-supply.com](mailto:tony.inabinet@pb-supply.com);
- [mike.brame@pb-supply.com](mailto:mike.brame@pb-supply.com);

- [aaron.fischer@pb-supply.com](mailto:aaron.fischer@pb-supply.com); and

any other email addresses utilized by Your company to carry out, manage, correct, complete, your scope of work or communicate with Lennar regarding the same.

4. Produce all Evidence relating to any work performed by You at the Project.
5. Produce all materials pertaining to the installation of windows at Midtown, including installation instructions, sketches, diagrams, plans.
6. Produce all correspondence pertaining to the installation of windows at Midtown, including internal correspondence, correspondence with Lennar's representatives, your subcontractors, inspectors, 3<sup>rd</sup> party inspectors, and / or other professionals or construction administrators.
7. Produce all Evidence relating to materials supplied or used by Your for building improvements made at the Project.
8. Produce all investigation, engineering, and/or testing reports relating to the Project.
9. Produce all Evidence relating to inspections performed internally for building improvements made at the Project.
10. Produce all Evidence relating to inspections performed by third parties for building improvements made at the Project.
11. Produce all Evidence relating to inspections by code officials or building inspectors for building improvements made at the Project.
12. Produce all Evidence You prepared for, received from, or provided to Lennar relating to the Project.
13. Produce all Evidence of licenses You have held between 2019 to the present.

14. Produce all Evidence of Your organizational and corporate structure as it exists/existed between 2019 to present. This request includes articles of organization/incorporation and organizational charts.

15. Produce all Evidence of Your company's protocols and guidelines between 2010 to present. This request includes training manuals, company manuals, and company policies and procedures effective between 2019 to present.

16. Produce all insurance policy documents, including complete copies of all policies and declaration pages, owned by You between 2019 to present.

17. Produce insurance certificates for all Your subcontractors who worked on the Project.

18. Produce all insurance-related communications such as claim submissions and reservations of rights letters relating to Your carrier's notice and handling of this claim.

19. Produce the following for any expert witness You identify:

- a. The most up-to-date curriculum vitae on his/her background, training, and education;
- b. Evidence which he/she has received or generated concerning this case;
- c. Evidence and any other materials upon which he/she may rely for his/ her testimony or to which he/she referred in reviewing this case;
- d. All reports prepared by him/her in connection with this case;
- e. All notes, outlines, PowerPoints, photographs, transcripts from any lectures, classes, or presentations given or attended by him/her or his/her company related to the issues in this case;
- f. Any communications which he/she has sent or received from any party in this case;
- g. All his/her invoices and billing records for this case; and

- h. A complete list of all cases where he/she has provided expert consultant services and whether a deposition or trial testimony was given. Include the names of the parties, the jurisdiction where the case was filed, the case number, and the names of the attorneys representing the parties.
- 20. Produce all Evidence which You obtained in response to subpoenas, FOIA requests, or otherwise that relate to this case.
- 21. All documents identified or referenced in Your Answers to Plaintiffs' Interrogatories.
- 22. Produce all deposition transcripts or Evidence of sworn statements given by Your officers, employees, agents, or experts within the last 10 years related to construction defects.
- 23. Produce a list of the terms and other control functions You used to search for ESI responsive to these Requests.
- 24. To the extent not covered by the above Requests, produce all Evidence:
  - a. of any problem, defect, or life-safety hazards (alleged or otherwise) at the Project whether prepared, sent, or received by You;
  - b. of statements given by witnesses that relate to the Project and/or matters at issue in this case;
  - c. of agreements between You and other persons involved in building improvements or construction at the Project including, but not limited to, servicing agreements, partnership agreements, contracting/installation agreements, warranty agreements, design agreements, or exclusivity agreements;
  - d. of warranties issued by You and/or any third-party for the Project, including evidence of warranties provided, warranty-related communications, warranty claims, and warranty work performed;
  - e. of communications about the Project among You/Your employees and/or between You/Your employees and Lennar Carolinas, LLC, subcontractors, designers, engineers, building code officials, government agencies, potential purchasers, homeowners, and any other persons;
  - f. that relates to any claims or defenses in this case;

- g. that You intend to use at the trial of this case; and
- h. that You reference in discovery or while otherwise preparing for this case.

**JUSTIN O'TOOLE LUCEY, P.A.**

/s/ Collin H. Fuller  
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Collin H. Fuller, Esq. (Of Contract)  
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*Attorneys for Plaintiffs*

May 19, 2023  
Mount Pleasant, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Midtown Townhomes HPR Owners Association, Inc., and Karen Tinsley, Terry Headley, and Wayne Scarsella, Derivatively, on behalf of the Midtown Townhomes HPR Owners Association, Inc.,

Plaintiffs,

vs.

Lennar Carolinas, LLC a/k/a Lennar Carolinas a/k/a Coastal Carolinas Division of Lennar a/k/a Lennar Corporation, Synchronicity, LLC d/b/a Synchronicity Land + Architecture, and VR Engineers, Inc. d/b/a R-K Engineers & Builders,

Defendants.

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Lennar Carolinas, LLC

Third-Party Plaintiff,

vs.

Alpha Omega Construction Group, Inc., CEBS-Construction LLC d/b/a CEBS Construction, Charleston Concrete Construction, LLC, Fogel Services, Inc., Home Energy Group LLC, Insulation by Cohen's LLC, SouthEnd Exteriors, Inc., Professional Builders Supply, LLC, and Hensley and Goerling Consulting Engineers, LLC

Third-Party Defendants

AND ALL RELATED ACTIONS

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04509

**CERTIFICATE OF SERVICE**

I, John Hewson, the undersigned employee of Justin O’Toole Lucey, P.A., do hereby certify that **Plaintiffs’ First Set of Interrogatories** and **Plaintiffs’ First Set of Requests for Production to Third-Party Defendant Professional Builders Supply, LLC** in the above-captioned matter are being served by serving the same upon the following via electronic mail as indicated below:

<p>James Lynn Werner, Esq.  <a href="mailto:jimwerner@parkerpoe.com">jimwerner@parkerpoe.com</a>  Taylor Stair, Esq.  <a href="mailto:Taylorstair@parkerpoe.com">Taylorstair@parkerpoe.com</a>  Parker Poe Adams &amp; Bernstein, LLP  1221 Main Street  Suite 1100  Columbia, SC 29201</p> <p>William Greyson Land, Esq.  <a href="mailto:greysonland@parkerpoe.com">greysonland@parkerpoe.com</a>  Taylor Harrison Stair, Esq.  <a href="mailto:taylorstair@parkerpoe.com">taylorstair@parkerpoe.com</a>  Joshua Hugh Umbarger, Esq.  <a href="mailto:joshumbarger@parkerpoe.com">joshumbarger@parkerpoe.com</a></p> <p>Parker Poe Adams &amp; Bernstein, LLP  200 Meeting Street  Suite 301  Charleston, SC 29401  <i>Attorneys for Defendant Lennar Carolinas, LLC</i></p>	<p>Alan Ross Belcher, Jr., Esq.  <a href="mailto:abelcher@hallboothsmith.com">abelcher@hallboothsmith.com</a>  Connor Evan Johnson, Esq.  <a href="mailto:cjohnson@hallboothsmith.com">cjohnson@hallboothsmith.com</a>  Hall Booth Smith, P.C.  111 Coleman Boulevard  Suite 301  Mount Pleasant, SC 29464  <i>Attorneys for Defendant Synchronicity, LLC</i></p>
<p>Kenneth Michael Barfield, Esq.  <a href="mailto:mbarfield@barnwell-whaley.com">mbarfield@barnwell-whaley.com</a>  Barnwell Whaley Patterson &amp; Helms, LLC  211 King Street  Suite 300  Charleston, SC 29401</p> <p><i>Attorney for Defendant VR Engineers, Inc.</i></p>	<p>Erin DuBose Dean, Esq.  <a href="mailto:erindean@tgdcpa.com">erindean@tgdcpa.com</a>  Tupper, Grimsley, Dean, &amp; Canaday  611 Bay Street  Beaufort, SC 29902</p> <p><i>Attorney for Third-Party Defendant CEBS Construction, LLC</i></p>
<p>Edward Glenn Elliott, Esq.  <a href="mailto:ege@aikenbridges.com">ege@aikenbridges.com</a>  Aiken Bridges Attorneys at Law  181 East Evans Street  Suite 409  P.O. Drawer 1931, 29503  Florence, SC 29506</p> <p><i>Attorney for Third-Party Defendant Insulation by Cohen’s, LLC</i></p>	<p>Jenkins Heyward Wilson, Esq.  <a href="mailto:jenkins@bestlawsc.com">jenkins@bestlawsc.com</a>  L. Dean Best, Esq.  <a href="mailto:dean@bestlawsc.com">dean@bestlawsc.com</a>  Best Law, P.A.  P.O. Box 2374  Mt. Pleasant, SC 29465</p> <p><i>Attorney for Third-Party Defendant Alpha Omega Construction Group, Inc.</i></p>

<p>Michael Lawrence Leech, Esq.  <a href="mailto:mike@cslaw.com">mike@cslaw.com</a>  Clawson &amp; Staubes, LLC  126 Seven Farms Drive  #200  Charleston, SC 29492  <i>Attorney for Third-Party Defendant Charleston Concrete Construction, LLC</i></p>	<p>R. Michael Ethridge, Esq.  <a href="mailto:methridge@ethridgelawgroup.com">methridge@ethridgelawgroup.com</a>  James K. Bryson, Esq.  <a href="mailto:jbryson@ethridgelawgroup.com">jbryson@ethridgelawgroup.com</a>  Ethridge Law Group  1100 Queensborough Blvd., Ste. 200  Mt. Pleasant, SC 29464  <i>Attorneys for Third-Party Defendant Fogel Services, Inc.</i></p>
<p>Taylor Leigh Cary, Esq.  <a href="mailto:tcary@csvg.law">tcary@csvg.law</a>  Paul Elliot Sperry, Esq.  <a href="mailto:psperry@csvg.law">psperry@csvg.law</a>  Copeland Stair Valz &amp; Lovell  40 Calhoun Street, Suite 400  Charleston, SC 29401  <i>Attorneys for Third-Party Defendant Hensley &amp; Goerling Consulting, LLC</i></p>	<p>James H. Elliott, Jr., Esq.  <a href="mailto:jelliott@richardsonplowden.com">jelliott@richardsonplowden.com</a>  Evan A. Carter, Esq.  <a href="mailto:ecarter@richardsonplowden.com">ecarter@richardsonplowden.com</a>  Richardson Plowden  235 Magrath Darby Boulevard, Suite 100  Mt. Pleasant, SC 29464  <i>Attorneys for Third-Party Defendant Home Energy Group, LLC</i></p>
<p>Philip Cristaldi, Esq.  <a href="mailto:pcristaldi@rclawsc.com">pcristaldi@rclawsc.com</a>  Ross &amp; Cristaldi  863 Coleman Blvd., Suite B  Mount Pleasant, SC 29464  <i>Attorney for Third-Party Defendant Professional Builders Supply, LLC</i></p>	<p>George C. James, Esq.  <a href="mailto:George.james@mgclaw.com">George.james@mgclaw.com</a>  Trippet Boineau, Esq.  <a href="mailto:Trippet.boineau@mgclaw.com">Trippet.boineau@mgclaw.com</a>  McAngus Goude-lock &amp; Courie  The Meridian  1320 Main Street, 10<sup>th</sup> Floor  Columbia, SC 29201</p> <p>Philip Cristaldi, Esq.  <a href="mailto:pcristaldi@rclawsc.com">pcristaldi@rclawsc.com</a>  Emily Christine Sheets, Esq.  <a href="mailto:esheets@rclawsc.com">esheets@rclawsc.com</a>  Brent DeShields, Esq.  Ross &amp; Cristaldi  863 Coleman Blvd., Suite B  Mount Pleasant, SC 29464  <i>Attorneys for Third-Party Defendant Southend Exteriors, Inc.</i></p>
<p>Shanna M. Stephens, Esq.  <a href="mailto:sstephens@arlawsc.com">sstephens@arlawsc.com</a>  Anderson Reynolds &amp; Stephens, LLC  37 ½ Broad Street  Charleston, SC 29401  <i>Attorney for Third-Party Defendant RDZ Services, LLC</i></p>	<p>David S. Cobb, Esq.  <a href="mailto:dcobb@turnerpadget.com">dcobb@turnerpadget.com</a>  Turner Padget Graham and Laney P.A.  40 Calhoun Street  Suite 200  Charleston, SC 29401  <i>Attorney for Third-Party Defendant LR Contractors, LLC</i></p>

<p>Jillian S. Barton, Esq. <a href="mailto:jsb@roblaw.net">jsb@roblaw.net</a> Robertson Hollingsworth Manos &amp; Rahn 550 King Street, Suite 300 Charleston, SC 29403 <i>Attorney for Third-Party Defendant ALF Enterprises, LLC</i></p>	<p>Thomas A. D. Barrow, Esq. <a href="mailto:tbarrow@hallboothsmith.com">tbarrow@hallboothsmith.com</a> Derek M. Newberry, Esq. <a href="mailto:dnewberry@hallboothsmith.com">dnewberry@hallboothsmith.com</a> Hall Booth Smith, P.C. 111 Coleman Boulevard, Suite 301 Mount Pleasant, SC 29464 <i>Attorneys for Arias Construction Services, LLC</i></p>
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John Hewson

May 19, 2023  
Mount Pleasant, South Carolina

# JUSTIN O'TOOLE LUCEY, PA

*Attorneys at Law*

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Sohayla R. Townes  
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September 26, 2023

## **VIA E-MAIL**

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**Re: Midtown Townhomes HPR, et al. v. Lennar Carolinas, et al.**  
**Case No.: 2022-CP-10-04509**

Counsel:

On May 19, 2023, Defendant Professional Builders Supply, LLC (“PBS”) was provided with Plaintiff’s First Set of Requests for Production and Interrogatories. PBS responded on June 12, 2023. Plaintiff notes the following deficiencies in PBS’s production:

## **INTERROGATORIES**

**ROG #2:** Provide a detailed description of Your Company’s scope of work ta Midtown. (Your response should include the approximate dates of work, a description of the work, and identification of any documents related to such work, including but not limited to subcontracts, work/purchase orders, draw requests, invoices, or other evidence of dates and tasks undertaken.

Your answer was nonresponsive to this Interrogatory. Please supplement your Answer in accordance with the information sought in Interrogatory No. 2.

**ROG #4:** For Labor, state whether Your company self-performed any work whatsoever at Midtown (as opposed to all labor within scope being subcontracted).

You answered, “See answer to Interrogatory number 3.” Interrogatory number 3 refers to Interrogatory number 1, which is a list of witnesses and therefore unresponsive to the Interrogatory. You failed to answer yes or no as to whether your company self-performed. Please supplement your Answer in accordance with Interrogatory No. 4.

**ROG #5:** If Your company did self-perform labor at Midtown, provide a list / description of all work which was elf-performed, and a list / description of all work that was subcontracted to others).

Again, you answered, “See answer to Interrogatory number 3.” Interrogatory number 3 refers to Interrogatory number 1, which is a list of witnesses and therefore unresponsive to the Interrogatory. Please supplement your Answer in accordance with Interrogatory No. 5.

**ROG #6:** Identify all subcontractors hired or employed by You to perform work at Midtown. For each subcontractor, provide a brief description of their scope of work (*ie*, Window installation), including the buildings or residences that they worked on (*ie*, Building L & M), and state whether you are in possession of a written contract with the subcontractor, whether you are in possession of an insurance certificate for the subcontractor, and how much the subcontractor was paid for his work. (Your response should include the company name, name of the company owner or primary contact person for the company, last known residential and email address for that individual, last known business address, last known phone number, and any license(s) held by said person(s)).

You answered, “see answer to Interrogatory numbers 1 & 3.” Again, Interrogatory number 3 refers to Interrogatory number 1, which is a list of witnesses and therefore unresponsive to the Interrogatory. While your Answer to Interrogatory number 1 lists a subcontractor and scope for Atlas, it does not list any additional information requested in Interrogatory number 6. Please supplement your Answer in accordance with Interrogatory No. 6, providing, at minimum, the complete scope of work of the subcontractor, what buildings he worked on, whether you have a contract with him and / or a certificate of insurance.

**ROG #8:** Identify the individual(s) employed by or acting on Lennar’s behalf who was / were responsible for overseeing / supervising / managing / approving Your scope of work.

Your answer is non-responsive. Please identify the individuals with Lennar as requested.

**ROGS #14-23:** Your answers to these Interrogatories were nonresponsive. Please supplement your Answers in accordance with the information sought in Interrogatories 14-23. For example:

- 15: You failed to identify whether You employed a professional to evaluate failures associated with your scope of work, or became aware of a professional being engaged by someone else such as Lennar;
- 16: You failed to state whether You were aware of deviations from original plans or installation instructions;
- 17: You failed to identify the basic product information for the windows installed at Midtown;
- 19: You failed to identify the source of instructions for the window installations;
- 20: You failed to state whether there were changes to the window installation methods during construction.

As demonstrated by the above examples, Your Answers to ROGS #14 – 23 should be supplemented to provide the requested information.

**ROG #24:** Identify all email addresses belonging to or utilized by Your company or Your company’s employees for work related to Midtown, including to receive trade partner emails, to

receive or request EPO's, VPO's, RFI's, or change orders, coordination with Lennar's CMs, coordination with Your subcontractors, to receive project plans or plan clarifications from Lennar, to request clarification or assistance in any manner pertaining to the completion or quality of Your scope of work.

You indicated you would supplement your Answer. Please do so.

**REQUESTS FOR PRODUCTION**

**RFP #5:** Produce all materials pertaining to the installation of windows at Midtown, including installation instructions, sketches, diagrams, plans.

Your production does not include any information from JeldWin pertaining to the windows, installation instructions, etc. Please supplement with the requested information.

**Further, Plaintiff requested all ESI be produced in native format. Please supplement your production with natives of your ESI.**

This letter serves as Plaintiff's attempt to obtain PBS's outstanding production without the necessity of a Motion to Compel. Kindly provide us with the requested information within the next ten (10) days. Thank you for your assistance in this matter.

Sincerely,



Mandee Funai, Esq.