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Elizabeth A. Brown
Clerk of Supreme Court

7 **COURT OF APPEALS**

8 **STATE OF NEVADA**

10 NICKEL MINE AVENUE TRUST, a
11 Nevada irrevocable trust;
12 TRAVERTINE LANE TRUST, a
13 Nevada irrevocable trust;
14 MAHOGANY MEADOWS AVENUE
15 TRUST, a Nevada irrevocable trust;
16 SATICOY BAY, LLC, a Nevada
17 Limited Liability Company,

18 Appellants,

19 vs.

20 COPPER CREEK HOMEOWNERS
21 ASSOCIATION a Nevada Nonprofit
22 Corporation,

23 Respondent.

Case No.: 82205-COA

**RESPONDENT’S OPPOSITION
TO APPELLANTS’ RESPONSE
TO ORDER TO SHOW CAUSE;
and REQUEST FOR AN
EXTENSION TO OBTAIN RULE
54(b) CERTIFICATION**

24 Respondent, COPPER CREEK HOMEOWNERS ASSOCIATION
25 (“Respondent”), by and through its counsel, BRAY LAW GROUP LLC,
26 respectfully submits Respondent’s Opposition to Appellants’ Response to Order
27 to Show Cause; and Request for an Extension to Obtain Rule 54(B) Certification.
28

1 **POINTS AND AUTHORITIES**

2 **I. ARGUMENT**

3 **A. The April 3, 2020 Order Denying in Part and Granting in Part**
4 **Respondent’s Motion for Summary Judgment Resolved All Issues**
5 **and Parties and NRCP 54(b) Certification is Therefore**
6 **Unnecessary**

7 The *Order Granting in Part and Denying in Part Summary Judgment*, filed
8 on April 3, 2020 (“*Summary Judgment Order*”)¹ resolved all of the parties’ claims
9 and rights in this action, and left nothing for the District Court’s future
10 consideration, except for post-judgment issues such as attorney fees and costs.²
11 Indeed, not only was the *Summary Judgment Order* completely dispositive of
12 Respondent’s claims against Appellants, but it also provided a cap on the damages
13 Respondent could recover for its claims. Although Respondent’s Complaint³ had
14 several causes of action (i.e., breach of contract; breach of the covenant of good
15 faith and fair dealing; fraud in the inducement/intentional misrepresentation;
16 negligent misrepresentation; civil conspiracy) it states only a single claim for
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25 ¹ Appellants’ Appendix Volume 1, (hereinafter referred to as “AA1”), pgs.
26 AA000241-AA000243).

27 ² See *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) [“We
28 conclude that an order granting summary judgment, which disposes of all claims
and parties before the district court, is final and appealable[.]”]

³ AA1, pgs. AA000001-AA000018.

1 relief for purposes of NRC 54(b). This is because Respondent's claims arise from
2 a single transaction, the *Settlement Agreement and Release*.

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4 The *Summary Judgment Order* determined that Appellants breached the
5 *Settlement Agreement and Release*, Respondent was capped on its damages, and
6 therefore no further consideration was required by the District Court (other than
7 post-judgment issues). This is evidenced by the fact, that the parties have not
8 engaged in further discovery following the *Summary Judgment Order*, expressly
9 because all of Respondent's claims against Appellants were completely resolved.
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12 Appellants' assertion that Respondent's claims for: breach of covenant of
13 good faith and fair dealing; fraud in the inducement/intentional misrepresentation;
14 negligent misrepresentation; and civil conspiracy were not derivative of the
15 breach of contract claim and therefore not completely resolved as result of the
16 *Summary Judgment Order* is without merit and should be summarily dismissed.
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18 Indeed, immediately following the issuance of the *Summary Judgment Order*,
19 Respondent addressed post-judgment issues with the District Court (i.e., an award
20 of attorneys' fees and costs).⁴ At no point did Appellants argue that such post-
21 judgment issues were premature because Respondent had remaining causes of
22 action. In fact, Appellants already agreed that the *Summary Judgment Order*
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⁴ AA2, pgs. AA000264-AA000299.

1 resolved ALL the parties' claims, rights and liabilities, as evidenced by
2 Appellants' Docketing Statement.⁵

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24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

- Yes
- No

9 However, now that this Court has issued an *Order to Show Cause* as to why
10 Appellants' December 7, 2020 appeal is untimely, Appellants now take the exact
11 opposite position that the *Summary Judgment Order* did not resolve all the parties'
12 claim and rights. Furthermore, Appellants' attorney signed the Verification at the
13 end of the Docketing Statement.⁶

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16 **VERIFICATION**

17 I declare under penalty of perjury that I have read this docketing statement, that
18 the information provided in this docketing statement is true and complete to the
19 best of my knowledge, information and belief, and that I have attached all required
documents to this docketing statement.

20 Nickel Mine Avenue Trust
21 Name of appellant

Michael F. Bohn, Esq.
Name of counsel of record

22 Jan 4, 2021
23 Date


Signature of counsel of record

24 Clark County, Nevada
25 State and county where signed

26

27 ⁵ See Respondent's Supplemental Appendix (hereinafter "RA"), pg. RA00011.
28 Docketing Statement Civil Appeals, filed 01-04-2021.

⁶ RA, pg. 00013.

1 No new evidence or facts have come to light since Appellants filed their
2 Docketing Statement, other than the *Order to Show Cause* informing Appellants
3 that their Appeal was untimely. Indeed, Appellants should be estopped from their
4 instant request for NRCP 54(b) certification of the *Summary Judgment Order*, as
5 it will serves as an “escape hatch” to Appellants’ untimely appeal. This Court
6 should not indulge Appellants’ failure to assert its own appellate rights timely.
7 Moreover, such certification is entirely unnecessary and superfluous, as the
8 *Summary Judgment Order* resolved ALL the parties’ claims and rights and left
9 nothing further for the District Court’s consideration (other than post-judgment
10 issues). Therefore, Appellants’ attempts to utilizing NRCP 54(b) to reset the
11 deadline for the filing of their appeal should be summarily dismissed.
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16 **B. The September 25, 2020 Order Granting Respondent’s Motion for**
17 **An Award of Attorneys’ Fees and Costs Resolved All Post-**
18 **Judgment Issues and NRCP 54(b) Certification is Therefore**
19 **Unnecessary**

20 Similar to Appellants’ attempts to reset the clock for its untimely appeal of
21 the *Summary Judgment Order*, Appellants also request that the *Order Granting*
22 *Plaintiff Copper Creek Homeowners Association’s Motion for an Award of*
23 *Attorneys’ Fees and Costs*, filed September 25, 2020 (hereinafter referred to as
24 the “*Attorneys’ Fees and Costs Order*”)⁷ be certified pursuant to NRCP 54(b).
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⁷ AA2, AA000347-AA000353.

1 Appellants do so to make their December 7, 2020, appeal of the same timely.
2 However, the Nevada Supreme Court has made it clear that “when district courts,
3 after entering an appealable order, go on to enter a judgment on the same issue,
4 the judgment is superfluous.”⁸ Indeed, the Nevada Supreme Court has expressly
5 stated that such superfluous judgments “are unnecessary and confuse appellate
6 jurisdiction” and therefore “disapprove of this practice[.]”⁹ This is no reason to
7 issue NRCP 54(b) certification on these post-judgment issues as all of
8 Respondent’s attorneys’ fees and costs have been resolved and there is nothing
9 further for the District Court’s consideration.
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13 14 **II. CONCLUSION**

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16 For the foregoing reasons, Appellants’ Request for an Extension to File a
17 Motion for Rule 54(b) Certification should be denied because the *Summary*
18 *Judgment Order* and *Attorneys’ Fees and Costs Order* completely resolved all the
19 parties’ claims and rights and left nothing for the District Court’s future
20 consideration, a fact that Appellants previously agreed to under penalty of perjury.
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25 ⁸ *Lee*, 116 Nev. at 427, 996 P.2d at 417-18

26 ⁹ *Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014)

27 (holding that the final judgment is the first order that adjudicates all rights and
28 liabilities; duplicative or superfluous judgment that do not modify settled legal
rights and obligations are not appealable).

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Appellants’ attempt to now misuse the Nevada Rules of Civil Procedure to reset the deadlines for filing their appeal should be summarily dismissed.

DATED: January 6, 2022.

BRAY LAW GROUP LLC

/s/ David Bray
By _____
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