

**DISTRICT COURT, EL PASO COUNTY,
STATE OF COLORADO**
270 S. Tejon Street
Colorado Springs, Colorado 80903

Plaintiff:
JERRY RICHBOW

v.

Defendant:
SAINT AUBYN HOMES, LLC, a Colorado Limited Liability
Company

Attorneys for Saint Aubyn Homes, LLC:
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Case No. 2020-CV-30197

Division:

**SAINT AUBYN HOMES, LLC'S ANSWER TO
PLAINTIFF'S COMPLAINT AND JURY DEMAND**

Defendant Saint Aubyn Homes, LLC (“SAH”), by and through its attorneys, Wood, Smith, Henning & Berman LLP, for its Answer to Plaintiff's Complaint and Jury Demand states as follows:

PARTIES

1. Answering Paragraph 1, SAH is presently without sufficient information to form a belief as to the truth or veracity of the allegations contained therein and therefore denies the same.
2. Answering Paragraph 2, SAH admits the allegations contained therein.
3. Answering Paragraph 3, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH admits the allegations contained therein.



4. Answering Paragraph 4, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

SAH'S VICARIOUS, IMPUTED AND/OR JOINT LIABILITY

5. Answering Paragraph 5, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

6. Answering Paragraph 6, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

7. Answering Paragraph 7, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

JURISDICTION AND VENUE

8. Answering Paragraph 8, SAH does not challenge this Court's personal jurisdiction at this time but denies that it committed tortious or other wrongful acts and omissions as alleged.

9. Answering Paragraph 9, SAH does not challenge this Court's subject matter jurisdiction at this time.

10. Answering Paragraph 10, SAH does not challenge Plaintiffs' chosen venue at this time.

11. Answering Paragraph 11, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

GENERAL ALLEGATIONS

12. Answering Paragraph 12, the Purchase and Sale agreement speaks for itself. SAH denies the allegations in Paragraph 12 insofar as they differ from the substance of said agreement.

13. Answering Paragraph 13, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein, including all subparts.

14. Answering Paragraph 14, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

15. Answering Paragraph 15, SAH denies the allegations contained therein.

16. Answering Paragraph 16, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

17. Answering Paragraph 17, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

18. Answering Paragraph 18, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

FIRST CLAIM FOR RELIEF
(Negligence – SAH)

19. Answering Paragraph 19, SAH incorporates by reference its responses to paragraphs 1-18 above as though fully set forth herein.

20. Answering Paragraph 20, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH states that it met all legal duties imposed upon it, and as such, denies the allegations contained therein.

21. Answering Paragraph 21, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH states that it met all legal duties imposed upon it, and as such, denies the allegations contained therein.

22. Answering Paragraph 22, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

23. Answering Paragraph 23, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

SECOND CLAIM FOR RELIEF
(Negligence *Per Se* - SAH)

24. Answering Paragraph 24, SAH incorporates by reference its responses to paragraphs 1-23 above as though fully set forth herein.

25. Answering Paragraph 25, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

26. Answering Paragraph 26, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

27. Answering Paragraph 27, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

28. Answering Paragraph 28, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

29. Answering Paragraph 29, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

30. Answering Paragraph 30, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is

necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

THIRD CLAIM FOR RELIEF
(Breach of Implied Warranty – SAH)

31. Answering Paragraph 31, SAH incorporates by reference its responses to paragraphs 1-30 above as though fully set forth herein.

32. Answering Paragraph 32, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

33. Answering Paragraph 33, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

34. Answering Paragraph 34, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

35. Answering Paragraph 35, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

FOURTH CLAIM FOR RELIEF
(Breach of C.R.S. § 6-6.5-101 – SAH)

36. Answering Paragraph 36, SAH incorporates by reference its responses to paragraphs 1-35 above as though fully set forth herein.

37. Answering Paragraph 37, including subparts 1 and 2, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH states that the statute cited speaks for itself.

38. Answering Paragraph 38, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

39. Answering Paragraph 39, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

40. Answering Paragraph 40, this paragraph contains purported legal conclusions and/or statements or recitations of law, rather than allegations, and as such, no response is necessary. To the extent that a response is deemed necessary, SAH denies the allegations contained therein.

PRAYERS FOR RELIEF

Answering Paragraphs 1-8 of Plaintiff's Prayers for Relief, SAH denies that Plaintiff is entitled to any of the relief he requests.

GENERAL DENIAL

SAH denies all allegations contained in Plaintiff's Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are either barred, limited, or entitled to a reduction of the judgment to the extent of any collateral source payments pursuant to the collateral source rule in C.R.S. § 13-21-111.6.

2. In the event SAH is determined to be in any way at fault concerning Plaintiff's claimed damages, liability for which is expressly denied, then SAH shall not be held liable for any greater amount of damages than is represented by its degree or percentage of causal fault, which determination shall be made in accordance with C.R.S. § 13-21-111.5.

3. At all relevant times to this matter, SAH acted in the good-faith belief that its actions were in compliance with applicable law, statutes, and building codes.

RESERVATION OF DEFENSES

Defendant Saint Aubyn Homes, LLC reserves the right to assert and amend defenses as discovery and investigation in this matter is accomplished, including by amending this Answer to add, delete and/or modify affirmative defenses. Defendant Saint Aubyn Homes, LLC does not waive any applicable affirmative defenses in this proceeding.

JURY DEMAND

Defendant Saint Aubyn Homes, LLC respectfully demands a jury on all issues so triable.

Respectfully submitted this 12th day of March, 2020.

WOOD, SMITH, HENNING & BERMAN LLP

/s/ Nick Herrick

Jason Klein

Nick R. Herrick

Pursuant to C.R.C.P. 121 1-26(9), a printed copy of the foregoing document with original signatures shall be maintained in Wood, Smith, Henning & Berman LLP's client files and made available for inspection upon request.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2020, a true and correct copy of Saint Aubyn Homes, LLC's Answer to Plaintiff's Complaint and Jury Demand was e-filed and/or e-served via Colorado Courts E-Filing System on the following parties:

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Counsel for Plaintiff

/s/ Jacqueline Geddes

Jacqueline Geddes

Pursuant to C.R.C.P. 121 1-26(9), a printed copy of the foregoing document with original signatures shall be maintained in WOOD, SMITH, HENNING & BERMAN LLP's client files and made available for inspection upon request.

DISTRICT COURT, EL PASO COUNTY,
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270 S. Tejon Street
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Plaintiff:
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Defendants:
SAINT AUBYN HOMES, LLC, a Colorado Limited
Liability Company

Attorneys for Plaintiff:
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▲ COURT USE ONLY ▲

Case Number: 20CV30197

Div.:

COMPLAINT AND JURY DEMAND

Plaintiff, Jerry Richbow (“Plaintiff”), by and through his attorneys, The Nelson Law Firm, LLC, complains as follows against the above named Defendant:

PARTIES

1. Plaintiff resides at and is the owner of a single family residence located at [REDACTED] Colorado Springs, Colorado 80925 (hereinafter referred to as the “Home”).
2. Defendant, Saint Aubyn Homes, LLC (“SAH”), at all times material to this Complaint, was a Colorado limited liability company with a principal place of business and registered agent located at 212 N. Wahsatch Ave., Suite 201, Colorado Springs, Colorado 80903.
3. SAH at all times material to this Complaint, was the Home’s “builder-vendor,”

engaged in the business of development, construction, marketing and sale of homes in Colorado.

4. As builder-vendor, SAH had non-delegable duties to exercise reasonable control and supervision over all of the Home's design and construction work and to act reasonably in quality checking and approving such work, some or all of which work was performed by subcontractors. SAH also had non-delegable duties to ensure such work was performed in a good and workmanlike manner and in accordance with all applicable plans, specifications, recommendations, and building codes.

SAH'S VICARIOUS, IMPUTED AND/OR JOINT LIABILITY

5. Upon information and belief, the various contractors, subcontractors and independent contractors, and/or design professionals involved in the design, development and construction of the Home, and responsible for creating the defectively designed and constructed elements described elsewhere in this Complaint, were delegated as part of these design, development, and construction activities by SAH. Upon information and belief, SAH supervised and approved the work of each of contractor, subcontractor, independent contractor, and/or design professional, which work was intended to be done pursuant to the direction of, and plans and specifications approved by, SAH.

6. Upon information and belief, SAH, its contractors, subcontractors independent contractors, and/or design professionals consciously and deliberately pursued a concerted and common plan, design, and course of conduct and action, expressly or impliedly, the execution of which was done tortiously or otherwise wrongfully, as described elsewhere in this Complaint, resulting in the damages alleged herein. Pursuant to C.R.S. § 13-21-1115, SAH is jointly and severally liable with each of its contractors, subcontractors, independent contractors, and/or design professionals, for one another's tortious or otherwise wrongful acts.

7. SAH is also vicariously liable and/or liable as a matter of law for the acts and/or omissions of its contractors, subcontractors, independent contractors, and/or design professionals.

JURISDICTION AND VENUE

8. This Court has personal jurisdiction over the Defendant because: (a) they are residents of the State of Colorado; (b) they did business in the State of Colorado at times material to this action; (c) they purposefully availed themselves of the rights and privileges of the State of Colorado at times material to this action; and/or (d) they committed the tortious or other wrongful acts and omissions described in this Complaint, with resulting, injury, damages, loss, or other consequences in the State of Colorado.

9. This Court has subject matter jurisdiction over this matter and the controversies described herein.

10. Venue is proper in El Paso County because: (a) the real property, which is

the subject of this action is located in El Paso County; (b) some of the agreements that are the subject of this action were entered into and performed and/or breached in El Paso County; and/or (c) some of the tortious or other wrongful conduct described elsewhere in this Complaint occurred in and/or had consequences and caused injury, damages or losses in El Paso County.

11. Plaintiff has complied with C.R.S. §§ 13-20-801, *et seq.* with respect to Defendant.

GENERAL ALLEGATIONS

12. Plaintiff purchased the Home from SAH on December 2, 2018.

13. At the time SAH developed, designed, constructed and/or sold the Home, SAH knew or should have known that the Home was developed, designed and/or constructed with errors, defects and deficiencies. Various elements of the Home suffers from defects and/or deficiencies including, but not limited to the following:

- The backfill area along the south side is settling and must be removed and replaced in lifts with adequate compaction.
- After the backfill material has been adequately replaced along the south side of the house, the final grade must be provided so that a minimum slope of 10% (2% for paved areas) for the first ten feet from the foundation walls is established.
- Since the runoff from this area of the house is intercepted by a swale, the swale should be reestablished so that water is properly diverted from the foundation. The slope of the new grade and the swale must be maintained for the life of the structure.
- Decorative rock adjacent to the foundation walls must be replaced over landscape fabric.
- The cracks on the ceiling and main and upper levels may be related to truss vertical deflections. Configuration of the roof trusses must be further analyzed to provide improvements or reinforcement. Modification of the roof trusses, upper level partition walls and ceiling dry wall finish must be completed.
- Steel posts that are currently leaning at the basement must be monitored to determine if the steel beams experience rotation. If rotation occurs, the bracing of the posts must be repositioned.
- Cracks visible on the basement level include:
 - Slab crack extending in the north-south direction.
- Cracks visible on the main level include:
 - Diagonal crack at the top corner of the kitchen to living room wall opening.
 - Diagonal crack on the dining room's north window opening top corner.
 - Crack between the ceiling and the living room west wall.
 - Cracks in the ceiling over the entry hallway.
 - Crack at the opposite wall of the entry hallway.
 - Gap between the floor and the staircase at the foyer.
- Cracks visible on the upper level include:

- Crack on the ceiling above the loft area resembling the joints between dry wall panels.
- Cracks at the upper bedroom level bedroom.
- Cracks at the corner of the second-floor stair wall.
- Doors on the upper level have stopped latching.
- All baseboards separating from the floor, in all rooms.
- Kitchen lighting detached from the ceilings.
- Cabinets separating from the walls.
- Cracks in hardwood floors.
- All walls above doorways show cracking.

14. These and other errors, deficiencies and defects, for which Defendant is legally liable, have caused and continue to cause the Plaintiff actual property damage and/or other losses, personal injuries, non-economic losses, economic losses and consequential damage to, and the loss of use of, various elements of the Home, over time from the date those areas were first put to their intended use. The occurrence of this property damage and/or loss of use was not manifested and was unknown to the Plaintiff until it progressed to the point it was reasonably detectable to the Plaintiff.

15. Upon information and belief, when SAH's attention was called to the problems described above, SAH assured Plaintiff that the damages and losses were not caused by any substantial defect or defects and/or would be reasonably, permanently remedied by repairs made by or at the direction of SAH.

16. As a result of the acts and omissions of SAH, Plaintiff has sustained damages including, for example and without limitation, property damage, diminished value, past and future repair and mitigation expenses, loss of the use of all or portions of the Home, attorney fees and litigation costs, among other damages, injuries and losses.

17. At the time SAH developed, improved, designed, constructed, repaired, marketed, and/or sold the Home, SAH, as a professional developer, builder and/or contractor developing, designing, constructing and repairing homes in Colorado, knew or should have known that their failure to follow the reasonable standard of care for developers, builders and/or contractors in Colorado could result in significant damage to the Home, would not result in the Home being constructed in a good and workmanlike manner, would result in the Home likely not complying with all applicable codes, and would result in a Home being not fit and sound for its reasonably anticipated uses. SAH knew or should have known that the reasonable standard of care of developers, builders and/or contractors in Colorado included the design, development and construction of the Home in such a way as to avoid the construction defects and deficiencies present at the Home.

18. At the time SAH developed, improved, designed, constructed, repaired, marketed, sold and/or conveyed interests in the Home, SAH knew or should have known that the failure of

developers, builders and contractors to comply with a reasonable standard of care in the development, design and/or construction of improvements to real property constituted adverse material facts and information that ought to have been disclosed to Plaintiff. It was foreseeable to SAH that purchasers of the Home would be members of a class of people that would be expected to rely upon statements, representations, concealments, and non-disclosures by SAH and their agents.

FIRST CLAIM FOR RELIEF
(Negligence – SAH)

19. Plaintiff incorporates the foregoing paragraphs herein.

20. SAH owed Plaintiff a duty to cause the Home to be designed, developed, constructed and repaired in a good and workmanlike manner, and to exercise reasonable care in its retention of design professionals, contractors and employees, and in its supervision, inspection, design, construction, installation of materials, and quality control relating to the Home.

21. SAH's duty of care included the duty to ensure that all design, development, construction and repair work was performed in accordance with industry standards, applicable building codes, and/or applicable plans and specifications, or a greater duty of care if reasonably required under the circumstances. Its duty of care also included the duty to ensure that all design, development, construction and repair was performed in a good and workmanlike manner, suited for its reasonably anticipated uses, met appropriate standards of care, and that all repairs were done in a good and workmanlike manner.

22. SAH breached these duties of care.

23. The negligence of SAH in relation to the design, development, construction and repair of the Home has damaged the Home, causing Plaintiff resultant and consequential property damage, and other damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Negligence *Per Se* – SAH)

24. Plaintiff incorporates the foregoing paragraphs herein.

25. SAH owed Plaintiff a duty to cause the Home to be developed, designed, constructed, repaired, marketed and/or sold in accordance with applicable statutes, ordinances, and building codes, including but not limited to the applicable building codes, as adopted by ordinance by the El Paso County Building Department; Colorado's Consumer Protection Act, C.R.S. §§ 6-1-105, *et seq.*; C.R.S. § 6-6.5-101; and C.R.S. §§ 12-61-801, *et seq.*

26. SAH violated these statutes, ordinances, and building codes by failing to develop, design, construct, market, sell and/or repair the Home in accordance with these statutes,

ordinances and/or building codes.

27. SAH's violation of these statutes, ordinances, and/or building codes damaged Plaintiff in an amount to be proven at trial.

28. One of the purposes of these statutes, ordinances, and building codes is to protect against the type of damages sustained by Plaintiff.

29. Plaintiff is a member of the group of persons these statutes, ordinances, and building codes were intended to protect.

30. SAH's violation of these statutes, ordinances, and/or building codes constitutes negligence *per se*.

THIRD CLAIM FOR RELIEF
(Breach of Implied Warranty – SAH)

31. Plaintiff incorporates the foregoing paragraphs herein.

32. As the Home's builder-vendor, SAH impliedly warranted that the Home was built in a good and workmanlike manner, was fit for its reasonably intended use, and would comply with generally acceptable codes, standards, and all applicable plans and specifications. These warranties were intended to benefit Plaintiff both as a matter of fact and a matter of law.

33. SAH breached these implied warranties.

34. To the extent SAH should ever argue that Plaintiff ever waived, or that SAH effectively disclaimed, the right to sue on the above-described warranties, such waiver or disclaimer is void under C.R.S. § 13-20-806(7), and/or as violative of public policy and/or was not made sufficiently conspicuous and clear so as to comply with C.R.S. § 6-1-105, and/or was not sufficiently particular, and/or such alleged disclaimer or waiver is unconscionable and/or constitutes a breach of SAH's duty of good faith.

35. SAH's breach of its implied warranties has caused damages to Plaintiff, including resultant and consequential damages, in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Breach of C.R.S. § 6-6.5-101 – SAH)

36. Plaintiff incorporates the foregoing paragraphs herein.

37. C.R.S. § 6-6.5-101 states in part as follows:

(1) At least fourteen days prior to closing the sale of any new residence for human habitation, every developer or builder or their representatives shall provide the purchaser with a copy of a summary report of the analysis and the site recommendations. For sites in which significant potential for expansive soils is recognized, the builder or his representative shall supply each buyer with a copy of a publication detailing the problems associated with such soil, the building methods to address these problems during construction, and suggestions for care and maintenance to address such problems.

(2) In addition to any other liability or penalty, any builder or developer failing to provide the report or publication required by subsection (1) of this section shall be subject to a civil penalty of five hundred dollars payable to the purchaser.

38. SAH breached C.R.S. § 6-6.5-101(1) since SAH did not provide Plaintiff a soils report of summary of same prior to closing.

39. Plaintiff is entitled to the statutory penalty of \$500 in addition to his other damages as proven at trial.

40. Plaintiff has been damaged in an amount to be proven at trial.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff requests that judgment enter against Defendant SAH as follows:

1. For the Plaintiff's actual damages, costs of suit, fees of experts, including engineering and construction experts, attorney fees, interest as permitted by law from the date of occurrence to the date of entry of judgment, as well as post-judgment interest until paid;

2. For the cost of repairing the Home to a reasonably good condition, and to a better condition, if that is what was promised or represented by SAH;

3. For the cost of the replacement of any defective construction elements, as well as the repair of those portions of the Home that were or are damaged by these defective construction elements;

4. For the costs and expenses incurred for storage charges, moving, repairs, and cleaning costs incurred as a result of such repairs, if any;

5. For the reasonable costs of rental or similar housing during the reasonable periods of repair, if any;

6. For loss of the use of the Home and all annoyance, discomfort, inconvenience, and aggravation arising from the injury to the Home and any required investigation and repair efforts;

7. For forensic investigation and analysis costs, including engineering fees and inspection and testing costs; and

8. For statutory damages and penalties pursuant to C.R.S. § 6-6.5-101.

PLAINTIFF DEMANDS TRIAL BY A JURY OF ALL ISSUES SO TRIABLE

Dated this 27th day of January, 2020.

Respectfully Submitted,

/s/ Mark W. Nelson _____

Mark W. Nelson, Esq.

J. Scott Sweeney, Esq.

Melissa J. Hessler, Esq.

The Nelson Law Firm, LLC

ATTORNEYS FOR PLAINTIFF

Plaintiff's Address:



Colorado Springs, Colorado 80125