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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Scott Armstrong, Sr., et al.,
10 Plaintiffs,

No. CV-13-00239-PHX-NVW

11 vs.

ORDER

12 D.R. Horton, Inc., et al.,
13 Defendants.

14 Before the Court is Defendants D.R. Horton, Inc. and D.R. Horton, Inc.-Dietz
15 Crane's Motion to Dismiss Claims of Plaintiffs Adeniji-Onasanwo, Beatty, Caggiano,
16 Cutchon, Fornabai, Moran, and Payne Pursuant to the Statute of Repose, § 12-552 (Doc.
17 16).

18 To decide a motion to dismiss, “[a] court may consider evidence on which the
19 complaint ‘necessarily relies’ if: (1) the complaint refers to the document; (2) the
20 document is central to the plaintiff’s claim; and (3) no party questions the authenticity of
21 the copy attached to the 12(b)(6) motion.” *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir.
22 2006). Both sides have submitted exhibits (Docs. 16-1, 46-1) that do not satisfy the
23 foregoing conditions and which the Court does not consider in deciding Defendants’
24 motion to dismiss.

25 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires only “‘a short and
26 plain statement of the claim showing that the pleader is entitled to relief,’ in order to
27 ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it
28 rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*,

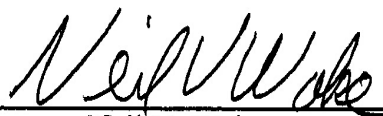
1 355 U.S. 41, 47, 78 S. Ct. 99 (1957)). A claim must be stated clearly enough to provide
2 each defendant fair opportunity to frame a responsive pleading. *McHenry v. Renne*, 84
3 F.3d 1172, 1176 (9th Cir. 1996). “Something labeled a complaint . . ., yet without
4 simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails
5 to perform the essential functions of a complaint.” *Id.* at 1180.

6 Plaintiffs’ Second Amended Complaint (Doc. 36) does not include the factual
7 allegations necessary to determine whether any claims are barred by Arizona’s
8 construction defect statute of repose, A.R.S. § 12-552. Because leave to amend should be
9 freely given “when justice so requires,” Fed. R. Civ. P. 15(a)(2), Plaintiffs will be granted
10 leave to file a further amended complaint.

11 IT IS THEREFORE ORDERED that Defendants D.R. Horton, Inc. and D.R.
12 Horton, Inc.-Dietz Crane’s Motion to Dismiss Claims of Plaintiffs Adeniji-Onasanwo,
13 Beatty, Caggiano, Cutchon, Fornabai, Moran, and Payne Pursuant to the Statute of
14 Repose, § 12-552 (Doc. 16) is **granted** to the extent that Plaintiffs’ Second Amended
15 Complaint (Doc. 36) is dismissed pursuant to Fed. R. Civ. P. 8(a).

16 IT IS FURTHER ORDERED that Plaintiffs may file an amended complaint by
17 **June 7, 2013**.

18 Dated this 23rd day of May, 2013.

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22 Neil V. Wake
23 United States District Judge
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